TYRONE TOWNSHIP BOARD WORKSHOP AGENDA
JULY 25, 2017 - 6:00 P.M.
(810) 629-8631

The regular board meeting will follow the workshop at 7:00 p.m.

ROLL CALL
APPROVAL OF AGENDA – OR CHANGES
NEW BUSINESS
1. Discussion of the future 2018 sewer connections.
2. Discussion on proposed drain.
PUBLIC REMARKS
ADJOURNMENT

TYRONE TOWNSHIP REGULAR BOARD MEETING AGENDA
JULY 25, 2017 - 7:00 P.M.
(810) 629-8631

CALL TO ORDER – PLEDGE OF ALLEGIANCE – 7:00 P.M.
ROLL CALL
APPROVAL OF AGENDA – OR CHANGES
APPROVAL OF CONSENT AGENDA
Regular Board Meeting Minutes – July 11, 2017
Treasurer’s Report
Clerk’s Warrants and Bills
COMMUNICATIONS
PUBLIC REMARKS
UNFINISHED BUSINESS
NEW BUSINESS
1. Discussion and potential action if desired by the board related to the petition under Chapter 6 of the Drain Code for Orchard Park Intercounty Drain.
2. Request to hire replacement Assessor to fill vacancy.
3. Resolution #170704 to proceed with the project and direct the preparation of the plans and cost estimates.
4. Resolution #170705 to approve the project, schedule the first hearing and direct statutory notices for the proposed Silver Lake Estates waste collection special assessment project.
MISCELLANEOUS BUSINESS
PUBLIC REMARKS
ADJOURNMENT

Please note: The Public Remarks section appears twice on the agenda - once after Communications and once before Adjournment. Anyone wishing to address the Township Board may do so at these times. The Tyrone Township Board of Trustees has established a policy limiting the time a person may address the Township Board at a regular or at a special meeting during the Public Remarks section of the agenda to three minutes. The Board reserves the right to place an issue under the New Business section of the agenda if additional discussion is warranted or to respond later either verbally or in writing through an appropriately appointed Township Official. Individuals with disabilities requiring auxiliary aids or services should contact the Tyrone Township Clerk at (810) 629-8631 at least seven days prior to the meeting.

* * * * * * * * * * * * * * * * *
Supervisor Mike Cunningham      Clerk Marcella Husted
CONSENT AGENDA
CALL TO ORDER
Supervisor Cunningham called the meeting of the Tyrone Township Board to order with the Pledge of Allegiance on July 11, 2017 at 7:00 p.m. at the Tyrone Township Hall.

ROLL CALL
Present: Supervisor Mike Cunningham, Clerk Marcella Husted, Treasurer Marna Bunting-Smith, Trustees Soren Pedersen, Al Pool, David Walker and Chuck Schultz.

PUBLIC HEARING
Supervisor Cunningham opened the public hearing at 7:00 p.m. The purpose of the public hearing was to explain and answer questions pertaining to the Roll and to hear objections to the Roll of the Apple Orchard Drive Waste Collection Project (2017) Special Assessment District.

One unidentified resident of Apple Orchard Drive asked general questions regarding the garbage carts and bags, etc.

No opposing comments or letters of opposition were received. The Supervisor closed the public hearing at 7:05 and reopened the regular meeting.

APPROVAL OF AGENDA – OR CHANGES
Trustee Walker moved to approve the agenda as presented. (Trustee Schultz seconded.) The motion carried; all ayes.

APPROVAL OF CONSENT AGENDA
Regular Board Meeting Minutes – June 20, 2017
Clerk’s Warrants and Bills

Trustee Walker moved to approve the consent agenda as presented. (Trustee Pool seconded.) The motion carried; all ayes.

COMMUNICATIONS
1. Orchard Park Drain petition
2. Livingston County Sheriff Report- May 2017
3. Revenue and Expenditure Report ending June 30, 2017

Trustee Walker moved to receive and place on file Communications #1-3 as presented. (Trustee Pool seconded.) The motion carried; all ayes.

PUBLIC REMARKS
An unidentified resident asked when the Orchard Park Drain issue will be discussed. The Supervisor said it will be discussed at the next board meeting.
UNFINISHED BUSINESS
None.

NEW BUSINESS
1. Resolution to confirm the special assessment roll for the Apple Orchard Drive Waste Collection Special Assessment.

RESOLUTION #170701
TYRONE TOWNSHIP, LIVINGSTON COUNTY
APPLE ORCHARD DRIVE
WASTE REMOVAL PROJECT (2017)

CONFIRMING SPECIAL ASSESSMENT ROLL

WHEREAS, the Township Board has taken the necessary actions under Act No. 188, Public Acts of Michigan, 1954, as amended (“Act 188”) for establishing a single waste hauler for the collection and disposal of garbage and rubbish along the Township’s Apple Orchard Drive (the “Project”), and for the establishment of the Tyrone Township Apple Orchard Drive Waste Removal Project (2017) Special Assessment District (the “Special Assessment District”);

WHEREAS, the Township Board has determined that it is necessary to cause special assessments to be levied against the lands especially benefited by the Project to pay for the costs of the Project;

WHEREAS, the Township Board has directed the Township Supervisor to prepare a proposed special assessment roll (the “Special Assessment Roll”) against the lands especially benefited by the Project;

WHEREAS, the Township Supervisor has prepared the Special Assessment Roll and has filed the Special Assessment Roll with the Township Clerk;

WHEREAS, the Township Board has scheduled a public hearing on the Proposed Roll and notice of the hearing has been properly provided;

WHEREAS, the Township Board conducted the public hearing on the Proposed Roll on July 11, 2017.

NOW, THEREFORE, BE IT RESOLVED THAT:

1. Roll Confirmed. In accordance with Act No. 188 and the laws of the State of Michigan, the Township Board hereby confirms the special assessment roll for the Tyrone Township Apple Orchard Drive Waste Removal Project (2017) (the “Roll”).
2. The Assessments in the district shall be as follows. Any parcel with a residential structure shall be assessed $206.00 in the first year to include legal and administrative costs; $161.00 in the second year with 3% increases in each year thereafter. Assessments will be for ten (10) years beginning in 2017 and continuing through 2026. Vacant parcels shall be assessed at $0.00 until such time as an occupancy permit for a structure requiring waste removal is issued to that vacant parcel.

3. Future Installments - Principal. The Township Board determines that each special assessment may be paid in annual installments. Each installment shall be billed on December 1 and shall be due annually on February 28th until 2027 at intervals 12 months from the due date of the first installment.

4. Future Installments - Interest. All unpaid installments shall bear interest, payable annually on each installment due date, at a rate of eight percent (8%) per annum. Interest on such unpaid installments shall accrue from its due date.

5. Warrant. The Township Clerk is hereby directed to attach a warrant (in the form of Exhibit B to this resolution) to the Roll and to deliver such warrant and the Roll to the Township Treasurer, who shall thereupon collect the special assessments in accordance with the terms of this resolution, the Clerk’s warrant and the statutes of the State of Michigan.

6. Inconsistent Prior Resolutions. All previously adopted resolutions that are in conflict with this resolution are repealed to the extent of such conflict.

RESOLVED BY: Trustee Walker
SUPPORTED BY: Trustee Schultz

VOTE: Walker, yes; Schultz, yes; Pedersen, yes; Pool, yes; Bunting-Smith, yes; Husted, yes; Cunningham, yes.

ADOPTION DATE: July 11, 2017

CERTIFICATION OF THE CLERK

The undersigned, being the duly qualified and acting Clerk of Tyrone Township, Livingston County, Michigan, hereby certifies that (1) the foregoing is a true and complete copy of a resolution adopted by the Township Board at a regular meeting, held on July 11, 2017, at which meeting a quorum was present and remained throughout, (2) the original thereof is on file in the records in my office, (3) the meeting was conducted, and public notice thereof was given, pursuant to and in full compliance with the Open Meetings Act (Act No. 267, Public Acts of Michigan, 1976, as amended) and (4) minutes of such meeting were kept and will be or have been made available as required thereby.
The project (the “Project”) will consist of the establishment of a single waste hauler for the collection and disposal of garbage and rubbish along Apple Orchard Drive in Tyrone Township.

WARRANT

TO: Treasurer
Tyrone Township
Livingston County, Michigan

I certify that attached to this Warrant is a true copy of the special assessment roll for the Tyrone Township Apple Orchard Drive Waste Removal Project (2017) confirmed by the Township Board July 11, 2017 (the “Confirming Resolution”). You are hereby directed to proceed to collect the amounts due on such roll in accordance with this Warrant, the Confirming Resolution and the statutes of the State of Michigan.

2. Request of Supe’s Exotic Jungle for a special land use application.

Trustee Pool moved to grant a Special Land Use Permit to Supe’s Exotic Jungle. (Trustee Schultz seconded.) The motion carried; all ayes.
3. Request to refund sewer overpayment to parcel 4707-09-201-010.

Treasurer Bunting-Smith to refund the sewer overpayment of $6,482.17 to parcel 4707-09-201-010, to be paid from the Sewer O&M 590 Fund. (Trustee Walker seconded.) The motion carried; all ayes.

4. Township escrow policy.

RESOLUTION #170702
TYRONE TOWNSHIP, LIVINGSTON COUNTY

ESCROW POLICY
FOR SPECIAL ASSESSMENT DISTRICT INQUIRIES

1. Purpose. In an effort to prevent Tyrone Township taxpayers from baring the cost of reviewing a potential special assessment district request the Township has established this Escrow Policy.

2. Township Reviews Subject to the Escrow Policy. This Escrow Policy shall apply to any request by an individual or organization requesting that the Township review the feasibility of a special assessment district.

3. Escrow Deposits. Escrow deposits are deposit amounts based on the experience of the Township Staff and Officials. They are applied to escrow activities set out in this Escrow Policy. The amount of the deposit shall be $3,000.00.

4. Activities Falling Under the Escrow Policy. The escrow deposit shall be used to defray the costs of the review and is not limited to the following:
   a. Township Attorney fees and costs for review, research, consulting, drafting, or meeting attendance.
   b. Engineer fees and costs for review, report and meeting attendance.
   c. Consultant (traffic, environmental, storm water, or other professionals) fees and costs for review, reports and meeting attendance.
   d. Township Staff time.
   e. Public hearing notice costs, including letters to neighboring properties when required.
   f. Special Meetings.
5. Fees Required at the Time of Request. The escrow fee must be paid at the time a request is made for a review of a special assessment district. The inquiring party must also include a completed and signed “Escrow Policy Acknowledgement.”

6. Escrow Account and Draws. The Township shall keep account of all bills under each Escrow Account separately, and shall maintain Escrow Account records. The Township Clerk shall draw from the requesting party’s Escrow Account in the amount billed for escrow activities and pay said amounts to the appropriate person, firm or consultant, or to the Township for escrow activities carried out by the Township.

7. Escrow Balance. The Township shall provide a written accounting to the inquiring party monthly. The Township shall notify the inquiring party if its Escrow Account balance falls below 20% of the initial Escrow Deposit. Once notified, the inquiring party shall redeposit into the account the full amount of the Escrow Deposit in order to continue the review of the application. A balance of less than 20% will be cause for any action concerning the inquiry to be removed from the current agenda and the action will not be reviewed until such time as the funds are current.

8. Excess Escrow Balance. Any excess escrow balance upon completion of an inquiry will be refunded to the requesting party with no interest accumulating on those funds. The Township Board shall authorize disbursement of escrow funds as part of their normal post-paid monthly approval process.

9. Expenses applied to the special assessment district. Expenses that have been incurred during this review process may be included in the costs of the special assessment district if the district is approved.

10. Waiver. The Township Clerk may, at his/her sole discretion, waive this escrow policy for a particular application.

RESOLVED BY: Clerk Husted
SUPPORTED BY: Trustee Pool

VOTE: Pedersen, yes; Bunting-Smith, yes; Pool, yes; Walker, yes; Schultz, yes; Cunningham, yes; Husted, yes.

ADOPTION DATE: July 11, 2017

CERTIFICATION OF THE CLERK

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pursuant to and in full compliance with the Open Meetings Act (Act No. 267, Public Acts of Michigan, 1976, as amended) and (4) minutes of such meeting were kept and will be or have been made available as required thereby.

Marcella Husted
Tyrone Township Clerk

5. Resignation of Treasurer Bunting-Smith.

RESOLUTION #170703
TYRONE TOWNSHIP, LIVINGSTON COUNTY

RESIGNATION OF TREASURER MARNA BUNTING-SMITH

Supervisor Cunningham moved to adopt Resolution #170703 accepting Marna Bunting-Smith’s resignation as Township Treasurer effective September 30, 2017. (Trustee Pool seconded). The motion carried; all ayes.

VOTE: Cunningham, yes; Husted, yes; Bunting-Smith, yes; Pool, yes; Pedersen, yes; Walker, yes; Schultz, yes.

ADOPTION DATE: July 11, 2017

CERTIFICATION OF THE CLERK

The undersigned, being the duly qualified and acting Clerk of Tyrone Township, Livingston County, Michigan, hereby certifies that (1) the foregoing is a true and complete copy of a resolution adopted by the Township Board at a regular meeting, held on July 11, 2017, at which meeting a quorum was present and remained throughout, (2) the original thereof is on file in the records in my office, (3) the meeting was conducted, and public notice thereof was given, pursuant to and in full compliance with the Open Meetings Act (Act No. 267, Public Acts of Michigan, 1976, as amended) and (4) minutes of such meeting were kept and will be or have been made available as required thereby.

Marcella Husted
Tyrone Township Clerk

The board discussed if it is financially responsible for the township to contribute $9000+ each year for the next three years to the Economic Development Council of Livingston County (EDCLC). Although the board agreed the EDCLC does a great job promoting the county, there was concern perhaps the township wasn’t benefitting and the money would be better spent elsewhere. Trustee Walker said he would inquire if the EDCLC would agree to keep the investment fees the same as in previous years.

7. Request to amend the Smith and Langdon agreement for gravel pit operation and closure.

Trustee Walker moved to amend the agreement with Fenton Sand and Gravel regarding hours of operation and reclamation. (Trustee Pedersen seconded.) The motion carried; all ayes.

MISCELLANEOUS BUSINESS
None.

PUBLIC REMARKS
An unidentified resident of Apple Orchard asked how the escrow policy for special assessment projects works, specifically who pays the escrow fee. Clerk Husted said that the person or association requesting the special assessment will submit the escrow payment. She explained larger projects, such as road paving, require legal or engineering counsel and the general township should not pay those fees.

Another unidentified resident asked how traffic could be limited through Apple Orchard Drive. The Supervisor referred him to the road commission.

ADJOURNMENT
Trustee Walker moved to adjourn. (Trustee Schultz seconded.) The motion carried; all ayes. The meeting adjourned at 7:40 p.m.
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<tr>
<th>TOWNSHIP FUNDS</th>
<th>INVESTMENTS ICS</th>
<th>MICHIGAN CLASS Int Rate</th>
<th>Int Rate Monthly AVG.</th>
<th>PEG CD Int rate</th>
<th>Grand Totals Each Fund</th>
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<td>07/11/2017</td>
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<td>21059</td>
<td>AT&amp;T MOBILITY</td>
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<td>07/11/2017</td>
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**001 TOTALS:**
- Total of 24 Checks: 42,271.81
- Less 0 Void Checks: 0.00
- Total of 24 Disbursements: 42,271.81

**Bank 022 STATE BANK - PUBLIC SAFETY savings**

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**022 TOTALS:**
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- Total of 5 Disbursements: 80,691.20

**Bank 102 SEWER O&M CHECKING 590**

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**Report Totals:**

|  |  |  |  |  |  |
|-----------------|----------------|-----------------|-----------------|-----------------|
| Total of 7 Checks | 245,889.52 | Total of 7 Checks | 245,889.52 | Total of 7 Checks | 245,889.52 |
NEW BUSINESS #1
Petition for Locating, Establishing and Constructing an Intercounty Drain

Orchard Park Intercounty Drain

STATE OF MICHIGAN )
COUNTY OF LIVINGSTON )

VICKI CALKINS hereby certify that I have compared the ownership of property represented by the signatures as signed to the foregoing petition with records in the office of Register of Deeds and find that they are the owners in fee simple of the lands described in this Petition, except where noted.

Vicki Calkins
For Livingston County, Michigan

Subscribed and sworn to before me this 8 day of May, 2017.

Shelly A. Nassing
Notary Public, Livingston County, Michigan
My Commission expires: March 3, 2023
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<td>BURGESS LOLITA J</td>
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</table>
STATE OF MICHIGAN

DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT
Environmental Stewardship Division

Petition for Locating, Establishing and Constructing an Intercounty Drain

ORCHARD PARK INTERCOUNTRY DRAIN
(Livingston and Genesee Counties)

To the Livingston County Drain Commissioner:

The undersigned freeholders of this petition request that the Orchard Park Intercounty Drain be located, established and constructed under the provisions of Chapter 6 of Public Act 40 of 1956, as amended, to alleviate drainage issues in the Drainage District.

The tentative location of the proposed Orchard Park Intercounty Drain is as described in the Order Laying Out and Designating the Orchard Park Intercounty Drain Drainage District dated January 18, 2017.

This petition is signed by a number of freeholders equal to at least half of the freeholders whose lands are traversed by the proposed intercounty drain as provided more specifically in MCL 280.121.

Signers acknowledge and understand that this Petition may be circulated and signed in counterparts, and that all such counterparts together constitute a single Petition.

<table>
<thead>
<tr>
<th>Signature</th>
<th>Printed Name</th>
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<tr>
<td>Craig Sadler</td>
<td>04-05-102-014</td>
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<td>11485 Orchard Pkwy</td>
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<td>Signature</td>
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<tr>
<td>Sarah Sadler</td>
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<tr>
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<tr>
<td>Signature</td>
<td>Printed Name</td>
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</tr>
<tr>
<td>Amanda Green</td>
<td>04-05-102-004</td>
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</tr>
<tr>
<td>11490 Orchard Parkway</td>
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1 The petition shall be signed by a number of freeholders in the drainage district, whose lands would be liable to an assessment for benefits, equal to 1/2 of the number of freeholders whose lands would be traversed by the drain or drains applied for, or abut on the part of any highway or street along the side of which the drain extends, between the point where the drain enters the highway and the point where it leaves the highway and which lands are within the drainage district.
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<tr>
<th>Signature</th>
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<tr>
<td>Keith Stockford</td>
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<td>Rebecca Stockford</td>
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<tr>
<td>Mike Anderson</td>
<td>04-05-102-069</td>
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</tr>
<tr>
<td>John Hoang</td>
<td>04-05-102-001</td>
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</table>

**AFFIDAVIT OF CIRCULATOR OF PETITION**

I **Hereby Certify** that I did personally circulate this petition and the signatures to same were made in my presence and are the genuine signatures of those whose names are affixed.

Dated: **APRIL 25, 2017**

Print Name: **GORDON TOMASZEWSKI**

STATE OF MICHIGAN  
County of Livingston,  

On **APRIL 25, 2017**, before me, a Notary Public in and for said County, personally appeared **GORDON TOMASZEWSKI** to me known to be the person described in and who circulated the foregoing petition.

Notary Public  
LIVINGSTON County, Michigan  
Acting in LIVINGSTON County, Michigan  
My Commission Expires: **FEBRUARY 12, 2021**
STATE OF MICHIGAN
DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT
Environmental Stewardship Division

Petition for Locating, Establishing and
Constructing an Intercounty Drain

ORCHARD PARK INTERCOUNTRY DRAIN
(Livingston and Genesee Counties)

To the Livingston County Drain Commissioner:

The undersigned freeholders of this petition request that the Orchard Park Intercounty Drain be
located, established and constructed under the provisions of Chapter 6 of Public Act 40 of 1956,
as amended, to alleviate drainage issues in the Drainage District.

The tentative location of the proposed Orchard Park Intercounty Drain is as described in
the Order Laying Out and Designating the Orchard Park Intercounty Drain Drainage District dated

This petition is signed by a number of freeholders equal to at least half of the freeholders
whose lands are traversed by the proposed intercounty drain as provided more specifically in MCL
280.121.

Signers acknowledge and understand that this Petition may be circulated and signed in
counterparts, and that all such counterparts together constitute a single Petition.

<table>
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<td></td>
<td>Glenn Salim</td>
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<td>3/22/17</td>
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<td>Dana Salim</td>
<td>Dana Salim</td>
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<th>Signature</th>
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<tr>
<td>Gordon Tomaszewski</td>
<td></td>
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</tr>
<tr>
<td>Address</td>
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<tr>
<td>Date</td>
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the point where the drain enters the highway and the point where it leaves the highway and which lands are within
the drainage district.
AFFIDAVIT OF CIRCULATOR OF PETITION

I hereby certify that I did personally circulate this petition and the signatures to same were made in my presence and are the genuine signatures of those whose names are affixed.

Dated: APRIL 25, 2017

Print Name: GORDON TOMASZEWSKI
Telephone No.: 

STATE OF MICHIGAN

County of Livingston

On APRIL 25, 2017, before me, a Notary Public in and for said County, personally appeared GORDON TOMASZEWSKI to me known to be the person described in and who circulated the foregoing petition.

KENNETH E. RECKER
Notary Public
LIVINGSTON County, Michigan
Acting in LIVINGSTON County, Michigan
My Commission Expires: FEBRUARY 12, 2021
STATE OF MICHIGAN

DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT
Environmental Stewardship Division

Petition for Locating, Establishing and
Constructing an Intercounty Drain

ORCHARD PARK INTERCOUNTRY DRAIN
(Livingston and Genesee Counties)

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<td></td>
<td>Aaron M. Stanfield</td>
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<td>Christopher M. Byars</td>
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<td>Heidi Wood</td>
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<tr>
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**AFFIDAVIT OF CIRCULATOR OF PETITION**

I **Hereby Certify** that I did personally circulate this petition and the signatures to same were made in my presence and are the genuine signatures of those whose names are affixed.

Dated: **APRIL 25, 2017**

Print Name: **Gordon Tomaszewski**

STATE OF MICHIGAN

County of Livingston

On **APRIL 25, 2017**, before me, a Notary Public in and for said County, personally appeared **Gordon Tomaszewski** to me known to be the person described in and who circulated the foregoing petition.

Notary Public

**Karl E. Reed**

LIVINGSTON County, Michigan

Acting in LIVINGSTON County, Michigan

My Commission Expires: **FEBRUARY 12, 2021**
STATE OF MICHIGAN

DEPARTMENT OF AGRICULTURE
AND RURAL DEVELOPMENT
Environmental Stewardship Division

Petition for Locating, Establishing and
Constructing an Intercounty Drain

ORCHARD PARK INTERCOUNTRY DRAIN
(Livingston and Genesee Counties)

To the Livingston County Drain Commissioner:

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The tentative location of the proposed Orchard Park Intercounty Drain is as described in the Order Laying Out and Designating the Orchard Park Intercounty Drain Drainage District dated January 18, 2017.

This petition is signed by a number of freeholders equal to at least half of the freeholders whose lands are traversed by the proposed intercounty drain as provided more specifically in MCL 280.1211.

Signers acknowledge and understand that this Petition may be circulated and signed in counterparts, and that all such counterparts together constitute a single Petition.

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<td></td>
<td>DOMINIC AIKEN</td>
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<td>MICHAEL CEBE</td>
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<td>Michael Cemazar</td>
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<td>Julie</td>
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<td>Lolita</td>
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<td>Address</td>
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<td>Date 3-26-17</td>
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**AFFIDAVIT OF CIRCULATOR OF PETITION**

I **Hereby Certify** that I did personally circulate this petition and the signatures to same were made in my presence and are the genuine signatures of those whose names are affixed.

Dated: **APRIL 25, 2017**

Print Name: **GORDON TOMASZEWSKI**

STATE OF MICHIGAN } ss.

County of Livingston } ss.

On **APRIL 25, 2017**, before me, a Notary Public in and for said County, personally appeared **GORDON TOMASZEWSKI**, to me known to be the person described in and who circulated the foregoing petition.

**K数据分析**:Notary Public

LIVINGSTON County, Michigan

Acting in LIVINGSTON County, Michigan

My Commission Expires: **FEBRUARY 12, 2021**
A total of 23 Parcels are traversed by the proposed Drain. Total ownership of these parcels includes 31 landowners. Parcels owned by an LLC or listed in Trust were counted as one landowner.
From: Ken Recker [mailto:KRecker@livgov.com]
Sent: Friday, June 30, 2017 3:10 PM
To: Hogan, Susanne; Marcella Husted
Cc: Mike Cunningham; JKenyon@WadeTrim.com; gordiefishnfool; Michelle LaRose; Shelly Messing; Vicki Calkins; Gerth, Jim
Subject: RE: Orchard Park

Thanks Sue. Have a good 4th.

From: Hogan, Susanne [mailto:shogan@co.genesee.mi.us]
Sent: Friday, June 30, 2017 3:09 PM
To: Ken Recker <KRecker@livgov.com>; Marcella Husted <mhusted@tyronetownship.us>
Cc: Mike Cunningham <mcunningham@tyronetownship.us>; JKenyon@WadeTrim.com; gordiefishnfool <gordiefishnfool@charter.net>; Michelle LaRose <MLaRose@livgov.com>; Shelly Messing <SMessing@livgov.com>; Vicki Calkins <VCalkins@livgov.com>; Gerth, Jim <JGerth@co.genesee.mi.us>
Subject: RE: Orchard Park

Hello,

On 1/26/17 I sent an email to Brady, Ken & Jason and CC’d Jim.

In it I stated that Genesee County has 41 freeholders traversed by the drain. Therefore 41 Genesee + 31 Livingston = 72/2=36 signatures.

Sue Hogan
Drain Engineer
GCDC-SWM

From: Ken Recker [mailto:KRecker@livgov.com]
Sent: Thursday, June 29, 2017 8:45 PM
To: Marcella Husted <mhusted@tyronetownship.us>
Cc: Mike Cunningham <mcunningham@tyronetownship.us>; JKenyon@WadeTrim.com; gordiefishnfool <gordiefishnfool@charter.net>; Michelle LaRose <MLaRose@livgov.com>; Shelly Messing <SMessing@livgov.com>; Vicki Calkins <VCalkins@livgov.com>; Gerth, Jim <JGerth@co.genesee.mi.us>; Hogan, Susanne <shogan@co.genesee.mi.us>
Subject: RE: Orchard Park

Marcy,
My apologies for not getting this to you sooner. Here’s what we have:

Attachment 1 are the petitions as submitted by Gordon Tomaszewski.
Attachment 2 is our verification of the signatures (checking register of deeds records)
Attachment 3 is a map highlighting the properties traversed by the Drain within Livingston County.

MCL 280.121 lays out the criteria for a landowner petition under Chapter 6 of the Michigan Drain Code. It says the petition “…..shall be signed by a number of freeholders in the drainage district, whose lands would be liable to an assessment for benefits, equal to ½ the number of freeholders traversed by the drain…….”

Obviously the route of the drain continues into Genesee County. I have not attempted to analyze the adequacy of the petition based on Genesee County land ownership. Mr. Tomaszewski attempted to contact the board of the Fox Chase Farms Condominium in Fenton Township, and also spoke with residents along Elder Oaks Dr. in Fenton Township. Signatures from landowners north of the Livingston County Line were difficult to come by, possibly due to concerns about the cost of the project that would be borne by Fenton Township landowners as a result of the project.

The petition submitted under chapter 6 of the Drain Code (which is attached) includes 24 signatures. Within Livingston County only, I estimate 31 freeholders traversed by the drain.

If the petitions as submitted do not meet the criteria outlined in MCL 280.121, the Township can consider petitioning in lieu of the landowners under MCL 280.121 (4).

I will be prepared to discuss this further at the Township Board meeting on July 25. Let me know if you have any questions in the interim.

Ken

---

From: Marcella Husted [mailto:mhusted@tyronetownship.us]
Sent: Monday, June 26, 2017 10:06 AM
To: Ken Recker <KRecker@livgov.com>
Subject: Orchard Park

Ken,

Can you get me the petitions and the SAD info to me asap because we want to start reviewing.

Thank you.

Marcella Husted
Clerk
Tyrone Township
mhusted@tyronetownship.us
810-629-8631
810-629-0047 fax
Regular Office Hours Mon-Thurs. 9AM - 5 PM
Notice: This email, including any attachments, is covered by Electronic Communication Privacy Act, 18 U.S.C. 2510-2521, is confidential and may be legally privileged. If you are not the intended recipient, you are hereby notified that any retention, distribution or copying of this communication is strictly prohibited. Please reply to the sender if you have received this message in error and destroy all copies of the original message.
STATE OF MICHIGAN

FORTY-FOURTH CIRCUIT COURT (LIVINGSTON COUNTY)

CRAIG AND SARAH SADLER,

Plaintiff,

v

File No. 14-23117-CH

ORCHARD PARK ASSOCIATION,

Defendant,

FOX CHASE FARMS ASSOCIATION,

Defendant.

____________________________/

STATUS CONFERENCE

BEFORE THE HONORABLE THERESA M. BRENNAN - TRIAL COURT JUDGE

Howell, Michigan - Tuesday, October 21, 2014

APPEARANCES:

For the Plaintiffs: MR. JOHN B. SWIFT P73599
1020 Greene Street
Ann Arbor, Michigan 48109
(734) 764-8657

For Orchard Park Association: MR. CHRISTIAN P. ODLUM P55575
Hackney Grover PLC
1715 Abbey Road Suite A
East Lansing, Michigan 48823
(517) 333-0306

For Fox Chase Farms Association: MR. WILLIAM DANIEL TROYKA P65155
Conlin McKenney & Philbrick PC
350 South Main Street Suite 400
Ann Arbor, Michigan 48104-2131
(734) 997-2153

TRANSCRIBED BY: Leah L. Hanna CER 6128
Certified Electronic Recorder
(517) 550-7818
TABLE OF CONTENTS

WITNESSES:
None

EXHIBITS:
None
Brighton, Michigan.

October 21, 2015 - 10:56 a.m.

THE COURT: -- 2817. Was this set at eleven?

VIDEO OPERATOR: Yes, it was.

MR. SWIFT: Good morning your Honor. John Swift on behalf of the plaintiffs.

THE COURT: Okay.

MR. TROYKA: Good morning Dan Troyka on behalf of defendant, Fox Chase Farms.

THE COURT: Okay. I'm sorry say your name again.


THE COURT: And so you're for Fox Chase Farms?

MR. TROYKA: That is correct your Honor.

THE COURT: Okay.


THE COURT: Okay. So are your clients here?

MR. OLDMAN: Yes.

MR. TROYKA: Yes, mine are.

THE COURT: That who all those people?

MR. OLDMAN: Yes.

MR. TROYKA: Yes.

THE COURT: All right go ahead and have a seat.

What's Mr. Halm here for?

VIDEO OPERATOR: (Inaudible).
THE COURT: Thanks Kristi. Okay. Plaintiffs. (Inaudible). Orchard Park. I have more pretrial statements than there are people. Or -- I've got the -- oh I see. Never mind.

VIDEO OPERATOR: (Inaudible).

THE COURT: No because this says civil pretrial statement of defendant Fox Chase Homeowners Association.

VIDEO OPERATOR: Okay.

THE COURT: Oh never mind. It's been a long -- my dad went in the hospital yesterday and so I am so completely and totally -- I've told -- out of it. I think he's going to be fine, but I did not sleep so I feel like I'm going on...I'm just really out of it. Sorry people. This is all about a drainage district right? If I remember from when I read it or the lack of maybe?

MR. SWIFT: It is the lack of a drainage district. The case is center around private cause of action against privately managed drains up to homeowner's association. But there is no drain district thus, the county doesn't actually have jurisdiction. Either county for that matter.

THE COURT: Is it in -- what are the two counties?

MR. SWIFT: Livingston and Genesee.

THE COURT: Okay. Well what happened when they bought? Was there any disclosure?

MR. SWIFT: No my clients bought the property from a
bank foreclosure. The bank sold it to them as is.

THE COURT: So they bought it as is.

MR. SWIFT: Right.

THE COURT: So there's nobody they can go after. But I suspect that this isn't the first time.

MR. SWIFT: The first time that it flooded.

THE COURT: Floods.

MR. SWIFT: My clients had no knowledge. Nothing was disclosed to them about the prior flooding.

THE COURT: Well the banks don't have to. That's what happens when you buy foreclosed homes. You're just -- you know it's usually cheaper but a lot of risk comes with it. Unfortunately. So why -- do we have all the parties in? Let me start there. Because usually -- go ahead.

MR. TROYKA: Your Honor, that's a good question. As I understand the case there's an allegation that the entire upstream watershed might be contributing to overburdening on a retention easement. If that's true, which we dispute, but if it's true --

THE COURT: Right.

MR. TROYKA: -- that there are likely going to be other upstream property owners that will file (indecipherable) a nonparty at fault for including new development called Elder Oaks which is much closer to the plaintiffs' residence than we are.
THE COURT: So but -- well it's probably a month ago
I had to go out and walk somebody's property because it was
about the natural flow of water. And when you buy in the
country you're stuck accepting your neighbor's water that
naturally flows but these people had built a berm. So did
there -- was this a subdivision recently built out there?

MR. TROYKA: There was one that's not a party that's
Elder Oaks. Um, and Elder Oaks is just north of the
plaintiffs --

THE COURT: Does anybody --

MR. TROYKA: -- property.

THE COURT: -- have a map so I can see what --

MR. TROYKA: I do your Honor.

THE COURT: -- I'm looking at.

MR. TROYKA: This is --

THE COURT: Is this in Tyrone?

MR. OLDMAN: Yes, your Honor.

MR. TROYKA: Some of it is. Theirs is. Our --
we're in Genesee County.

THE COURT: Which used to be country. I mean I've
been here for 50 some years and that was -- it's all country.
And as we develop this just keeps happening and happening.
Okay.

MR. TROYKA: So your Honor, is aware that's
something that was provided by the Genesee County Drain
Commissioner. Uh, and it -- I understand that it was provided in response to this lawsuit when they were a party.

THE COURT: I'm just trying to get my bearings. Why doesn't the plaintiff's attorney and one -- the defense attorney just come up and point to me -- for me where everybody is.

MR. TROYKA: Your Honor, the plaintiffs' house is right there. It's that one.

THE COURT: Okay. Do you agree?

MR. TROYKA: The one right there.

MR. SWIFT: Yeah it backs right up to there.

THE COURT: That one?

MR. SWIFT: I think it's that one.


THE COURT: Okay.

MR. TROYKA: Um, this is the Orchard Park Site Condominiums.

THE COURT: Okay so that's your clients' right there?

MR. SWIFT: Correct. This is the Orchard Park Association is basically here.

MR. TROYKA: And Fox Chase is over here. It's like this.

THE COURT: Oh.
MS. TROYKA: So it's a good ways away and you can see our water is carried by a pipe over here. So we're not really sure why there's allegation that it goes there.

THE COURT: Does this have any like elevations? Are these elevations?

MR. TROYKA: These are elevations.

THE COURT: Okay.

MR. TROYKA: And we have other maps too that show elevations.

THE COURT: Okay. Well good. We can just start there because this isn't gonna be the trial obviously. I'm just trying to bet my bearings.

MR. SWIFT: Um, can I show --

THE COURT: What do you want to say?

MR. SWIFT: The uh, course of water that uh, we've been informed about --

THE COURT: Okay go ahead.

MR. SWIFT: -- from our engineer um, flows from the wetland that is in the middle of Fox Chase.

THE COURT: The wetland?

MR. SWIFT: It is a designated wetland right?

MR. TROYKA: This is a wetland. This is our detention pond and this is a wetland.

MR. SWIFT: Our engineers found that the water flows down through here through this pond down the road in the
drain, the gutter on the side of the road. And then dumps off into the retention pond.

MR. TROYKA: Uh, that statement is not in the documents you gave me.

THE COURT: Wait (indecipherable). That's what he says I don't know if it's true.

MR. TROYKA: Okay.

THE COURT: Everybody says a lot of stuff at a pretrial. I don't take it all as gospel. I know everybody tries to give me their argument, but I'm just trying to get my bearings in. Who's, who's your engineer?

MR. SWIFT: Uh, Brad Thompson.

THE COURT: How long has Fox Chase been developed?

MR. TROYKA: Your Honor, the --

THE COURT: Oh it's not developed.

MR. TROYKA: Well Fox Chase Farms is -- the development was completed in about 2005. The master deed was recorded in 2004. It's not fully built out because like a lot of site condominiums it was hit by the housing market. But the actually development has been completed for close to a decade.

THE COURT: A lot of vacant lots though. Who knows what the natural flow of the water was before the developments?

MR. TROYKA: Your Honor, I'm not aware of any
evidence on that except we do have a satellite photo from 1995 --

THE COURT: Let me see it.

MR. TROYKA: -- showing the pond.

MR. TROYKA: Your Honor, what you’ll see are four photographs ‘95, 2000, 2005, and 2010. These are from Livingston County GIS.

THE COURT: Okay. Whose -- what pond is this? Oh is this the Orchard Park pond?

MR. TROYKA: That’s the one of issue with this litigation. And the first one is 1995.

THE COURT: Okay. Oh my gosh. The water is up to the houses. Is this -- are these public roads or private roads?

MR. TROYKA: Do you know? We know that Lobdell is public but for Orchard --

THE COURT: Why didn’t the, why didn’t the drain commissioner get involved?

MR. TROYKA: Uh, your Honor, they need a petition as I understand it.

THE COURT: They’re going to have to have a drainage district out here. Has anybody petitioned?

MR. TROYKA: I know the process was discussed. We were not involved in that.

MR. SWIFT: Part of the issue is that it would have
to involve both county drain commissioners (inaudible).

THE COURT: Yeah but that’s going to be the only solution here. I did city work, township work for 22 years. I had to read more site plans than you can even imagine. I cannot believe they approved this development without a drainage district.

MR. SWIFT: Agreed your Honor.

THE COURT: But that doesn’t make them at fault. How does that make them at fault?

MR. SWIFT: Their fault arises from uh, number one, Orchard Park’s improper management of the retention pond.

THE COURT: Okay what didn’t they do?

MR. SWIFT: They did not manage it so as to protect it from flooding into my clients’ property.

THE COURT: And what could they -- did you look at these photos?

MR. SWIFT: I’ve seen many of the photos.

THE COURT: What could they have done?

MR. SWIFT: Properly drained that pond.

THE COURT: What does that mean?

MR. SWIFT: There’s no outlet for that pond.

THE COURT: And what, what governmental entity is going to let them drain it where? Unless there’s a drainage district.

MR. SWIFT: Your Honor, they’re the association
managing the private drain that includes that pond.

THE COURT: But, but they probably have to do is

petition for a drainage district which is going to cost

everybody money including your clients.

MR. SWIFT: Agree. With regard to Fox Chase your

Honor, we --

THE COURT: How do you know that it never flooded

before?

MR. SWIFT: Never flooded before my --

THE COURT: I guess what, what are the -- so this is

a retention pond on the development?

MR. TROYKA: Yes.

THE COURT: Okay. What does the master deed or the

-- what does it say in all of the documents about who is

responsible for managing and how it should be managed and all

of that?

MR. SWIFT: The master deed states that the

retention pond is one of the general common elements that is

to be managed by the association.

THE COURT: Okay which means your client too right?

I mean they understand that.

MR. SWIFT: Yes.

THE COURT: I mean it could cost hundreds of

thousands of dollars to fix this problem.

MR. SWIFT: Correct your Honor.
THE COURT: Okay go ahead. Tell me what you’re thinking. How are you going to fix it?

MR. OLDUM: Well according to the master deed my clients were um, as far as it related to the general common element land areas including all required open space and wetland shall remain in their natural state and were not to be altered by them.

THE COURT: This isn’t a wetland. It’s a retention.

MR. OLDUM: It’s a common area open area that they were not supposed to --

THE COURT: There has to be some type of drainage system set forth in the master deed.

MR. OLDUM: Yes. Which the developer put in place.

We have all the plans and everything.

THE COURT: Well you just don’t put something in place and let it be. There has to be management of it. That would be like saying okay, they’re private roads and the developer put them in and that’s the be all and the end all. That’s not it.

MR. OLDUM: Well we also believe that there are some issues out there that when this property was developed it was not to grade and they removed too much of the soil in that area in order to put a walkout basement which --

THE COURT: Who approved it?

MR. OLDUM: -- created --
THE COURT: Who approved it?

MR. OLDUM: I don't know if the -- if they went and got the proper permits to do that and if the --

THE COURT: Well you should know that by now.

MR. OLDUM: -- township --

MR. TROYKA: Yeah, it was the building department.

THE COURT: Okay so they approved it. The building department -- the Livingston County Building Department approved it? How come he knows but you don't?

MR. OLDUM: I came into these case a little bit later and --

THE COURT: How long have you been in it?

MR. OLDUM: Probably about a month or month and a half I think.

MR. TROYKA: And just so your Honor knows I got a FOIA response from the building department yesterday.

THE COURT: Okay.

MR. TROYKA: So it's news to me too.

THE COURT: Okay. Okay. Tell me where it says in the master deed about the management of the water on this development. It can't be -- it can't not address it.

MR. OLDUM: What I'm looking at and what I think would be applicable says that any provision of the master deed, the bylaws, or any other condominium document to the contrary notwithstanding except as shown on the plans
approved by the Tyrone Township, the general common element
land areas including all required open space and wetlands
shall remain in their natural state and shall not be altered
or disturbed --

THE COURT: Let me try this again. Is there a
retention pond on this site?

MR. OLDUM: I believe that is considered a retention
pond in that area.

THE COURT: All right. Why don’t I try it with you?
Where is it in there that it says that they are responsible
for managing water?

MR. SWIFT: One second your Honor. It is in our
complaint. I’ll grab that citation for you.

THE COURT: Who is your engineer?

MR. OLDUM: I have listed --

THE COURT: Have you talked with your engineer?

MR. OLDUM: I have not yet. We were trying to
gather up the documentations through FOIA requests and --

THE COURT: How did you pick an engineer without
talking to them first?

MR. OLDUM: We’ve used him in the past.

THE COURT: Who is it?

MR. OLDUM: Dave Geyer.


MR. OLDUM: And also Delbert Mocma (phonetic) that
we've used out of Michigan State University.

THE COURT: Okay. Have they visited the site yet?

MR. OLDUM: No they have not.

THE COURT: What about you?

MR. TROYKA: Um, your Honor, we have not retained an engineer yet. I just got their engineering report last week. And that's why we waited. Um, probably Cliff Zabra (phonetic). I might consult my boss who does a lot of work in this area. But we haven't retained one at this time.

THE COURT: Okay. All right go ahead.

MR. SWIFT: Uh, yes your Honor. Uh, as to Orchard Park Article 4 lists the common elements uh, Subsection D is the storm water drainage system.

THE COURT: I'm sorry it says what?

MR. SWIFT: Uh, Subsection D of Article 4 lists the storm water drainage system as one of the general common elements.

THE COURT: Okay.

MR. SWIFT: The association responsibilities are set forth in Section 4 of Article 4.

THE COURT: Okay what does it say?

MR. SWIFT: Uh, costs of maintenance, repair, replacement of all general common elements except the part of the gen -- the general common element land area located within a home site shall be borne by the association.
Subject to any contrary provisions of the bylaws.

THE COURT: What do you think about that one?

MR. OLDUM: (Indecipherable).

THE COURT: I'm sorry did you say nothing?

MR. OLDUM: Notice. I'm sorry.

THE COURT: Oh. Oh okay. What do you mean?

MR. OLDUM: Notice of the problem and then whether

the --

THE COURT: You have notice so let's --

MR. OLDUM: -- township --

THE COURT: -- get past that.

MR. OLDUM: Okay. We do have a -- I guess we would

have an obligation in order to --

THE COURT: It's just common sense.

MR. OLDUM: Sure.

THE COURT: So for you to have said you didn't,

defies common sense. Forget about the law okay?

MR. OLDUM: I guess the question is what could we do

then?

THE COURT: Yeah, that's exactly it.

MR. OLDUM: Okay.

THE COURT: Instead of everybody spending tens and

tens of thousands of dollars on attorney fees maybe that

needs to go to finding a solution. And I suspect it's gonna

have to be a drainage district. Anybody think anything
differently? Any other ideas?

MR. SWIFT: Your Honor, in talking to the engineer I
do know that two possibly outlets have been identified.
Whether or not it would require an actually drainage
district --

THE COURT: You’re probably gonna have to get -- now
I forget DEQ or DNR -- because you’ve got a lot of wetlands
out there.

MR. SWIFT: It is all wetlands. So --

THE COURT: Yeah.

MR. SWIFT: -- I imagine the DEQ will want --

THE COURT: So good luck with that. That’s gonna
take a while.

MR. SWIFT: There are I believe even without the
drainage district still have to get --

THE COURT: Their permission.

MR. SWIFT: -- um, cooperation of the adjacent land
owners over which an outlet would likely --

THE COURT: But if you create a drainage district
then a few can object and it still goes through. I mean I
suspect you’re not going to go out there and get an easement
for somebody to have water running across their land. I
suspect the government is gonna have to get involved.

MR. SWIFT: Agreed your Honor, although uh, the
issue with my clients is that the defendant Orchard Park had
an obligation to take care of this a long time ago. My
clients have been injured due to the destruction of their
property. Multiple flooding events.

THE COURT: I'm not even going there yet. We have
to solve this problem.

MR. SWIFT: Understood.

THE COURT: Well um, so are the three of you gonna
really try to figure out a solution or should I just set this
for trial? Because I can set it you know in a few months.
You can all go get your engineers and we'll just decide that
--

MR. SWIFT: Your Honor, my clients are definitely
open to settlement and we'd be open to mediation.

THE COURT: I'm not sending it to case evaluation.
That would be a complete and -- we're going to cancel that.
That would be a complete waste of time and the law does not
require it to go to case eval.

MR. SWIFT: Agreed.

THE COURT: Now facilitative mediation might not be
a bad idea if you find someone who is an engineer who
understands wetlands and drainage districts and all of that.
And you could really -- but who also understands master
deeds. Anybody got any brilliant ideas on that?

MS. SWIFT: As to a mediator? I --

THE COURT: Right.
MR. SWIFT: -- do...

MR. OLDUM: It will take some research obviously.

THE COURT: No we’re deciding now. Or I’ll give you
know a couple of weeks and then we can do a phone conference.
I don’t want to have to come back. And I don’t want it to
get put off which we all know that happens to all of the best
of us. I -- I’m trying to think. You need somebody who’s
done municipal work. See it’s not like you can just -- it’s
almost like you need two people. Like you need a lawyer that
understands municipal law and master deeds and someone who’s
done design work for municipalities and been a part of
drainage districts and all of that. I mean it’s kind of out
there, but what about two people? That work together.

MR. OLDUM: I would be open to that.

MR. SWIFT: I have no objection.

MR. TROYKA: I’m not opposed. Are interests are a
little different but I’m not opposed in principle.

THE COURT: Well you don’t think Fox Chase
Development has impacted everybody?

MR. TROYKA: No.

THE COURT: Really?

MR. TROYKA: Not at all.

THE COURT: How can you say that?

MR. TROYKA: Well look at the 1995 aerial photo.

It’s the same in 1995 as it is in 2010.
THE COURT: The elevations are all the same.

MR. TROYKA: Well the size of the retention pond is the same and there's --

THE COURT: All the elevation is the same?

MR. TROYKA: My belief --

THE COURT: That's what I would look at.

MR. TROYKA: Yeah. And your Honor, I can't answer that question because I haven't had time to --

THE COURT: Well then you can't say that they're not responsible. If you can't compare the elevations before Fox Chase was developed and after you cannot tell me they have not affected the flow of water. It's as simple as that.

MR. TROYKA: And thank you your Honor. Ultimately the plaintiff does have to make specific allegations of defects which we have not yet received. And that will make a difference on how we go forward.

THE COURT: What? That there isn't a problem out there?

MR. TROYKA: No the plaintiff has the burden in demonstrating a defect or concentration of water or diversion of water from our property. And we've not received any specific allegation that we can even evaluate at this point.

MR. SWIFT: Your Honor, we have document requests that were submitted last week to Fox Chase to obtain necessary documents for our engineer to put together that
detail analysis.

THE COURT: They can probably go to the townships too. And the county and get a lot of stuff.

MR. SWIFT: Agreed. These were documents that the engineer advised me that he needed directly from Fox Chase.

THE COURT: Okay. How long is that going to take? Why didn’t your engineer just go to the townships and the, and the county?

MR. SWIFT: My understanding is he -- our engineer obtained all the --

THE COURT: What are you asking for? What does he need?

MR. TROYKA: For example, your Honor, the as built plans for the development. I’m not sure the association has that because the developer would be the one, but the as built plans would be on file with the building department.

THE COURT: I know.

MR. TROYKA: And they also asked for the --

THE COURT: I get that. Why, why don’t you just go to the county?

MR. SWIFT: I will request that he do that. He advised me that these were documents he needed from Fox Chase. I’m happy to --

THE COURT: All right so you need --

MR. SWIFT: -- revisit --
THE COURT: -- so you need a report from his engineer that shows that Fox Chase has some impact?

MR. TROYKA: Correct your Honor. Something that shows that we improperly diverted water or increased the concentration of water --

THE COURT: All right. I suspect --

MR. TROYKA: -- (indecipherable) property.

THE COURT: If he can he can and if he can’t he can’t and I’m not gonna give you very long.

MR. SWIFT: Understood.

THE COURT: A month to get that report done.

MR. SWIFT: Understood your Honor.

THE COURT: So if shows that it has -- and -- I’m gonna order facilities mediation. I don’t usually do this, but I am. When is this case supposed to be finished?

VIDEO OPERATOR: June 23rd.

THE COURT: Okay we’ve got some time but --

VIDEO OPERATOR: (Inaudible).

THE COURT: Yeah, but I just told you I’m doing away with case eval so that doesn’t apply. I don’t even know since I never order people into facilitative mediation I don’t know if I can -- I don’t think I have the right to pick who it is. You do right? And if you can’t agree then I do.

MR. SWIFT: That’s my understanding.

MR. TROYKA: I agree.
THE COURT: Okay. So pick. Go out in the hall and talk about it. And if you can’t agree then I’ll pick somebody.

MR. SWIFT: Okay.

MR. TROYKA: We could use Dan Burress.

MR. SWIFT: What’s that?

MR. TROYKA: We could use Dan Burress.

THE COURT: He’s not around in the winter, usually.

MR. TROYKA: Oh okay. You know better than I do.

Thank you.

THE COURT: Last year he went away for three months. Didn’t he Mr. Halm? I’m pretty sure he did. He went away for a few months.

MR. TROYKA: Your Honor, do you have the Livingston County Approved Mediator List? I don’t have that with me. I --

THE COURT: Do we have an approved list? I don’t know. It’s not very updated I don’t think. I -- you don’t have to use that.

MR. TROYKA: It just has ideas. But we’ll --

THE COURT: Yeah, why don’t you see if -- you should have it. We should have a copy.

VIDEO OPERATOR: Okay.

THE COURT: Give them a copy. Think about somebody that does real property. Thing about somebody that’s done
municipal work. Think about somebody who knows engineers.
All right come on back in when you've figured out somebody.

MR. TROYKA: Okay. Thank you your Honor.

THE COURT: Give those back to them.

(At 11:23 a.m., court recess)

(At 11:37 a.m., court reconvenes)

THE COURT: -- did a lot of site plans and a lot of
drainage and he works -- I mean he's still a city attorney.
I -- he's -- I think he's the road commission attorney so he
gets involved with drainage issues. I know that he has a lot
of drainage experience. But I don't care if you use him or
not. I really don't care.

MR. SWIFT: Your Honor, if we did use Mr. Burns
given his level of experience would you still want an
additional engineer to be involved as well?

THE COURT: No I think that -- I'll call him Paul --
would know -- he knows Boss, he knows yours, never heard of -
- and maybe he knows who mentioned, I've never heard of him.
But I've been out of now you know for 9 or 10 years so I
don't know. No I would think that Paul would be able to --
if he wanted to hear from the engineers he would hear from
the engineers. So anyways but -- so I don't want you to feel
like I'm making you use him. That would -- you get to pick.

MR. TROYKA: Your Honor, we don't feel that way.
He's a name that I got from one of my law partners who has a
high regard to Mr. Burns. Simply doesn’t know if he does mediations. So I did leave a voicemail or message -- 

THE COURT: He’s getting old. Maybe it’s time for him to start doing that. He’s older than me. So yeah he’s 60 he should --

MR. TROYKA: It’s a good line of work.

THE COURT: You can tell him I said that. Okay.

All right. Well it’s -- you’ve got to prove to him though before --

MR. SWIFT: Understood your Honor.

THE COURT: I just drew a blank again. So why don’t we just keep, why don’t -- we have a trial date right? I’m sure we do.

VIDEO OPERATOR: It’s 3-6 of ’15.

MR. SWIFT: Yes, your Honor.

THE COURT: Okay. So it’s not till May. So why don’t I just say that you have to by March 1st have to have concluded facilitative mediation. And then I’m going to set as a catchall a conference in this court for like the second week in March on a Tuesday whatever that date might be at ten o’clock. And if he doesn’t obviously establish for you that Fox Chase had anything to do with it --

MR. SWIFT: If the facts suggest that Fox Chase has no liability I would imagine dismissing the --

THE COURT: I hope so because I’m not hesitant to
award attorney fees if there's a frivolous claim or frivolous defense.

MR. SWIFT: Understood your Honor.

MR. TROYKA: Your Honor, for the conference in March should we bring clients and claim representatives or...

THE COURT: Do you have insurance companies?

MR. TROYKA: Your Honor, we do because there's a claim for property damage.

THE COURT: All right.

MR. TROYKA: The insurance wouldn't deal with the drainage issue.

THE COURT: Because I mean -- your clients can be here if they want to -- for -- you know -- but they don't have -- your claim reps do.

MR. TROYKA: Okay.

THE COURT: But everybody else I doubt they want to take another day off of work. Okay. All right. Thanks everybody.

MR. OLDUM: Thank you your Honor.

VIDEO OPERATOR: What time your Honor?

THE COURT: Ten o'clock. Ten o'clock.

MR. SWIFT: Your Honor, do you them to complete an order for that or...

THE COURT: Yes. Give them a blank order please.

(At 11:41 a.m., proceedings concluded)
STATE OF MICHIGAN  

COUNTY OF LIVINGSTON  

I certify that this transcript, consisting of 28 pages, is a complete, true, and correct transcript, of the proceedings and testimony taken in this case on Tuesday, October 21, 2014.

Leah L. Hanna CER 6218  
Certified Electronic Recorder  
204 South Highlander Way  
Howell, Michigan 48843

Dated: June 14, 2017
NEW BUSINESS #2

No documents
NEW BUSINESS #3
RESOLUTION #170704
TYRONE TOWNSHIP, LIVINGSTON COUNTY

SILVER LAKE ESTATES
WASTE REMOVAL PROJECT (2017)

RESOLUTION TO PROCEED WITH THE PROJECT AND DIRECTING
PREPARATION OF THE PLANS AND COST ESTIMATES

WHEREAS, the Board of Trustees of the Township has received a petition signed by property owners of the Silver Lake Estates subdivision of the Township requesting that a single waste hauler be established for the collection and disposal of garbage and rubbish within the Silver Lake Estates subdivision in the Township as described in Exhibit A (the “Project”);

WHEREAS, the Board of Trustees of the Township desires to establish the Project, and;

WHEREAS, the Board of Trustees of the Township has tentatively determined to proceed with the Project in accordance with Act No. 188, Michigan Public Acts of 1954 as amended, and;

WHEREAS, the Board of Trustees of the Township has tentatively determined to continue to use special assessment funds to pay the costs of the Project;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. In accordance with Act No. 188, Michigan Public Acts of 1954, as amended, and the laws of the State of Michigan, the Township Supervisor is directed to have plans prepared illustrating the Project, the location of the Project, and an estimate of the cost of the Project.

2. The plans and estimates identified in paragraph 1, when prepared, shall be filed with the Township Clerk.

RESOLVED BY:
SUPPORTED BY:

VOTE:

ADOPTION DATE:
CERTIFICATION OF THE CLERK

The undersigned, being the duly qualified and acting Clerk of Tyrone Township, Livingston County, Michigan, hereby certifies that (1) the foregoing is a true and complete copy of a resolution adopted by the Township Board at a regular meeting, held on July 25, 2017, at which meeting a quorum was present and remained throughout, (2) the original thereof is on file in the records in my office, (3) the meeting was conducted, and public notice thereof was given, pursuant to and in full compliance with the Open Meetings Act (Act No. 267, Public Acts of Michigan, 1976, as amended) and (4) minutes of such meeting were kept and will be or have been made available as required thereby.

__________________________________
Marcella Husted
Tyrone Township Clerk

Resolution #170704
Silver Lake Estates Waste Removal Project
EXHIBIT A

DESCRIPTION OF PROJECT

The project (the “Project”) will consist of the establishment of a single waste hauler for the collection and disposal of garbage and rubbish along the following streets in the Silver Lake Estates subdivision in Tyrone Township: Bay of Firth Blvd., Englishman Drive, Majorca Drive, Malaga Drive and Marinus Drive.
RESOLUTION #170705
TYRONE TOWNSHIP, LIVINGSTON COUNTY

SILVER LAKE ESTATES
WASTE REMOVAL PROJECT (2017)

RESOLUTION TO APPROVE THE PROJECT,
SCHEDULING THE FIRST HEARING
AND DIRECTING THE ISSUANCE OF STATUTORY NOTICES

WHEREAS, the Board of Trustees of the Township has received a petition signed by property owners in the Silver Lake Estates subdivision of the Township requesting that a single waste hauler be established for the collection and disposal of garbage and rubbish within the Silver Lake Estates subdivision in the Township as described in Exhibit A (the “Project”);

WHEREAS, the Board of Trustees of the Township desires to establish the Project, and;

WHEREAS, the Board of Trustees of the Township has approved the establishment of the Project;

WHEREAS, preliminary plans and cost estimates for the Project have been filed with the Township Clerk;

WHEREAS, the Board of Trustees of the Township has tentatively determined to use special assessments to raise the funds to pay the costs of the Project and has tentatively determined to proceed with the Project;

WHEREAS, the special assessment district (the “Special Assessment District”) for the Project has been tentatively determined by the Township and is described in Exhibit B;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The Board of Trustees of the Township hereby tentatively declares its intent to proceed with the Project.

2. In accordance with Act No. 188, Michigan Public Acts of 1954, as amended, and the laws of the State of Michigan, there shall be a public hearing on the Project and the proposed Special Assessment District for the Project which is known as the “Tyrone Township Silver Lake Estates Waste Removal Project (2017) Special Assessment District.”

3. The public hearing will be held on Tuesday, August 15, 2017 at 7:00 p.m., at the offices of Tyrone Township, Livingston County, Michigan.
4. The Township Clerk is directed to mail, by first class mail, a notice of the public hearing to each owner of or party in interest in property to be assessed, whose name appears upon the last Township tax assessment records. The last Township tax assessment records means the last assessment roll for ad valorem tax purposes which has been reviewed by the Township Board of Review, as supplemented by any subsequent changes in the names or addresses of such owners or parties listed thereon. The notice to be mailed by the Township Clerk shall be similar to the notice attached as Exhibit B and shall be mailed by first class mail on or before August 3, 2017. Following the mailing of the notices, the Township Clerk shall complete an affidavit of mailing similar to the affidavit set forth in Exhibit C.

5. The Township Clerk is directed to publish a notice of the public hearing in the Tri-County Times, a newspaper of general circulation within the Township. The notice shall be published twice, once on or before August 6, 2017 and once on or before August 13, 2017. The notice shall be in a form substantially similar to the notice attached as Exhibit B.

RESOLVED BY:
SUPPORTED BY:

VOTE:

ADOPTION DATE:

CERTIFICATION OF THE CLERK

The undersigned, being the duly qualified and acting Clerk of Tyrone Township, Livingston County, Michigan, hereby certifies that (1) the foregoing is a true and complete copy of a resolution adopted by the Township Board at a regular meeting, held on July 25, 2017, at which meeting a quorum was present and remained throughout, (2) the original thereof is on file in the records in my office, (3) the meeting was conducted, and public notice thereof was given, pursuant to and in full compliance with the Open Meetings Act (Act No. 267, Public Acts of Michigan, 1976, as amended) and (4) minutes of such meeting were kept and will be or have been made available as required thereby.

__________________________
Marcella Husted
Tyrone Township Clerk

Resolution #170705
Silver Lake Estates Waste Removal Project
EXHIBIT A

DESCRIPTION OF PROJECT

The project (the “Project”) will consist of the establishment of a single waste hauler for the collection and disposal of garbage and rubbish along the following streets in the Silver Lake Estates subdivision in Tyrone Township: Bay of Firth Blvd., Englishman Drive, Majorca Drive, Malaga Drive and Marinus Drive.
NOTICE OF PUBLIC HEARING
UPON SPECIAL ASSESSMENT ROLL FOR THE
TYRONE TOWNSHIP SILVER LAKE ESTATES
WASTE REMOVAL PROJECT (2017) SPECIAL ASSESSMENT DISTRICT

NOTICE IS HEREBY GIVEN:

(1) The Township Board of Tyrone Township, Livingston County, Michigan (the “Township”) in accordance with the laws of the State of Michigan, will conduct a public hearing beginning at 7:00 p.m., local time, on August 15, 2017 at the Tyrone Township Hall, 10408 Center Road, Fenton, Michigan, to review the following proposed special assessment district:

TYRONE TOWNSHIP SILVER LAKE ESTATES
WASTE REMOVAL PROJECT (2017)
SPECIAL ASSESSMENT DISTRICT

and to hear any objections thereto and the proposed project.

(2) The project (the “Project”) will consist of establishing a single waste hauler for the Silver Lake Estates in Tyrone Township. The Project is designed to serve the properties in the Special Assessment District (the “District”), which District consists of the properties located within the area designated on the map attached at Appendix I and includes the specific properties that are identified by the permanent lot and parcel numbers described in Appendix II.

(3) The Township plans to impose special assessments on the properties located in the Special Assessment District to pay for the costs of the Project.

(4) The plans and cost estimates for the proposed Project and the description of the District are now on file in the office of the Township Clerk for public inspection. Periodic redeterminations of the cost of the Project may be made, and subsequent hearings shall not be required if such cost redeterminations do not increase the estimated cost of the Project by more than 10%. Any person objecting to the proposed Project or the proposed District must file his or her objections in writing with the Township Clerk before the close of the August 15, 2017 public hearing or within such additional time (if any) as the Township Board may grant.

This notice is given by order of the Tyrone Township Board.

Dated: July 25, 2017

Marcella Husted
Tyrone Township Clerk

Exhibit B, Page 1

Resolution #170705
Silver Lake Estates Waste Removal Project
APPENDIX I

Map of Special Assessment District
APPENDIX II

Special Assessment District
Permanent Parcel Numbers

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Resolution #170705
Silver Lake Estates Waste Removal Project
EXHIBIT C

AFFIDAVIT OF MAILING

STATE OF MICHIGAN
COUNTY OF LIVINGSTON

Marcella Husted, being first duly sworn, deposes and says that she personally prepared for mailing, and did on August 3, 2017, send by first-class mail, the notice of hearing, a true copy of which is attached hereto, to each record owner of or party in interest in all property to be assessed for the improvement described therein, as shown on the last local tax assessment records of the Township of Tyrone; that she personally compared the address on each envelope against the list of property owners as shown on the current tax assessment rolls of the Township; that each envelope contained therein such notice and was securely sealed with postage fully prepaid for first-class mail delivery and plainly addressed; and that she personally placed all of such envelopes in a United States Post Office receptacle on the above date.

____________________________
Marcella Husted
Tyrone Township Clerk

Subscribed and sworn to before me
this 3rd day of August 2017.

____________________________________
Notary Public

_______________________ County, Michigan
Acting in Livingston County
My commission expires:

Exhibit C

Resolution #170705
Silver Lake Estates Waste Removal Project