

# VILLAGE OF DEXTER

8140 Main Street Dexter, Michigan 48130-1092

Phone (734) 426-8303 FAX (734) 426-5614

August 29, 2007

Via First Class U. S. Mail

Mr. Mark Roberts  
8415 Sandfield Court  
Dexter, MI 48130

Re: Action on FOIA APPEAL

Dear Mr. Roberts,

At the Council meeting on Monday, August 27, 2007, Village Council received and acted on your FOIA Appeal dated August 14<sup>th</sup>. During the meeting a motion was made by Ms. Fisher and Seconded by Mr. Cousins to authorize the Village Manager to release the Dykema letter dated April 9, 2007.

That letter is included for your review.

Respectfully,

  
Donna Dettling, Village Manager

Cc: Dexter Village Council  
Stephen R. Estey, Esq. Dykema



received 4/10/07 SP

Dykema Gossett PLLC  
Suite 300  
39577 Woodward Avenue  
Bloomfield Hills, Michigan 48304

WWW.DYKEMA.COM

Tel: (248) 203-0700

Fax: (248) 203-0763

**Stephen R. Estey**

Direct Dial: (248) 203-0538

Email: SESTEY@DYKEMA.COM

VIA U.S. MAIL

April 9, 2007

**CONFIDENTIAL – SUBJECT TO ATTORNEY – CLIENT PRIVILEGE**  
**PREPARED IN ANTICIPATION OF LITIGATION**

Mr. James Seta  
President  
Village of Dexter  
8140 Main Street  
Dexter, MI 48130-1092

**Re: March 2, 2007 Letter of William Fahey**

Dear Mr. Seta:

You have requested a review of the March 2, 2007 letter ("Letter") submitted by William Fahey regarding the effect of the 1981 Promulgation of Annexation Policy with Scio Township, ("1981 Agreement"), a copy of the Letter and 1981 Agreement are attached hereto for reference. The Letter states the position of Scio Township regarding the validity and enforcement of the 1981 Agreement. According to the Letter, Scio Township is arguing that the 1981 Agreement is not binding on the present Township Board and, in any event, the present Township Board does not intend to honor the 1981 Agreement. Whether the 1981 Agreement is enforceable or not, is ultimately a question of law, which a court must determine. Accordingly, this letter is not intended to, nor is it in fact, a legal opinion as to the enforceability of the 1981 Agreement and/or an interpretation of how a court might rule in the future on this issue. Instead, what follows is an analysis of the arguments made in the Letter and a summary of some of the issues confronting the Village in the event it elects to move forward with the annexation process.

The success of the arguments set forth in the Letter, cannot be determined solely under the text of the 1981 Agreement and/or the *Inverness Mobile Home Community, Ltd v Bedford Twp*, 263 Mich App 241, 248; 687 NW2d 869 (2004) case. Indeed, the validity of the 1981 Agreement will likely depend upon several factors including, but not limited to: (1) a future court's interpretation of *Inverness* against the facts of the instant matter, (2) whether the matters set forth in the 1981 Agreement constitute or require further "legislative" action on the part of the Township Board, and (3) whether there was adequate consideration given for the agreement,

among other factors. Given the present dispute, it is apparent these issues would need to be determined in the courts as a matter of law.

The 1981 Agreement provides in pertinent part as follows:

Scio Township and the Village of Dexter for the purpose of furthering their common welfare, do hereby promulgate, as their mutual **policy** and declare their intentions to abide by and be bound by the same in their exercise of governmental authority insofar as **practical** and not in conflict with the law...

\* \* \*

The Township agrees that it will not interpose objections to the Annexation of said territory or any portion thereof, in any proceeding upon such annexation before the Board of Commissioners of Washtenaw County., or court of law, provided that such annexation would not create an enclave of territory in the Township enclosed within the territory of the Village...

(Emphasis added).

Mr. Fahey challenges the authority of the 1981 Agreement on the basis that (i) the document is defective as a matter of contract law in that it allegedly lacks mutuality and consideration and (ii) the 1981 Agreement “purports to bind a future township board” in contravention of the holding in *Inverness*. Our reading of the *Inverness* case reveals that it might be distinguishable from the facts presented under the 1981 Agreement. In *Inverness*, the plaintiffs sought to enforce certain provisions of a prior consent judgment, which required the Township to amend, within 5 years, its Master Plan to locate a new manufactured home community development. The trial court held that these paragraphs under the consent judgment operated to disenfranchise voters and “inappropriately bind future township boards...” *Id.* at 245-246. The Court of Appeals upheld the decision of the trial court finding that the consent judgment “impermissibly contracted away the legislative powers of a future governing body.” *Id.* at 248. The Court further stated that:

The true test is whether the contract itself deprives a governing body, or its successor, of a discretion which public policy demands should be left unimpaired.

*Id.* at 248.

The rationale was based, in part, upon the underlying premise that the power to zone and rezone is a legislative function. In our case, however, further legislative action by Scio Township is not necessarily required in the event of an annexation. Moreover, we do not believe that agreeing

Mr. James Seta  
April 9, 2007  
Page 3

not to "object" to a transfer of property pursuant to the state authorized annexation process, is on the same level as the power to zone or rezone, which was at issue in the *Inverness* case.

Under Michigan law, the essential elements of a valid contract are the following: (1) parties competent to contract; (2) proper subject matter; (3) legal consideration; (4) mutuality of agreement; and (5) mutuality of obligation. *Thomas v. Leja*, 187 Mich App 418; 468 NW2d 58 (1991). Consideration for a contract exists where there is a benefit on one side, or a detriment suffered, or service to be done on the other. *Sands Appliance Services, Inc. v Wilson*, 463 Mich 231; 615 NW2d 241 (2000). However, generally courts will not inquire into adequacy of consideration and rescission of a contract for inadequacy of consideration will not be ordered unless the inadequacy was so gross so as to shock the conscience of the court. *Moffit v Sederlund*, 145 Mich App 1; 378 NW2d 491 (1985). Mutuality of obligation means that both parties are bound to an agreement or neither is bound. *Reed v Citizens Ins Co of America*, 198 Mich App 443; 499 NW2d 22 (1993). While we do not necessarily agree with Mr. Fahey's position regarding consideration and mutuality under the 1981 Agreement, we cannot predict or determine with certainty how a particular court may rule in the future with regard to these legal issues as arguments exist on both sides. For example, the Village could argue that the decision by the Township to refrain from objecting to annexation of certain property, a potential detriment to the Township, in exchange for the agreement of the Village to cooperate with Township in creating an ultimate boundary, constitutes adequate consideration and mutuality of obligation between the parties. Likewise, the 1995 Amendment to the 1981 Agreement, a copy of which is attached hereto, required the Village to place a moratorium on the annexation until December 31, 2006. This evidences further possible ratification and consideration for the 1981 Agreement. However, there are aspects of the 1981 Agreement and related documents, which appear to be "policy" related and subject to later revocation. Indeed the 1981 Agreement is entitled "Promulgation of Annexation Policy," and as Mr. Fahey notes, the provisions within that document reference terms such as "practicality" and "policy" considerations.

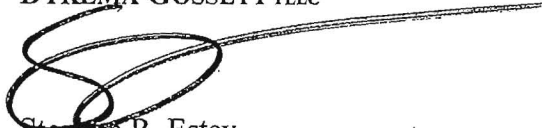
There are also other considerations, which must not be overlooked. The fact that the Township disavows the 1981 Agreement and will actively oppose its enforcement potentially complicates any future annexation proceeding before the County Board of Commissioners. The County will likely not want to become embroiled in a political battle between the Township and Village, nor will the County likely want to interpret the 1981 Agreement. As such, unless the Village has significant political capital at the County level, the 1981 Agreement could complicate the annexation process and may result in litigation between the Township and the Village. Indeed, even if the County approved the annexation, it is likely the Township will litigate to stop such an annexation from occurring. As a result, the Village should carefully consider the use of its resources and the likelihood of success prior to commencing further action with regard to this matter.

Mr. James Seta  
April 9, 2007  
Page 4

As stated above, the issue of whether the 1981 Agreement is valid and enforceable must be determined by a court of law. Due to the lack of clear precedent, among other issues, we are unable to issue an opinion as to how a court may rule in this matter in the future. We hope that this summary has provided the information you requested. Should you require further information, please do not hesitate to contact the undersigned. Thank you.

Best regards,

DYKEMA GOSSETT PLLC



Stephen R. Estey

cc: Donna Dettling  
Daniel Schairbaum, Esq.

BH01V738779.2  
ID\SRE