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Reply To: Lansing Office

March 2, 2007

Via Facsimile and First Class Mail

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

Dear President Seta:

RE: "Promulgation of Annexation Policy"

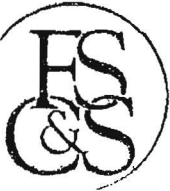
Scio Township has directed our attention to recent actions by the Village Council in regard to proposed annexation of certain territory within the Township. The agenda for the Council's February 26, 2007 meeting contained materials referring to an alleged "1981 promulgation of annexation agreement with Scio Township." This firm represents the Township, and we have been asked to communicate the Township's position on this matter.

We assume that the Council's agenda meant to refer to the "Promulgation of Annexation Policy" that was signed by the Scio Township Supervisor and Clerk, as well as by the Village of Dexter President and Clerk on June 23, 1981. For the reasons discussed below, that document is not a valid "agreement" of any kind, and is not binding on the present Township Board.

In a recent case, the Michigan Court of Appeals explained that a township board may not bind future boards in matters involving the exercise of legislative power:

"However, while a township board may, by contract, bind future boards in matters of a business or proprietary nature, a township board may not contract away its legislative powers. 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." *Inverness Mobile Home Community, Ltd v Bedford Twp*, 263 Mich App 241, 248; 687 NW2d 869 (2004).

Mr. Jim Seta, President
March 2, 2007
Page 2



A township board unquestionably has legislative authority to support or oppose any particular proposed annexation. It is also clear that the Township Board's exercise of its authority to support or oppose an annexation is a matter of legislative discretion, not a "matter of a business or proprietary nature."

The annexation of territory from a township to a general law village is governed by MCL 74.6. That section requires that the village council, if it desires to commence an annexation, must file a petition with the County Board of Commissioners. Before approving the annexation, the Board of the Commissioners must allow "all parties interested" to appear and be heard concerning the proposed change of the Village boundary. The Township would clearly be one of the "parties interested" by such a proposed annexation, as would the residents and property owners within the area proposed to be annexed and the balance of the Township. Therefore, the Township Board in office at the time of the proposed annexation has legislative discretion to either support or oppose the proposed annexation, and its legislative discretion cannot be impaired or limited by a "policy" declaration made by former Township officials.

The 1981 "Promulgation of Annexation Policy" purports to bind a future township board to take a position in favor of a future annexation. Since a past board cannot bind a future board to such an exercise of legislative discretion, the "Promulgation of Annexation Policy" is not valid and binding on the present Township Board.

The 1981 "Promulgation of Annexation Policy" is also not a binding "agreement" because it lacks both consideration and mutuality. Consideration is lacking because, under the "Promulgation of Annexation Policy," the Township received nothing in exchange for its 1981 policy statement. The "Promulgation of Annexation Policy" lacks mutuality because, under that document, nothing prohibits the Village from seeking to annex even more territory than the document describes. As a matter of fundamental contract law, such a document that is lacking in consideration and mutuality is not considered to be an "agreement" and is purely non-binding.

It appears that the drafter of the 1981 "Promulgation of Annexation Policy" contemplated the very clear possibility that the document would not be considered to be a valid and binding "agreement." In the introductory clause to that document, it states that the parties recognize that they would only "be bound by the same in their exercise of governmental authority insofar as practical, and not in conflict with the law."

We also note that the 1981 "Promulgation of Annexation Policy" was further amended in 1995 by a "Resolution of Mutual Cooperation," under which the Township and Village each resolved to jointly pursue and implement, "by March 31, 1996," the establishment of "common zones of interest along the border" and "joint policies for the governance of common zones of

Mr. Jim Seta, President
March 2, 2007
Page 3



interest." After establishing those, the Village and Township were also to have determined "by March 31, 1996 . . . whether the current border is appropriate." It is apparent that the agreed-upon deadline for accomplishing those conditions subsequent has long ago passed, and that the Village and Township have not been able to make such a determination. Therefore, the Village cannot in good conscience assume that the pre-existing, long-expired 1981 policy has any continuing force or effect.

We are mindful that the Village and Township have for some weeks now been discussing the possibility of the conditional transfer of certain other territory to the Village under 1984 PA 425. This is entirely an appropriate means for the Village to address potential changes in boundaries, and the Township has been negotiating with the Village to that possible end. It is unfortunate that, in the course of those discussions, the Village negotiators never even thought to mention the Village's apparent intent to pursue a forced annexation of other Township territory, apparently heedless of the wishes of the Township Board or the affected residents and landowners.

If the Village brings a forced annexation before the County Board of Commissioners, the Township Board intends to take the meritorious and strong position that the 1981 "Promulgation of Annexation Policy" is expired, superseded, invalid and non-binding, and specifically does not reflect the legislative discretion of the present Township Board. The Township Board further reserves its judgment with respect to any specific annexation proposal, however, since it is not possible for the Board to take a position until a proposal has been made and the facts are known.

Please do not hesitate to contact us at any time if you have any questions regarding the Township's position in this matter.

Very truly yours,

FOSTER, SWIFT, COLLINS & SMITH, P.C.

A handwritten signature in cursive script that reads 'William K. Fahey'.

William K. Fahey

WKF:jkc

cc: Charles D. Nielsen, Township Supervisor
Kathleen P. Knol, Township Clerk
Darrell A. Fecho, Township Manager