

## **Fife Lake Area Planning Commission**

### **DRAFT Meeting Minutes**

May 10, 2022

Fife Lake Township Hall, 134 Morgan Street, Fife Lake, MI 49633

### **1. Call to Order and 2. Pledge of Allegiance**

The Meeting was called to order by Chairperson Marcia Eby at 6:30pm. The Commission recited the Pledge of Allegiance.

### **3. Roll Call**

Present: Marcia Eby, Lisa Leedy, Shane Lewis, David McGough, Amanda Scott, Dawn Zimmerman

Excused: Tom Rookus

### **4. Agenda Modifications/Approval**

Lewis questioned if the commission was required to follow current bylaws for agenda. Zimmerman requested that Unfinished Business be reordered to: a. Attorney RFQ; b. Attorney Memo; c. Recording Secretary; d. FLAPC Bylaws Review; e. December 14, 2021 Public Hearing; f. Master Plan.

Scott requested addition of Williams and Works bills to consent calendar. Lewis requested it not be placed in the consent calendar because it had not been approved in our bylaws yet. Williams and Works bills added as item number 6 – Williams & Works and Consent Calendar.

Lewis requested addition of RLUIPA (federal statute) overview under new business, a.

Lewis explained that he believes the last meeting, April 19, 2022 was improperly posted because the posting didn't come out until April 15, 2022 and 15 days' notice is required. Eby questioned who made the posting and where it was posted. Lewis stated it was in the Record Eagle. Leedy suggested the commission add to the agenda that the FLAPC reaffirm the motions from the April 19, 2022 meeting. Added as agenda item 8 prior to approval of the minutes.

Lewis explained that he believes the commission cannot hold the Public Hearing because it was improperly posted and explained that the Record Eagle public notice did not include "d. where written comments can be accepted" as required by the statute. Zimmerman requested that items like this be taken care of ahead of time by reaching out to the chairperson or another member of the commission so that we can address the business at hand during meetings. Eby agreed that these items are delaying the commission's progress. Leedy suggested that the FLAPC be more thoughtful about how and what information was provided to clerks regarding postings as they don't always necessarily know what the requirements are. Eby reiterated the commission's decision to have the Secretary take care of postings going forward. Eby explained that the posting in reference was completed by the Village. The commission wasn't aware of the Public Hearing until after it was posted. Eby received no communication regarding the posting until after it was completed and the notices were sent to homeowners. Public Hearing Notice and Property Owners notified are included below as **Attachment A and B**.

Lewis explained that he believes if we hold the Public Hearing today, it could be invalidated. Eby stated that we could still allow public comments and incorporate them into the written record for the Public Hearing when rescheduled so that the public did not have to make comments a second time. Zimmerman asked when comments would be accepted.

Discussion regarding if the posting was actually improperly posted. The commission reviewed the statute.

**Motion by McGough to leave the Public Hearing in the agenda and conduct the Public Hearing. Second by Scott.**

Discussion regarding the posting and Public Hearing, Commission and Commissioner liabilities. Zimmerman explained that all properties within 300 feet were provided a letter with notice of the hearing and that the error was minor and unintentional. Eby confirmed they all received notices by mail. Lewis questioned if all actually received the notice because he believes a resident across the street did not receive it.

Discussion regarding which households received letters and the process for postings, mailings, etc. Leedy suggested the commission create checklists for processes the commission needs to complete including who does what, and when. Leedy suggested the commission schedule a workshop.

**Roll Call vote: Zimmerman, no; Leedy, no; Lewis, no; Scott, yes; McGough, yes; Eby, no. Motion failed. 4-2**

Consensus by the Commission to remove the Public Hearing from the agenda and reschedule it for another meeting, to allow public comments on the Village marihuana ordinance during the regular public comment period, and that all comments would be incorporated into the official record for the Public Hearing.

**Full reordered agenda below as Attachment C.**

**Motion by Leedy to approve the agenda as amended, second by Zimmerman. Motion passed.**

**5. First Public Comment**

Scott read Public Comment Rules.

\*Jacob Terry representing the Fife Lake Baptist Church made public comment regarding his disapproval of recreational marihuana in the area. Expressed concerns regarding the township and village image, tourism, and moral reasons.

\*Paul Erickson with Fife Lake Baptist Church and supervisor of South Boardman Township spoke regarding his disapproval of recreational marihuana. Expressed concerns with smell and light and distance from church.

\*Ronda Rowser from Fife Lake Baptist Church made public comment that she is against the Village Marihuana Ordinance. Expressed concerns with children playing outside at church and the children smelling marihuana and referenced Kalkaska's marihuana industry.

\*Written comment was also submitted to the FLAPC from Fife Lake Baptist Church to be included in the record (below as **Attachment D**).

Mary Ellen Dilley of Fife Lake Township, Sparling Road, expressed her concern with the way the FLAPC has been operating and requested that the Commission change the way it operates and show mutual respect for one another. Lewis requested he be able to respond. The Chairperson allowed it. Lewis explained the Open Meetings Act. Dilley responded that she understands but feels it is unfortunate and taking away from the Commission's business.

\*Wayne Seiger from Fife Lake Baptist Church and former corrections officer made public comment expressing his disapproval of the Village Marihuana Ordinance. Expressed that he believes that marihuana is how many drug problems start and that he has seen it in the prison system. Expressed concern with distance from church and requested decisions made based on morals not on finances.

\*Cal Meyers from Fife Lake Baptist Church and former corrections officer made public comment expressing his disapproval of the Village Marihuana Ordinance. Explained that he does not see the benefits of approving the ordinance. Expressed concern with appearance of the town and didn't want it to look like Las Vegas.

\*Paula Quartz(?) from the Fife Lake Baptist Church made public comment expressing her disapproval of the Village Marihuana Ordinance. Shared a story about her son being caught smoking marihuana and lost his license for 19 years and it changed his life. that people used to be severely punished for marihuana and now it's allowed and people aren't being punished. Expressed concern with tourism and children.

\*Gary Blazick who owns car lot on US 31 made public comment regarding Village Marihuana Ordinance. He did not realize there was not already a Village ordinance. Eby clarified that the Township does have an ordinance and that the Village does not. He expressed concern with allowing a variance from the required setbacks in one location but not another, noting that his property was previously denied a variance. He expressed that it should be the same - we should allow what's in the township in the village and that it's legal and we should deal with it.

*Note: Items above with a \* indicate that they will be included in the record for the Public Hearing regarding the Village Marihuana Ordinance.*

## **6. Bills**

Williams and Works bill received and provided to FLAPC members (**Attachment E**). **Motion by Scott to pay Williams and Works bill. Second by Leedy.**

Leedy questioned if the bill was coming from 2021 or 2022 budget. Eby stated it would come from the 2021 budget since services were from last year.

**Motion passed unanimously via roll call vote.**

## **7. Correspondence**

Marcia sent training opportunity at Treetops via email.

## **8. Reaffirm motions from April 19, 2022 meeting**

**Motion by Leedy to reaffirm all motions made and approved at the April 19, 2022 meeting (approval of agenda, approval of minutes, approval of office where records kept, and the approval of the RFQ for Attorney, and motions regarding Public Hearing held). Second by Zimmerman. Roll call vote: Leedy, yes; Zimmerman, yes; Scott, yes; Lewis, yes; McGough, yes; Eby, yes. Motion passed.**

## **9. Approval of Minutes for April 19, 2022 Meeting**

Correction of spelling in #3 from unfished to unfinished. **Motion by Leedy to approve minutes with correction, second by Zimmerman. Motion carried.**

## **10. Declaration of Conflict of Interest**

None declared. Discussion regarding what constituted a conflict of interest.

## **11. New Business**

### **a. Religious Land Use and Institutionalized Persons Act (RLUIPA)**

Lewis provided a summary of the Religious Land Use and Institutionalized Persons Act (RLUIPA) and provided commissioners with a handout with a summary of the law (included as **Attachment F**).

Zimmerman clarified that the Township already has a Marihuana ordinance that has passed and that this ordinance is for the Village of Fife Lake which is within the Township but currently does not have its own ordinance. Zimmerman and Eby also explained the current township ordinance and summarized what the Village ordinance would mean for the Fife Lake area. Commission discussed the ordinance and where facilities would be allowed.

## **12. Unfinished Business**

### **a. Attorney RFQ**

Leedy provided commissioners with a summary of all attorneys who were sent the RFQ and the three attorneys who replied to the RFQ (below as **Attachment G**). One additional attorney expressed that they would submit a proposal if we would accept it late.

McGough requested additional time to review the proposals from the attorneys as two commissioners were unable to open the attachment from Leedy's email including the attorney responses.

Leedy provided a summary of the attachment, costs, location of attorneys, qualifications, experience with joint planning, response time/capacity, and commission needs.

Scott questioned the process for contacting the FLAPC Designated Attorney which has been included in the new bylaws and recommended that the Commission develop a motion that explains who can contact the attorney.



Commission discussed the FLAPC budget and process for hiring an Attorney.

**Lewis made a motion to hire Fahey Schultz Burzych Rhodes as the FLAPC Designated Attorney. Second by Leedy. Roll call vote: Leedy, yes; Zimmerman, yes; McGough, no; Scott, yes; Lewis, yes; Eby, yes. Motion carried 5-1.**

**Motion by Leedy that only the Commission's chairperson or the Commission's designee are authorized to contact the Commission's Designated Attorney and that all communications to and from the attorney be in writing and provided to the Commission unless the attorney is present at the meeting. Second by Lewis. Motion passed Unanimously.**

**b. Attorney Memo regarding FLAPC Membership**

Attorney Memo regarding FLAPC membership has been included as **Attachment H** below. Lewis made comment regarding elected officials being prohibited from attending planning commission meetings.

Leedy does not believe that the attorney was provided with enough information before issuing the legal memo regarding JPC membership. Leedy contacted the attorney and provided additional information to the attorney, asked who hired the attorney, and, in addition to several other questions, requested more information on what information was already provided but the attorney did not reply. Leedy suggested that we provide additional information to the new Designated Attorney and request a new opinion. Discussion regarding who hired the attorney.

Scott asked what questions specifically we want the attorney to answer. Leedy has a list of questions that she sent to the previous attorney who issued the opinion. Eby questioned whether the MTA or Michigan Municipal League could handle this if we already have the questions and information prepared. Discussion regarding who the Commission should request complete the legal review/opinion.

Zimmerman requested that the Commission provide the new attorney with the current and new bylaws, both zoning ordinances, the formation ordinance, background information, and the information regarding incompatible offices to the new attorney and get a final, renewed opinion from the new attorney.

Scott requested that the Commission be able to see the questions and information being provided to the attorney before it is sent out. **Leedy will send the information and questions to commissioners.**

Discussion regarding which information to send to the attorney. Scott suggested that, instead of sending the questions in writing, to avoid any confusion or back and forth in writing or additional questions, that the Commission invite the new attorney to attend the next meeting.

**McGough moved that we request that the new attorney attend our next regular meeting to answer questions regarding Compatibility of Office. Second by Scott. Roll call vote: Leedy, yes; Zimmerman, yes; Scott, yes; Lewis, yes; McGough, yes; Eby, yes.**

**Leedy moved to authorize the Chairperson to sign the engagement letter with the new Designated Attorney, Fahey, Schultz, Burzych, and Rhodes. Second by Lewis. Motion carried.**

**c. Recording Secretary**

Commissioners discussed hiring of a recording secretary. Scott expressed difficulty participating in meetings while taking minutes and recommended that we post an RFQ for a recording secretary. Commissioners discussed setting a rate for the Recording Secretary, if they would be hired as an employee or 1099, and the recommendation by Township Zoning Administrator, Heather O'Connor, who is the Wexford JPC Recording Secretary and who's resume was provided to commissioners. The commission also discussed if Kay Hele, who takes minutes for the township board and the sewer board, would be willing to be the recording secretary. Consensus that the rate should be \$150 per meeting with a overall budget of \$3,000 for the recording secretary.

**McGough moved that the FLAPC hire Heather O'Connor. No second.**

Discussion regarding rates, qualifications, and process for hiring either Heather or Kay or another Recording Secretary.

**McGough moved that the Commission reach out to Heather O'Connor and see if she's interested in the position at a rate of \$150 per meeting. Second by Scott. Roll call vote: Leedy, no; Zimmerman, yes; Scott, yes; Lewis, no; McGough, yes; Eby, yes Motion passed 3-2.**

**Lewis moved that the FLAPC also reach out to Kay Hele and see if she's interested in the position at a rate of \$150 per meeting. Second by Leedy. No vote occurred.**

Discussion regarding the motion, the hiring process, and if the Commission should offer the position to others or post publicly. Leedy suggested that McGough's motion be amended to hire O'Connor on a temporary basis to alleviate the Secretary from taking minutes while a decision is made and to see samples of her product.

**McGough agreed to amend the motion to reach out to Heather to see if she would be willing to be the Recording Secretary at \$150 per meeting on a trial basis. Scott, second, supported the amendment. Motion passed unanimously via roll call vote.**

**d. FLAPC Bylaw's Review**

Commissioners reviewed proposed changes to the Bylaws and reviewed the remainder of Bylaws that did not get reviewed at the March 29, 2022 meeting. Zimmerman suggested a few minor corrections which were incorporated into the final bylaws, which will be provided to the Commission for the next meeting.

**Motion by Leedy to authorize payment to Scott for minutes taken at the rate that was approved for the Recording Secretary, \$150 per meeting. Support by McGough.**

Discussion regarding Secretary duties and rate of pay.

**Motion carried unanimously via roll call vote with Scott abstaining.**

**Motion by Scott to approve the Bylaws as amended. Support by McGough. Motion passed unanimously.**

**e. Notice provided for December 14, 2021 Public Hearing**

Proof that the Public Hearing notice for December 14, 2021 was posted in the Cadillac News was provided to commissioners. Lewis believes that the Cadillac News is not in general circulation. Scott stated that it is considered general circulation due to the fact that it is sold at Beacon and Bridge and the Fife Lake Village Market which are both within the Township. Consensus that the December posting was properly posted in the Cadillac News but that going forward, notices will be posted in the Record Eagle instead.

**f. Master Plan**

Eby postponed until next regular meeting.

**13. Reports of Officers, Boards, and Committees**

None.

**14. Chairperson's Comments**

None.

**15. Commissioner Comments**

Zimmerman wondered if any other commissioners planned to attend the Treetops Resort planning and zoning training as she plans to attend. No other commissioners plan to attend.

**Leedy moved that the commission hold a special meeting May 24, 2022 at 6:30pm to develop standard operating procedures including who is in charge of doing what and developing a checklist for processes and procedures. Second by Eby. Motion carried.**

Leedy will prepare documents and samples/suggestions for commissioners.

**Scott moved to hold a Public Hearing regarding the Village Marihuana Ordinance at our next regularly scheduled meeting June 14 at 6:30pm. Second by McGough. Motion carried.**

**16. Second Public Comment**

None.

**17. Video Presentation**

None.

**18. Adjournment**

Motion to adjourn by Scott at 9:10pm.

1414  
Village of Fife Lake

**Attachment A: Public Hearing Notice**

## AFFIDAVIT OF PUBLICATION

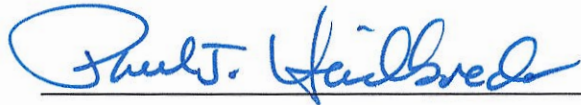
<b>LEGAL NOTICE</b> <b>NOTICE of Public Hearing</b> <b>for the Fife Lake Area Planning Commission</b>	
The Fife Lake Area Planning Commission will hold a public hearing during their regular scheduled meeting, at 6:30pm on May 10, 2022, at the Fife Lake Township Hall, 134 Morgan Street, Fife Lake MI 49633. The hearing will be held to review and gather public input on the Village of Fife Lake's Marijuana Zoning Ordinance. Any questions can be directed to the Village of Fife Lake 231-879-4291, located at 616 Bates, Fife Lake MI, during normal office hours: Tuesday-Thursday 9am-3pm.	
April 22, 2022-1T	584094

STATE OF MICHIGAN  
County of Grand Traverse

Paul Heidbreder being duly sworn deposes and says the annexed printed copy of notice was taken from the Traverse City RECORD EAGLE, a newspaper printed and circulated in said State and County, and that said notice was published in said newspaper on the following dates:

04/22/2022

that he or she is the agent of the printers of said newspaper, and knows well the facts stated herein



Subscribed and sworn to before  
this 22nd of April, 2022.



Denise A. Lingerfelt  
Notary Public, State of MI  
County of Grand Traverse  
09/28/2023  
Acting in County of Grand Traverse

## Public notice on tonight's hearing

Marcia Eby <marcieby@yahoo.com>

Tue 5/10/2022 1:10 PM

To: Dave McGough <mcgoughdavid16@gmail.com>; Dawn Zimmerman <DndZimmerman@gmail.com>; Amanda Scott <AScott@cfs3l.org>; Tom Rookus <Twr0505@ymail.com>; Lisa Leedy <lisaleedy@mail.com>; Shawn Lewis <thelwcrew133@gmail.com>; Marcia Eby <marcieby@yahoo.com>; Dawn Zimmerman <DndZimmerman@gmail.com>

CAUTION: This email originated from outside Child and Family. Do not click links or open attachments unless you recognize the sender and know the content is safe.

12:52



Not Secure — notices.record-eagle.com

Source	Traverse City Record-Eagle
Category	Legal Notices
Published Date	April 22, 2022

### Notice Details

LEGAL NOTICE NOTICE of Public Hearing for the Fife Lake Area Planning Commission The Fife Lake Area Planning Commission will hold a public hearing during their regular scheduled meeting, at 6:30pm on May 10, 2022, at the Fife Lake Township Hall, 134 Morgan Street, Fife Lake MI 49633. The hearing will be held to review and gather public input on the Village of Fife Lakes Marijuana Zoning Ordinance. Any questions can be directed to the Village of Fife Lake 231-879-4291, located at 616 Bates, Fife Lake MI, during normal office hours: Tuesday-Thursday 9am-3pm. April 22, 2022-1T584094

SHOWING LISTINGS SIMILAR TO THIS ONE. DRAG AND DROP TO CHANGE THE SORT ORDER OF CLOSE MATCHES:

1 date

2 state

### Related Notices



EXPIRED

Sent from my iPhone



Attachment B: Properties that received Public Hearing Notice

Rare Holding LLC  
7801 US 131 -  
Sent to  
72 85 Taylor Dr  
Plint MT 48507

Mark Mabee  
7499 US 131  
Sent to  
6484 Snyder Rd SW  
Fire Lake MT 49633

~~Sent to~~  
~~Dr. Rich + Kathryn Oliver~~  
~~7300 US 131~~  
~~Fire Lake MT 49633~~

sent to Adam + Allison Coan  
7300 US 131  
Fire Lake MT 49633

Tina Copeland  
7328 US 131  
Sent to  
7203 Elm Dr  
Manton MT 49663

Leo Ely Trust  
7288 US 131  
Sent to  
6756 Fire Lake Rd  
Fire Lake MT 49633

Sent to  
Scott + Mary Smith  
468 W State  
Fire Lake MT 49633

Gary + Shelly Blazek  
484 W State St  
Sent to  
7272 M 113

Sent to  
Patricia + David Warner  
448 W State St  
Fire Lake MT 49633

Kingsley MT 49649

Dylan Dontje  
650 W State  
Sent to  
11926 E State St  
Fire Lake MT 49633



Harry + Precilla Dutton  
W State Street  
Sent to 1686 Saunders Rd SE  
Kathasha MT 49646

Sent to  
Fife Lake Baptist Church  
449 W State  
Fife Lake MT 49633

Fife Lake Township  
Cemetery  
134 Morgan  
Fife Lake MT 49633

Forest Area Schools  
315 W State  
7741 Shipp Rd  
Fife Lake MT 49633

**Attachment C: Revised Approved Agenda.**

**FIFE LAKE AREA PLANNING COMMISSION  
REGULAR MEETING  
TUESDAY, MAY 10, 2022 at 6:30PM**

Location: Fife Lake Township Hall, 134 Morgan Street, Fife Lake, MI 49633

1. Call to Order
2. Pledge of Allegiance
3. Roll Call
4. Agenda Modifications/Approval
5. First Public Comment
6. Bills – Williams & Works
7. Correspondence
8. Reaffirm motions from April 19, 2022 meeting
9. Approval of Minutes from April 19, 2022
10. Declaration of Conflict of Interest (state name and reason for conflict)
11. New Business
  - a. RLUIPA
12. Unfinished Business - Reordered
  - a. Attorney RFQ
  - b. Attorney memo regarding FLAPC Membership
  - c. Recording secretary
  - d. FLAPC Bylaw's review
  - e. December 14, 2021 Public Hearing
  - f. Master Plan
13. Reports of Officers, Boards, and Committees
14. Chairperson's Comments
15. Commissioner Comments
16. Second Public Comment
17. Video Presentation
18. Adjournment





To the Fife Lake Area Planning Commission,

My name is Jacob Terry, and I am the pastor and representative of the Fife Lake Baptist Church. It was brought to our attention that this meeting is being held tonight to discuss the ordinance regarding the location of a dispensary for marijuana.

As a matter of principle, I must state that we are opposed to any location being used for the sale of Marijuana for several reasons:

1. As a church we are opposed to the use of Marijuana period. The Lord is very clear that he is concerned for us to be of a sound (right) mind. 2 Timothy 2:7 the Apostle Paul states, "For God hath not given us the spirit of fear; but of power, and of love, and of a sound mind". Marijuana has the opposite effect on most people.
2. As a church we stand to try to help those in our community who are fighting, struggling with, and desiring to overcome addictions. The placement of a facility the grows and/or dispenses Marijuana so close to our meeting place would have a very negative affect on that goal, much like putting a bar next to an Alcoholics Anonymous meeting.
3. Looking at it from the standpoint of our community also raises opposition. We are not a wealthy community by any means, and we have many who don't have money to feed their families. Making Marijuana, an addictive substance, readily available to our community can only hurt it. While it would bring revenue to the town, it is not worth the price it cost families that are already struggling to make it. This substance affects the thinking and emotions of people. It covers and does not fix their problems. It numbs people to the problems we face in our families and communities. And it is a step in the direction toward harder and more destructive drugs and violence.

Turn Over

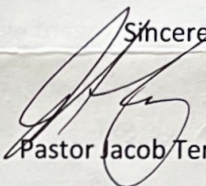
Fife Lake Baptist Church  
449 W. State St. ~ P.O. Box 95  
Fife Lake, MI 49633  
(231) 879-4251  
fifelakebaptist.com

Service Times:  
Sunday School - 9:45 AM  
Sunday Worship - 11:00 AM  
Sunday Afternoon - 1:00 PM  
Wednesday Bible Study & Prayer - 7:00 PM



I, the pastor, and those who are involved in the ministry of Fife Lake Baptist Church, do not want to be desensitized by the constant sight of these facilities. We do not want our kids affected by the negative influences associated with its sale and use. And we certainly do not want the negative effects on our community that are sure to come if a change is approved for this location.

We therefore request that the distance ordinance remain as is and not be changed to accommodate these facilities for the general benefit and welfare of our community.

Sincerely,  
  
Pastor Jacob Terry

P.S. On the next page are the signatures of those associated with our church who are opposed to this change.



L. Calvin Meyers  
Connie Meyers  
Mitchell Roberts

David M. Boyd  
Shelly Boyd  
Amanda Roberts  
Carol Houghton

Darrel Grayson  
Dale Kuiper  
Otis

D. J. Munn  
Patty Rounsey  
Rounsey

Sue Radcliffe  
Karin Munn

Gene Munn  
Harold Wanner

Brenda Wanner  
Mark Radcliffe  
Bill Smith

James R. R.  
Clow Pickard

George & Betty Martner

Wayne Segar Jr.  
Paula Long

Paul C. Chilton  
John L. Eir

Bethany & Perry  
Shale Long

Joan M. Tallman  
Jill Tallman

Harold & K. J. J.  
Harold J. J.

Ron & Beverly  
Pat



Jul L

Halley Seger

Linda Seger-Sheets

Deanna S. Shurt

Gale & Tammy Penny

Emma Jeany Bird

Taylor Bird

Rox Fox

# williams&works

engineers | surveyors | planners

**Village of Fife Lake**

616 Bates St.  
Fife Lake, MI 49633

Attn: Ms. Tessa Johnson, Clerk

Re: Joint Master Plan

December 31, 2021

Invoice No: 93514

Project No: 220139.01:

Billing To: Dec 31, 2021

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Professional Services:	\$516.00
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<b>TOTAL NOW DUE</b>	<b>\$516.00</b>
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Payment Due Upon Receipt

# williams&works

engineers | surveyors | planners

January 5, 2022

Ms. Tessa Johnson, Clerk  
Village of Fife Lake  
616 Bates St  
Fife Lake MI 49633

Dear Ms. Johnson:

Enclosed is our invoice for services procured over the past month in connection with our planner of record contract. This includes coordination and work related to the following services:

<b>Task</b>	<b>Hours</b>	<b>Amount</b>
Preparation and attendance at the November 29 FLAPC meeting:	1.0 hr	\$120
Drafted public hearing notices for Village and Township	0.5 hr	\$60
Draft adoption resolutions for Village Council and Township Board	1.4 hr	\$168
Updated Recreation Plan to incorporate M-113 property	0.4 hr	\$48
Review, edit, compile draft Master Plan and email to client	1.0 hr	\$120

Invoice Total: \$516

As always, please call me if you have any questions or concerns regarding our billings or services.

Sincerely,

**Williams & Works**

[via email]

Andy Moore, AICP



**Attachment F: RLUIPA Summary provided by Commissioner Lewis**

The second part of RLUIPA's land use provision prohibits "discrimination and exclusion."<sup>55</sup> This part provides that (1) governments shall not treat a religious assembly or institution on less equal terms than a non-religious assembly or institution;<sup>56</sup> (2) governments shall not impose a land use regulation that discriminates on the basis of religion or religious denomination;<sup>57</sup> and (3) governments shall not totally exclude or unreasonably limit religious assemblies, institutions, or structures within a jurisdiction.<sup>58</sup> This second part has been infrequently applied and seldom used by plaintiffs.<sup>59</sup> Moreover, it has generally not been attacked in the courts as either overbroad or unconstitutional.

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the constitutionality of the statute, which is outside the scope of this Article. *See generally* *Freedom Baptist Church of Delaware County v. Twp. of Middletown*, 204 F. Supp. 2d 857 (E.D. Pa. 2002) (finding RLUIPA constitutional). *But see* *Elsinore Christian Ctr. v. City of Lake Elsinore*, 291 F. Supp. 2d 1083 (C.D. Cal. 2003) (finding RLUIPA unconstitutional). In any event, it is worth noting a few points about the final jurisdictional "hook" concerning individualized assessments, which apparently stems from Congress' power to enforce the Free Exercise Clause through Section Five of the Fourteenth Amendment. As the Supreme Court held in *Smith*, laws of general applicability that incidentally burden religious exercise are only subject to rational basis scrutiny. *Employment Div. v. Smith*, 494 U.S. 872, 878–82 (1990). RLUIPA attempts to get around this general rule by describing the application of land use regulations as a system of "individualized assessments." 42 U.S.C. § 2000cc(a)(2)(C). This test harkens back to an earlier case, *Sherbert v. Verner*, in which the Supreme Court held that South Carolina's unemployment compensation system had to provide an exemption for a claimant that could not work on Saturdays because of her religious beliefs. 374 U.S. 398, 410 (1963). The *Sherbert* court held that because the unemployment compensation system provided exemptions for other non-religious reasons, it had to also provide a religious exemption. *Id.* at 403–04. In other words, *Sherbert* applied strict scrutiny to an "individualized governmental assessment." *Smith*, 494 U.S. at 883. However, as the Court in *Smith* explained, "[w]e have never invalidated any governmental action on the basis of the *Sherbert* test except the denial of unemployment compensation." *Id.* Therefore, to apply strict scrutiny in the zoning context based solely on this "individualized assessments" argument seems dubious, at best. Moreover, if a zoning board's application of a law of general applicability to an individual applicant is an "individualized assessment," then it would seem that any criminal law (including, say, prosecution for the possession of peyote) would be an application of a general law to a specific person. *See id.* at 883–84 (stating that a ban against peyote possession was a generally applicable law, even though it was applied in a specific circumstance); *cf.* *Corp. of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints v. City of W. Linn*, 86 P.3d 1140, 1148 (Or. Ct. App. 2004), *aff'd*, 111 P.3d 1123 (Or. 2005) ("Thus, even assuming that a governmental entity's enactments are neutral laws of general applicability, their application to particular facts nevertheless can constitute an individualized assessment . . ."). Using *Sherbert* to support RLUIPA's land use provisions seems to run into even more problems when one considers the fact that *City of Boerne* was a zoning case, where individualized assessments were made that substantially burdened the applicant's religion, yet the Court did not apply strict scrutiny. *See City of Boerne v. Flores*, 521 U.S. 507, 533–36 (1997).

55. 42 U.S.C. § 2000cc(b).

56. *Id.* § 2000cc(b)(1).

57. *Id.* § 2000cc(b)(2).

58. *Id.* § 2000cc(b)(3).

59. *See, e.g.,* *Primera Iglesia Bautista Hispana of Boca Raton, Inc. v. Broward County*, 450 F.3d 1295 (11th Cir. 2006) (finding no violation of RLUIPA's equal terms provision in the denial of a variance); *The Lighthouse Inst. for Evangelism, Inc. v. City of Long Branch*, 406 F. Supp. 2d 507, 516–17 (D. N.J. 2005) (analyzing the few RLUIPA cases that have been based on subsection (b) of



# **SUPREME COURT SAYS GOVERNMENT OFFICIALS MAY BE PERSONALLY LIABLE FOR MONEY DAMAGES UNDER RELIGIOUS FREEDOM STATUTE(S)**

*Written by Noel Sterett on December 10, 2020 Category: Firm News, Religious Institutions, RLUIPA, RLUIPA Case Observations and Insights*

Today, the United States Supreme Court decided an important religious liberty case—*Tanzin v. Tanzir*—involving who can be sued for money damages under the Religious Freedom Restoration Act (“RFRA”). The unanimous decision authored by Justice Clarence Thomas affirmed that government officials may be sued for money damages in their *individual or personal capacities* under RFRA. While the government argued that RFRA should not be interpreted in a way that would expose a government official’s personal assets to judgment, the Supreme Court held that RFRA’s text is clear and that Congress, not the Court, is responsible for addressing the policy concerns related to the personal liability of government employees.

In its decision, the Supreme Court also referenced RFRA’s sister statute, the Religious Land Use & Institutionalized Persons Act (“RLUIPA”). Both statutes contain a “substantial burden” provision which prohibits the government and government employees from imposing substantial burdens on religious exercise. Both statutes also contain a provision which allows religious claimants to seek “appropriate relief” against the government and government employees who imposed the burden. Since RLUIPA contains the same operative provisions, government officials who impose land use regulations in a manner which



substantially burden the religious exercise of a religious institution or assembly may be individually or personally liable for money damages in some cases.

Hopefully, the prospect of facing personal liability for their actions will cause more government officials to be less inclined to burden the religious exercise of the citizens and institutions they are called to serve. We look forward to continuing to help religious assemblies and institutions across the country keep government officials accountable.

**Attachment G. FLAJPC ATTY BID Responses 05.20222**

	A	B	C	D	E	F	G	H	I
1	Attorney Bid Invitation Sent:	Response	Municipal	Attorney	Paralegal Rate	Secretary Rate	Joint Plan	Planning/	Lead Atty
2		recd	Experience	Rate-Hourly	Hourly	Hourly	Experience	Zoning Exp	Name
3									
4	Fahey Schultz Burzych Rhodes	6-May	Y	\$210-260	Not identified	Not identified	Y	Y	Chris Patterson
5	David Biegenowski	3-May	Y	\$170.00	\$100.00	\$50.00		Y	David Bieganowski
6	Cummings McClorey, Davis & Acho	5-May	Y	\$195.00	\$100.00	\$0.00		Y	Haider Kazim
7	Smith, Johnson	None							
8	Smith Haughey Rice & Roegge	None							
9	Sondee Racine & Doren	None							
10	Running Wise & Ford	None							
11	360 Law	None							
12	Slocombe Law	None							
13	Kuhn Rogers	None							
14	Parker Harvey	None							
15	UpNorth Law	None							

# **PROPOSAL TO PROVIDE LEGAL SERVICES TO FIFE LAKE AREA JOINT PLANNING COMMISSION**



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Fahey Schultz Burzych Rhodes PLC is delighted to present this proposal to serve as Attorneys for Fife Lake Area Joint Planning Commission. We represent townships of all sizes, on all issues, and all across the State. Guiding and protecting townships is our specialty and our passion. We would be honored to serve Fife Lake Area Joint Planning Commission.

Every day, we strive to achieve our twin goals: **Expert Counsel** and **Real Solutions**.

**Expert Counsel.** As Michigan's experienced township attorneys, we represent more than 120 townships across Michigan. Our firm's attorneys have more than 200 years of combined experience in township law. We understand the demands you face. Our lawyers have the experience to proactively address all the issues townships must face daily.

We are a growth-oriented law firm with a strong focus on client service. Starting out as a small law-firm in 2008, we began with just 4 lawyers. Now, in 2022, we are fully staffed with 24 lawyers and 10 professionals, which allows each of us backup when necessary, so there will always be a qualified attorney available when you need us. We further provide unparalleled responsiveness due to the depth of our team.

**Real Solutions.** We pride ourselves on finding practical solutions for our clients' unique and complex legal problems. You can always reach us for legal help or advice. We respond to your phone calls or emails within 1 hour, usually immediately. We maximize technology and management to deliver excellent service at a reasonable cost. Each of our lawyers has a direct dial number, cell phone, email and dedicated desktop fax for convenient communication at all times. We also are adept in conducting virtual meetings. Our lawyers give you access to complete Michigan and federal online legal databases, in addition to our own cloud-based repository of more than 40 years of research, documents and legal opinions. We control costs and operate efficiently, effectively and successfully.

## WHAT WE DO

We have the expertise and solutions to address the problems that townships face daily. Our firm's expertise extends to all the areas in which townships may require legal counsel, including:

Act 425 Agreements	Collective Bargaining	Freedom of Information
Annexation & Detachment	Drains	Act
Appeals	Economic Development	Joint Agreements
Arbitration & Mediation	Elections	Lake Improvements
Cable Television	Emergency Services	Libraries
Cemeteries	Employment & Personnel	Liquor Licensing
Code Enforcement	Environmental Issues	Litigation

Marihuana	Public Improvements	Utilities
Open Meetings	Resolutions & Contracts	Water/Sewer Authorities
Ordinance Drafting	Sanitary & Storm Sewers	Water Systems
Personal Property Tax	Special Assessments	Wetlands
Planning Law	Tax Appeals	Zoning & Land Use
Property Acquisition	Telecommunications	

Most townships need attorneys who can address all the increasing legal demands placed upon you. You can count on our lawyers' expertise and solutions to assist Fife Lake Area Joint Planning Commission in dealing with the full array of municipal legal challenges, including:

***Advice and Counsel.*** A wealth of legal opinions and practical advice are available when you call us. We respond by telephone, email, text or formal opinion letters, as you prefer. Townships rely on us for sound legal advice, as well as for our practical experience. When called upon, we provide immediate advice and counsel or written legal opinions addressing the question you face, including issues of authority, statutory and ordinance construction, constitutionality of existing and proposed legislation, conflicts of interest, compliance with the FOIA and OMA, contracts, policies, rules of order and any other issues you may encounter. Although even our most experienced lawyers still learn something new every day, we are usually able to answer your questions without lengthy delay and expensive research, since we have represented so many townships for so many years.

***Appeals.*** Strong expertise and success in appellate litigation distinguish our lawyers from others who represent townships. Over our long and very active history of representing townships in Michigan, we have addressed countless issues before the Michigan appellate courts. Our lawyers frequently handle the most important township cases before the Michigan Court of Appeals and Supreme Court. We know township law very well, in part, because we actively participated in the shaping of that law in the appellate courts for more than four decades.

***Litigation.*** Our lawyers handle a wide array of complex litigation. In addition to land use and zoning litigation, we frequently defend townships in cases involving constitutional issues, labor and employment matters, issues of authority, FOIA and OMA matters, sewer and water litigation and the resolution of virtually every dispute that the Township may encounter. In addition to our litigation skills, we are trained mediators. We strive to reach appropriate and inexpensive resolutions of pending disputes in the best interests of the Township whenever possible.

***Medical and Recreational Marihuana.*** We have assisted several townships with the new challenges presented by commercial medical and recreational marihuana,. This is a cutting-edge area of township law that calls for solutions to entirely new problems. To meet these challenges, we have worked with a select group of townships to develop a list of comprehensive recommendations



and model ordinances. Different townships will choose different strategies in this emerging area, and we are attempting to provide townships the most up-to-date information and strategies.

**Ordinance Strategies and Code Enforcement.** We routinely review, draft, interpret and enforce ordinances. We have the ability to take a comprehensive assessment of your ordinances, identify sections that have become obsolete, identify opportunities to enhance the development process, and evaluate the ordinance's alignment with the community's visions. As experience or trends dictate, we proactively suggest amendments or changes to improve your existing ordinances. We prepare or review zoning ordinances, nuisance and noise ordinances and ordinances regulating a wide variety of matters, including public and private roads, site condominiums, telecommunications, cemeteries, signs, wetlands, adult businesses, mobile homes, abandoned and dilapidated structures and vehicles, water and wastewater systems and surface water drainage. Our lawyers can also help you establish or improve current systems to improve the efficiency and economy of your ordinance violation prosecutions. As part of this process, we can help you review your municipal civil infraction ordinances for effectiveness and efficiency and establish systems to optimize your results.

**Zoning and Planning.** Our reputation in land use and zoning matters is well-recognized across the state. We frequently draft or review land use plans, zoning ordinances and amendments, wetlands regulations, growth management measures, land division ordinances, subdivision regulations and site condominium ordinances. We will work closely with the Township and your professional planners to review proposed land developments, especially when litigation is possible. We monitor and defend land use disputes in both the trial and appellate courts.

## **SEMINARS, PRESENTATIONS AND PUBLICATIONS**

Our attorneys are called upon by municipal and professional organizations like the MTA and MATS to provide seminars and presentations to township officials and others. We also present seminars for individual townships and sponsor our own seminars for township officials.

If any of your Township officials are not already subscribed, one of the complimentary services we provide is our monthly Township Law E-Letter, circulated to over 5000 Michigan township officials. We have years' worth of E-Letters on a variety of timely topics for the benefit of township officials posted on our firm's website, which is also searchable by keyword at: <https://fsbrlaw.com/our-feed/>

## **RECENT PROJECTS**

Examples of some of our recent township projects include:

- Dozens of successful zoning, building and nuisance prosecutions.
- Comprehensive zoning ordinance revisions for several townships.

- Review and advice on complex zoning approvals or decisions, including special land uses, site plans, variances, and appeals.
- Removal of dangerous buildings and recovery of removal costs.
- Multi-million-dollar water and sewer projects with Rural Development financing.
- Developed a unique wind park zoning ordinance amendment.
- Intergovernmental police and fire agreements.
- Disincorporation of a joint fire authority to township's advantage.
- FOIA case against Department of Treasury to obtain "secret" criteria for review of township assessing practices, recovering 100% of the township's attorney fees.
- Truck route ordinance to control truck traffic from gravel pits.
- Joint township planning commission and joint land use plan.
- Dozens of commercial and industrial tax appeals in the Tax Tribunal and appellate courts.
- Halted state tax foreclosure through swift judicial action, protecting township from the loss of \$1 million in unpaid water and sewer assessments.
- Unique special assessment mechanism for township police, fire and emergency services.
- Collective bargaining agreements for several police, firefighter, public works and clerical units, with significant wage and benefit savings for townships.
- Resolution of serious internal township board disputes.
- Formation of special assessment districts for lake improvement projects.
- Prepared complex regulations to address new legislation on telecommunications towers.
- Negotiated drain easement across a fragile municipal-owned natural area.
- Minimized cemetery costs; allocated grave sales between general fund and cemetery fund.
- Ballot proposals for new and renewal millage; township police assessments; and zoning.
- Defended discipline and termination of police and fire union employees.

## TEAM OF TOWNSHIP ATTORNEYS

We propose the following outstanding team of notable and experienced township attorneys to serve the needs of your Township:



**Christopher S. Patterson** (License# P74350, Admitted 2010) focuses his law practice on the representation of townships, particularly in land use and zoning, utility rates and issues, and township governance issues. Chris would serve as lead counsel to the Fife Lake Area Joint Planning Commission. Chris lives in the Grand Rapids area. He assists dozens of townships on a variety of matters and serves as lead counsel to several of the firm's township clients. Prior to joining our firm, he was a law clerk for federal Judge Lawrence P. Zatkoff in Port Huron, where he gained valuable experience in hearings and trials. He graduated magna cum laude



from Michigan State University College of Law, focusing on studies of real property and urban planning, which complemented his undergraduate studies in real estate regulation, appraisal and investment. In 2017, he was named a Top 5 under 35 attorney in Ingham County. Chris was named by Super Lawyers as a Michigan Rising Star in State, Local and Municipal Law in 2019 and again in 2020. Chris is a member of the Executive Council of the Administrative and Regulatory Law Section of the State Bar of Michigan and a member of Inns of Court-MSU Chapter. He also is co-chair of the Ingham County Bar Association's Real Estate Section and is a Michigan real estate licensed salesperson, which assists with taking a practical, knowledgeable approach to real property matters, including the transfer of real property and related litigation. [cpatterson@fsbirlaw.com](mailto:cpatterson@fsbirlaw.com)

**Matthew A. Kuschel** (License# P74350, Admitted 2010) practices in the municipal law group, with an emphasis on zoning law, medical marihuana, and ordinance drafting and enforcement. He has extensive experience drafting opinions and memoranda on a wide variety of township issues. Matt also has assisted with and closed real estate transactions of several hundred thousand dollars. Prior to joining Fahey Schultz Burzych Rhodes, Matt worked for two years in the Research Division of the Court of Appeals and also completed a one-year corporate and legal fellowship in Chicago, Illinois. Matt graduated magna cum laude from Ave Maria School of Law in Naples, Florida. [mkuschel@fsbirlaw.com](mailto:mkuschel@fsbirlaw.com)



**Kyle A. O'Meara** (License# P83075, Admitted 2018) joined FSBR in 2018 after spending the previous summer as a summer associate with the firm. He is a member of the firm's Municipal Group and supports the Drain Practice Group in various matters such as establishing inland lake levels. Kyle's work focuses on public entities in need of advice on a wide variety of legal topics from the Freedom of Information Act to drafting purchasing policies. He has aided numerous lake improvement boards and townships with various special assessment improvement projects. Fact-finding, problem-solving, and brainstorming are among Kyle's favorite parts of his work, and he enjoys helping clients tackle their challenges. Kyle is a graduate of Notre Dame Law School and the University of Michigan. [komeara@fsbirlaw.com](mailto:komeara@fsbirlaw.com)

**Jacob N. Witte** (License# P 82558, Admitted 2018) joined the firm in 2018. His work primarily focuses on code enforcement and prosecuting civil infractions for ordinance violations. He also assists in drafting new ordinances, sign regulation, small cell licensing, marihuana law, and has tackled constitutional issues involving first and second amendment rights on behalf of municipalities. Before joining the firm, Jake served as an intern for the Honorable John T. Gregg in the United States Bankruptcy Court for the Western District of Michigan, where he prepared bench memoranda to be used in court opinions, conducted extensive legal research and authored an article that was published in the Fall 2017 edition of the Federal Bar Association Bankruptcy Section Newsletter. Jake also served as an intern for the Honorable Rosemarie E. Aquilina in the 30th Circuit Court. [jwitte@fsbrlaw.com](mailto:jwitte@fsbrlaw.com).



## FEES AND CHARGES

We serve townships efficiently and economically. We know that townships must carefully manage their legal expenses. To that end, we propose the following rates and billing practices for the Township.

Unless other arrangements are made, we will bill for our legal services based on hourly rates that are assigned to each lawyer according to their years of experience and expertise. Hourly rates are subject to periodic review and adjustment at least annually. Lawyers primarily handling your matters would bill at the following hourly rates:

Christopher Patterson	\$260	Kyle O'Meara	\$210
Matthew Kuschel	\$210	Jake Witte	\$210

We will assign the right professional to each matter based on experience, efficiencies and abilities. If a matter requires only the experience of an associate, we would assign an associate. When a partner is required, we will assign a partner. When a particular specialty is required, an attorney with that specialty would be assigned.

On request, we provide estimates of our anticipated fees on a matter when that is practicable. We can also set budgets on specific matters at your request. But unless we agree in writing to perform a specific service for a fixed fee, an estimate will not represent a maximum, minimum or agreed fee.

Our rates are inclusive of all overhead costs. We will not charge you separate "cost" items for mileage, facsimiles, emails, telephone charges, overtime, photocopying within our office and other similar costs. Any additional costs we charge are limited to our actual, out-of-pocket cost (without a markup) for such items as witness fees, title work, third party messenger or overnight delivery

services, process servers, court transcripts, court and government filing fees, outside printing, newspaper notices and similar third-party charges.

We will invoice you at the beginning of each month for hourly rates and costs. Payment within 30 days is expected, and we may charge you interest of 1% per month on accounts not paid within 30 days. Invoices can be paid by check (to Fahey Schultz Burzych Rhodes PLC), cash, money order or electronic transfer (ACH). Please refer to our standard terms attached to the engagement letter for more detailed information on time and costs charged.

## **NO CONFLICTS OF INTEREST**

There are no pending matters or client relationships that would present a conflict of interest in the representation of Fife Lake Area Joint Planning Commission.

We avoid conflicts of interest wherever possible by not accepting clients that may likely have disputes with townships. Before engaging with new clients or opening new matters for a client, we conduct a search to determine whether a conflict may arise with an existing client. We have an electronic software that runs the names of adverse parties, clients, and potential clients. We also run a search of our entire file system. We abide by the Michigan Professional Rules of Conduct, which prohibits our lawyers from the representation of a client that will be directly adverse to that of another client. In the event that a conflict would arise in the future, Fife Lake Area Joint Planning Commission would be involved as required by the rules of conduct. Because we devote such a large percentage of our time to the representation of townships, we take this challenge very seriously.

## **NON-DISCRIMINATION**

We do not discriminate against any individual because of race, color, national origin, sex, age, height, weight, marital status, handicap or any other reason prohibited by applicable laws in our consideration for employment, selection of training, promotion, transfer, recruitment, rates of pay or other forms of compensation, demotion or separation.

## **REFERENCES**

We serve more than 120 townships and many other municipal governments, including cities, villages, counties, district libraries, lake improvement districts and drain commissioners. You are welcome to contact any of our clients, including the following township references:

Michigan Townships Association  
Neil Sheridan, Executive Director  
(517) 321-6467

Alpena Charter Township (Alpena County)  
Nathan Skibbe, Supervisor  
(989) 356-4024

Pinconning Township (Bay County)  
Sharon Stalsberg, Supervisor  
(989) 879-4018

Howell Township (Livingston County)  
Mike Coddington, Supervisor  
(517) 546-2817

Coe Township (Isabella County)  
Mary Kay Maas  
(989) 828-5322

Grant Township (Clare County)  
Dan Dysinger, Supervisor  
(989) 588-2552

Oneida Charter Township (Eaton County)  
Don Cooley, Supervisor  
(517) 622-8078

Grass Lake Charter Township (Jackson County)  
Cathy Zenz, Clerk  
Doug Lammers, Zoning Administrator  
(517) 522-8464

Arcada Township (Grafton County)  
Doug Merchant, Supervisor  
(989) 289-7420

Roscommon Township (Roscommon County)  
Diane Randall, Supervisor  
(989) 422-4116

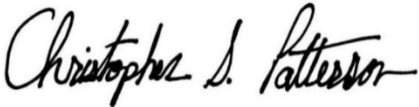
Vernon Township (Shiawassee County)  
Bert DeClerg, Supervisor  
(989) 288-2388

Windsor Charter Township (Eaton County)  
Kern Slucter, Supervisor  
Lisa Rumsey, Clerk  
(517) 646-0772

## SUMMARY

Fahey Schultz Burzych Rhodes PLC and its lawyers are excited about the opportunity to represent Fife Lake Area Joint Planning Commission. Our focus on serving townships, our depth and breadth of legal skills and our years of township experience will benefit the Township in ways that no other law firm can match. We look forward to assisting Fife Lake Area Joint Planning Commission.

Sincerely,



**CHRISTOPHER S. PATTERSON**

## MEMBER

Direct: 517.381.3205

[cpatterson@fsbirlaw.com](mailto:cpatterson@fsbirlaw.com)

May 6, 2022

***Via E-mail***

Fife Lake Area Joint Planning Commission  
c/o Lisa Leedy  
Fife Lake Township Hall  
134 Morgan St.  
Fife Lake, MI 49633  
[Lisaleedy@gmail.com](mailto:Lisaleedy@gmail.com)

Dear Planning Commission Members:

**Re:    *Engagement re Municipal Legal Services***

Thank you for selecting Fahey Schultz Burzych Rhodes PLC to represent Fife Lake Area Joint Planning Commission. The scope of our engagement includes general municipal legal services. We will do our best to provide timely legal advice and representation within the scope of the engagement. This letter confirms the terms of our agreement to represent Fife Lake Area Joint Planning Commission.

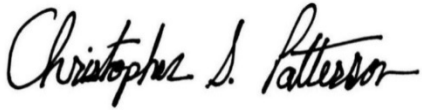
You will be our primary contact in this engagement, and I will be the primary attorney responsible for this engagement. Our time and costs will be charged as described in the enclosed Standard Terms, which are incorporated in this letter. My current hourly rate is \$260.

Unless other arrangements are made, we will bill for our legal services based on hourly rates that are assigned to each lawyer according to their years of experience and specific expertise. Hourly rates for lawyers handling township matters currently range from \$165 to \$305 per hour. Our rates are subject to periodic review and adjustment at least annually.

We appreciate the confidence you have in us and look forward to working with you. If you have any questions about this letter, please do not hesitate to call me. If you agree with the above, please return a signed copy of this letter so we can officially begin to represent Fife Lake Area Joint Planning Commission's interests.



Sincerely,



**CHRISTOPHER S. PATTERSON**  
**MEMBER**

Direct: 517.381.3205

[cpatterson@fsbirlaw.com](mailto:cpatterson@fsbirlaw.com)

CSP/tnd

Acknowledged and Agreed:

By: \_\_\_\_\_  
\_\_\_\_\_, Supervisor  
Fife Lake Township

Dated: \_\_\_\_\_, 2022

By: \_\_\_\_\_  
\_\_\_\_\_, Supervisor  
Village of Fife Lake

Dated: \_\_\_\_\_, 2022

## STANDARD TERMS OF ENGAGEMENT

Thank you for retaining **Fahey Schultz Burzych Rhodes PLC** ("Firm") for legal services. These **Standard Terms** govern our engagement unless otherwise stated in your engagement letter or by the Rules of Professional Conduct. Please review these **Standard Terms** carefully and retain them in your files. If you have any questions about our legal representation or invoices, please contact your primary attorney promptly.

**1. SCOPE OF OUR SERVICES.** Our engagement letter states specific matter(s) where we represent you and the scope of our services, which can only be varied by express written agreement. Our services do not include tax advice unless specified in the engagement letter. If you request opinions of law or outcomes, our opinions are limited by known facts and law at the time our opinion is rendered, subject to factors unknown or beyond our control. We use our best professional judgment, but cannot guarantee any outcome.

**2. PRIMARY ATTORNEY.** The primary attorney responsible for your representation may use other attorneys, paralegals or non-legal professionals with the Firm in the exercise of professional judgment. Attorneys outside the Firm may be consulted to serve as legal advisors to the Firm based on their licensed status in other jurisdictions or expertise in particular legal specialties.

**3. CLIENT.** The Firm will provide representation only to the person(s) or entity identified in our engagement letter. In matters for corporations, partnerships and other legal entities, unless otherwise agreed in writing, our representation does not extend to officers, directors, employees, shareholders, partners, members, individuals or any affiliates (such as parent, sister or subsidiary corporations).

**4. OUR FEES.** Unless other arrangements are made, we will bill for our legal services at our standard hourly rates, which are available on request. Hourly rates are subject to periodic review and adjustment at least annually. On request, we provide estimates of our anticipated fees on a matter when, in our professional judgment, they can be made; but unless we agree in writing to perform a specific service for a fixed fee, an estimate will not represent a maximum, minimum or agreed fee. We may also consider the following factors as appropriate to submit invoices in excess of our standard hourly rates: novelty and difficulty of the question involved; skill requisite to perform the legal services; likelihood that acceptance of a particular matter will preclude other representation; fee customarily charged in the locality for similar services; risk assumed by the Firm in performing certain types of work; amount involved and results obtained; and any time limitations imposed by the Client or by other circumstances.

**5. COSTS.** In addition to hourly rates, you must reimburse us for costs such as filing and recording, experts and expert witnesses, deposition transcripts, overnight or special delivery service, certified mail, mileage exceeding twenty-five (25) miles from our office and lodging (all without any mark-up). These costs will not include copies we make in-house, regular US postage, faxes or other costs that we typically consider as overhead. We submit costs in excess of \$1,500.00 by third parties to you for direct payment.

**6. INVOICES.** We will invoice you at the beginning of each month for hourly rates and costs. Payment within 30 days is expected, and we may charge you interest of 1% per month on accounts not paid within 30 days. Invoices can be paid by check (to Fahey Schultz Burzych Rhodes PLC), cash, money order or electronic transfer (ACH). If you have questions on any invoice, contact your primary attorney as soon as possible.



**7. RETAINERS.** Unless otherwise stated in the engagement letter, we may withdraw amounts from a retainer at any time as necessary to satisfy unpaid invoices. If the retainer becomes insufficient to cover past due invoices or falls below the agreed amount, you will be required to replenish the retainer. Any portion of the retainer remaining after all legal services have been paid for will be refunded to you.

**8. CONFLICTS OF INTEREST.** We try to identify existing and potential conflicts at the outset of any engagement. We may ask you to sign a conflict waiver prior to an engagement. Other clients or prospective clients may ask us to seek a conflict waiver from you to represent them, but that doesn't mean we will represent you less zealously. If a conflict arises or appears after we begin an engagement, we will do our best to address and resolve the conflict consistent with our professional responsibilities. We will not represent any other client on a matter where we represent you unless you expressly agree and we can do so under the Rules of Professional Conduct. We may represent another client who is one of your market competitors.

**9. INSURANCE COVERAGE.** You must determine if you are covered by insurance for liability or legal expenses. Please notify your insurer(s) of any claim or potential claim and our involvement as soon as possible. Please inform us if you have insurance coverage for the matter(s) for which we are retained. With your approval and cooperation of your insurer(s), we can work with or serve as assigned insurance counsel as appropriate.

**10. TERMINATION OF REPRESENTATION.** You may terminate our representation at any time, with or without cause. We may terminate your representation if you fail to pay us any amount invoiced, fail to cooperate with us, or we determine that your representation would violate the Rules of Professional Responsibility or be impractical. Termination of the representation does not relieve you of the obligation to pay for legal services we provided prior to termination or need to provide for orderly transfer to your new counsel. On termination of representation for any reason, we will return your papers, documents and other property to you at your request, but may retain a copy for our own files. If any unpaid invoices are owed to us, we may retain your documents if they are subject to a lien. When we complete the work for which you retained us, our representation will end. Any further or additional work will be subject to these **Standard Terms** unless otherwise expressly agreed in writing.

**11. RECORDS RETENTION.** Subject to the above, we will return your materials at the end of the engagement. After the engagement, in accordance with these **Standard Terms**, applicable law and the Rules of Professional Conduct, we will hold your files for seven (7) years, when they may be destroyed. We will attempt to notify you before destroying any files and may charge you to dispose of or retain your files.

**12. ELECTRONIC DATA COMMUNICATION AND STORAGE.** We may communicate with you and others by email or fax, send data over the Internet, store electronic data via computer software applications hosted remotely on the Internet, or allow access to data through third-party vendors' secured portals or clouds. Electronic data confidential to your matters(s) may be transmitted or stored using these methods. In using these data communication and storage methods, the Firm will make a reasonable effort to keep such communications and data secure in accordance with our obligations under applicable laws and professional standards. You agree that we have no control over the unauthorized interception or breach of any communications or data once it has been sent or has been subject to unauthorized access, notwithstanding all reasonable security measures employed by us or our third-party vendors.

Please contact your primary attorney if you have any questions regarding these **Standard Terms**.



**DAVID A. BIEGANOWSKI, PLC**  
ATTORNEY AT LAW  
2226 S. Airport Rd., W., Ste B, P.O. Box 426  
Traverse City, Michigan 49684

David A. Bieganowski

Email: [dbiegan@bieganowskilaw.com](mailto:dbiegan@bieganowskilaw.com)  
Telephone: (231) 947-6073  
Telefax: (231) 947-1645

April 15 2022

Fife Lake Area Joint Planning Commission

Re: Attorney Services

Dear Ms. Leedy and the Fife Lake Area Joint Planning Commission Members:

I am a local municipal attorney responding to an RFP for legal services that I received. This letter is an introduction of my firm and a proposal for providing services as your planning commission attorney. Please share this letter with the other members of the planning commission.

I am an established, experienced attorney with 26 years of municipal experience. A summary of my background and experience is attached to this letter. I have represented the Village of Kingsley for over 16 years and previously represented Fife Lake Village for one year. I also currently represent Solon Township in Leelanau County and Mayfield Township in Grand Traverse County.

It is important to all of my clients that they get prompt answers to their legal questions and quick turnaround on projects and document review. Many clients complain that their attorney is slow or unresponsive. My reputation and promise is the opposite. When the planning commission calls, I will be able to respond immediately, even if I am in trial or currently dealing with another matter.

My strength and experience is mainly in transactional law such as drafting ordinances and contracts. In addition to representing municipalities such as the Village of Kingsley, Solon Township, Blair Township, and Mayfield Township, my private practice has focused on real estate, zoning and land use, estate planning and business law. Recent examples include a township using a drone without a warrant to prosecute a junk ordinance complaint, objections to the siting of a cell tower, negotiating a union contract with township EMS/Fire personnel, drafting both a police power ordinance and zoning ordinance dealing with medical marijuana, litigating a dispute with an engineering firm regarding sewer system design, an application for a campground, adult foster care homes, and drafting ordinances for marihuana, junk, noise, noxious weeds, outdoor wood burning furnaces, wind mills, and solar power.

Over the years I have dealt with a large variety of zoning matters, many of which I am sure your planning commission has faced or will soon face. You will find me familiar with all aspects of land use and zoning, medical marihuana, sexually oriented businesses, liquor ordinances, land division, fireworks, towers, sewer and water, and many other similar issues. My drone case is in the Michigan Supreme Court currently.

One of the most important issues for any client is controlling costs. Although you cannot control being sued or avoid using an attorney at times, you can control attorney fees. I propose offering my services at the hourly rate contained below for legal work and for attending regular Planning Commission meetings.

I would welcome an opportunity to attend a planning commission meeting. This would allow the members to meet me personally and to answer any questions. Thank you for your consideration.

Sincerely,

*David A. Bieganowski*

David A. Bieganowski

## **DAVID A. BIEGANOWSKI, PLC**

### **PROPOSAL TO PROVIDE LEGAL SERVICES FOR THE FIFE LAKE AREA JOINT PLANNING COMMISSION**

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#### **Firm Experience**

David A. Bieganowski, PLC was formed in 2005. My firm currently represents the Village of Kingsley and Mayfield Township in Grand Traverse County and Solon Township in Leelanau County. My office is in Traverse City and is fully equipped as a modern law office. I do and will maintain professional liability insurance on myself and my staff. I formerly represented Blair Township and the Village of Fife Lake in Grand Traverse County for several years and have done work for several other local municipalities in Northern Michigan.

#### **Areas of Expertise and Company Capabilities**

I have knowledge of the laws, regulations, and court decisions affecting townships, villages and other units of government. I am an expert in zoning, planning and land use law; including drafting and enforcing ordinances. I have criminally prosecuted ordinance violations resulting in jail time and/or fines for the violators.

I have experience in the everyday issues confronting planning commissions; including Freedom of Information Act requests, Open Meetings Act questions, personnel matters and employment issues, conflicts of interest, etc. I have prepared opinion of counsel letters for financial statement audits and capital project financing.

I have thoroughly reviewed the zoning ordinances for Mayfield, Solon and the Village of Kingsley for compliance with the 2006 Zoning Enabling Act. Required amendments were drafted and provided to my clients. I aided each of my clients through a similar process for the amendments to the Michigan Planning Acts. I have taught classes for planning commissions and zoning boards of appeals in Grand Traverse and Benzie Counties.

If your planning commission is ever sued, I am experienced in all forms of litigation. I have obtained immediate injunctions and administrative search warrants in the past. I have defended Planning Commission and Zoning Board of Appeals decisions successfully many times in circuit court.

Some municipal clients have staff who are familiar enough with certain acts and procedures to do them on their own (e.g. notices of public hearings, ordinance summaries and notice of adoption, etc) and do not ask for help from their attorney. Other municipal clients need guidance on these matters and ask for assistance. Some municipalities have their attorney attend all regular meetings; some only have the attorney attend meetings when they request. I will only do what work the planning commission requests of me.

Please note that some areas of law are extremely specialized and it should be anticipated that there will be times when outside counsel is required. Some of those specialized areas include:

issuing bonds or securities, bankruptcy, annexation issues, environmental issues, and perhaps some complex employment matters.

### **Related Legal Experience**

Some examples of my related legal experience include:

- Litigation regarding drone use by township zoning departments
- Cell Tower location litigation
- Right to Farm Act litigation
- Michigan Tax Tribunal litigation (valuation, uncapping, exemptions, etc.)
- Intergovernmental Agreement and Lease w/Traverse Area District Library (TADL)
- Negotiate and conduct a land swap between a municipality and private owner
- FOIA litigation with the City of Traverse City regarding elected officials' emails
- All aspects involving an application for a controversial sexually oriented business
- Condemnation suits to obtain easements for sewer lines
- Plat amendments and lot split issues (Land Division Act)
- Street vacation and abandonment; quiet title to property
- Special assessment districts
- Cell tower leases and extensions
- Sewer and water issues
- Fireworks permits
- Codification of all Village ordinances into single Code of Ordinances (Kingsley)
- Creating public park rules

Recent ordinances, resolutions and policies drafted by me include:

- Short Term Rental Ordinance reviews
- Michigan Medical and Recreational Marihuana Act Ordinances
- Sexually Oriented Businesses Ordinance
- Liquor Ordinance
- Right-of-Way Ordinance
- Wood Burning Furnace Ordinance
- Civil Infraction Ordinance
- Junk and Noise Ordinances
- Computer/Internet/E-Mail Policy
- Investment Policy
- Social Security Number Policy and Privacy Ordinance
- Water Ordinance Amendments
- Tree and Shrub Ordinance
- Wind Energy Conversion System Ordinance and Solar Ordinance
- Resolution to Impose Property Tax Administration Fee and Late Penalty Charge
- Resolution Establishing Fees for Reimbursable Expenses

## **Proposed Attorney**

David Bieganowski is the attorney for general planning commission matters, zoning issues and ordinance drafting. He would also be the attorney for litigation and enforcement matters. He is supported by his legal secretary Jan Kline.

**David Bieganowski** is a former U.S. Marine and has practiced law for 26 years, all in the Traverse City area, concentrating his practice in transactional law such as drafting ordinances, contracts, purchase agreements and other commercial documents. In addition to representing municipalities such as Mayfield Township, Solon Township and the Village of Kingsley, his private practice has focused on real estate, zoning and land use, and business law. As part of my real estate and land use practice, I have represented many property owners in zoning and regulatory transactions with municipalities. I have also provided legal services to the Village of Fife Lake, Blair Township, Long Lake Township, Acme Township and Custer Township (Kalkaska County). In 2004, David was elected to a Trustee position in Green Lake Township and was re-elected in 2008, 2012, 2016 and 2020. From this broad experience, he can assess municipal issues from all perspectives. David Bieganowski practiced previously with the established firm of Blakeslee & Chambers until its dissolution in 2005. I also partnered with Douglas Donaldson from 2005 to 2010. Doug has gone full time with Leelanau County as the Chief Assistant Prosecuting Attorney and no longer practices with me.

I sat on the Grand Traverse County Planning Commission for 5 years and was Chairperson of that body in 2013. I sat on the Grand Traverse County Concealed Weapons Licensing Board until its dissolution, was a SCORE counselor with the Traverse City Area Chamber of Commerce, volunteer at the Third Level Crisis Center, and was an officer in the local Marine Corps League. I teach DNR Hunter's Safety, firearm safety, and presented an Effective Meetings for Planning Commissions Workshop (for Grand Traverse County Planning in 2007 and Homestead Township in Benzie County in 2010) and a Lorman seminar on Zoning, Subdivision and Land Development Law in Michigan in 2006. I am a member of the Michigan Townships Association (MTA) and the Michigan Association of Municipal Attorneys (MAMA). In 2010 and 2013 I was a presenter at the annual MAMA Advanced Institute in Lansing. I was formerly on the Board of Governors of the Grand Traverse Leelanau Antrim Bar Association for 8 years. I sit on the Grand Traverse County Chapter of the MTA.

## **Resources**

My office has many of the reference resources that are available from the Michigan Townships Association (MTA), Michigan Municipal League (MML) and Michigan State University - Extension. We have full online legal research tools from Lexis and the Institute for Continuing Legal Education (ICLE).

## **Accessibility, Responsiveness and Conflicts**

As a one-person law firm at present, I am the lead attorney. I often use my legal secretary to

perform tasks that do not require an attorney thereby saving the client money. I am normally available on a moment's notice and have historically been extremely responsive to the urgent requests of the client, during and after normal business hours. Evening meetings are not a problem.

In the rare event that I am not available, attorney Daniel Hubbell will be able to respond to the Village. Daniel Hubbell shares the same office with me and has experience as a municipal attorney. Dan formerly represented Bear Lake Township and has done corporate work for Leelanau County. He is on the township board in Centerville Township.

The only potential conflict would be with the Village of Kingsley where I am the Village Attorney. I really don't see any likely issues that will arise but the two are close in location.

### **Proposed Fee Structure**

I offer my services to the Fife Lake Area Joint Planning Commission at the hourly rate of \$170. Paralegal services will be billed at \$100 per hour and secretarial services will be billed at \$50 per hour. My rates will not change without your consent and agreement. The time recorded will be billed in increments of tenths of an hour (6 minutes). I have no minimum charges for any service.

I will bill for travel expenses, recording and certification fees, computerized legal research, courier services, photocopying, postage, long distance telephone charges, and similar items. Mileage is only billed when I must leave the county and travel time is billed at one-half normal rates. These items appear separately from the hourly charges and are referred to as costs on our statements. We will provide you with an itemized monthly statement of services and costs.

I carry full malpractice insurance

### **References**

The following individuals can be contacted for references for David:

Dan Hawkins – Kingsley Village Manager; 231 263-7778  
Marvin Radtke – Green Lake Township Supervisor; 231 631-7171  
Greg Julian – Kasson Township Supervisor; 231 883-2560  
John Ockert – Mayfield Township Supervisor; 231 649-9001  
Tim Lueck – Mayfield Township Zoning Administrator; 231 357-4830  
James C. Lautner – Solon Township Supervisor; 231 947-2509  
Tim Cypher – Solon Township Zoning Administrator; 231 360-2557  
Thomas Bensley – Grand Traverse County Sheriff; 231 995-5019  
Mike Borkovitch – Leelanau County Sheriff; 231 256-8601

**An Introduction to the Law Firm of  
Cummings, McClorey, Davis & Acho, P.L.C.**

**Request for Legal Services  
Fife Lake Area Joint Planning Commission**

CUMMINGS • MCCLOREY



DAVIS & ACHO, P.L.C.

ATTORNEYS AND COUNSELORS AT LAW

310 West Front Street, Suite 221 ▪ Traverse City, MI 49684  
Telephone: (231) 922-1888 ▪ [www.cmda-law.com](http://www.cmda-law.com) ▪ [hkazim@cmda-law.com](mailto:hkazim@cmda-law.com)

## EXECUTIVE SUMMARY AND FIRM HISTORY

Founded in 1965, CMDA is a premier, AV® rated law firm comprised of 48 attorneys. CMDA maintains offices in Livonia, Clinton Township, Grand Rapids, and Traverse City, as well as Riverside, California, Kansas City, Missouri, and New York, New York.

CMDA consistently receives recognition for our excellence in the practice of law. CMDA's seasoned and accomplished partners have been recognized as *Leaders in the Law* by Michigan Lawyers Weekly, *Top Rated Lawyers* by Martindale-Hubbell, *Super Lawyers* by Michigan Super Lawyers, and *Top Lawyers* by dBusiness Magazine. In addition, CMDA's young and innovative legal minds have been named *Rising Stars* by Michigan Super Lawyers and *Up & Coming Lawyers* by Michigan Lawyers Weekly.

Recently, our Firm was matched up against ten of the largest firms in Michigan and ranked on the five categories listed below. We are pleased to share that **CMDA ranked #1 in every category.**

- Depth and quality of experience
- Demonstrated efficiency in providing services
- Qualifications of personnel assigned
- Cost and reasonableness of rates proposed
- Professional reference checks

CMDA's skilled and diverse attorneys, backed by state-of-the-art technology and a knowledgeable support staff, enable CMDA to operate as a full-service law firm. CMDA's primary practice areas include:

<b>Appeals and Litigation</b>	<b>Estate Planning and Elder Law</b>
<b>Business Law</b>	<b>Insurance Defense</b>
<b>Community Association and Real Estate Law</b>	<b>Law Enforcement Defense and Litigation</b>
<b>Education Law</b>	<b>Municipal Law</b>
<b>Employment and Labor Law</b>	<b>Utility Law</b>

CMDA provides legal services to a broad spectrum of clients, including national and international corporations, Fortune 500 companies, insurance companies, small and medium companies, municipal and governmental entities, employers, employees, individuals, and many others. CMDA consistently exceeds clients' expectations—a product of our commitment to developing cost-effective and result-oriented solutions, our dedication to providing efficient and high-quality representation, and our willingness to go the extra mile.

For nearly six decades, CMDA has represented hundreds of municipal clients. CMDA's municipal clients, as well as their self-created sectors (divisions, commissions, departments, boards, and authorities) and servants (employees, officers, and elected officials). Courts and judges, judicial councils, community colleges, public school systems, public libraries, and risk management pools are also among CMDA's municipal clients.



CMDA helped pioneer the Michigan Municipal Risk Management Authority (MMRMA), which has become the largest municipal self-insurance pool in Michigan with membership of more than 300 municipalities, in 1980. For more than four decades, CMDA has served as defense counsel and provided legal services on behalf of the MMRMA's membership. Additionally, as general counsel to the Michigan Community College Risk Management Authority since its inception in 1985, CMDA provides legal services to 19 Michigan community colleges located throughout the state.

The depth of our municipal law experience will enable CMDA to provide all of the necessary legal services required by the Fife Lake Area Joint Planning Commission (FLAJPC). We take pride putting our vast experience to work for our municipal clients, striving to assist governments while protecting against costly and time-consuming litigation. Practice areas highlighted throughout this proposal include FOIA and OMA, zoning, planning, and land use, Intergovernmental Cooperation Agreements, grievance arbitrations, labor and employment law, employment litigation, reducing the risk of employment litigation, contract negotiations, EEOC and MDCR charges, whistleblower protection act, intergovernmental cooperation agreements, torts, statutes, workers' compensation claims, and public works projects.

Having represented governmental clients for 57 years, we are sensitive to the fact that our fees are ultimately paid from revenue generated by taxes and fees. By providing legal services efficiently and economically, CMDA helps preserve limited governmental resources. Thank you for the opportunity, and we look forward to the possibility of working with the FLAJPC.

## MUNICIPAL LAW EXPERIENCE

For the past five decades, CMDA has represented hundreds of municipal clients. CMDA's municipal clients include municipal corporations (counties, cities, townships, and villages), as well as their self-created sectors (divisions, commissions, departments, boards, and authorities) and servants (employees, officers, and elected officials). Courts and judges, judicial councils, community colleges, public school systems, public libraries, and risk management pools are also among CMDA's municipal clients.

CMDA helped pioneer the MMRMA, which has become the largest municipal self-insurance pool in Michigan with membership of more than 300 municipalities, in 1980. For more than three decades, CMDA has served as defense counsel and provided legal services on behalf of the MMRMA's members.

### **I. *General Counsel***

CMDA serves in the capacity of general counsel to various municipal corporations. CMDA takes on an active role as general counsel. CMDA assists municipal clients with analysis and management of intergovernmental relations, development of strategic plans, and facilitation of employee relations. CMDA provides legal advice and consultation to boards, commissions, councils, departments, and other levels of government on virtually every issue that arises in the context of municipal governance. Some of the issues on which CMDA provides legal advice and consultation include intergovernmental operating agreements, government contracts, ordinance enforcement, public works infrastructure projects and improvements, taxation, finance, environmental regulations, condemnation and eminent domain, sewer and water, elections, insurance, health care, labor and employment, zoning and land use, public

disclosure obligations, telecommunications, administrative law, and public policy. CMDA frequently attends meetings to advise elected and appointed officials on complex and sensitive matters of public concern.

CMDA drafts intergovernmental agreements, agreements between municipal corporations and vendors in the private sector. CMDA also drafts resolutions, policies or procedures to standardize municipal operations, and other legal documents designed to protect the interests of our municipal clients. CMDA assists municipal clients in developing new ordinances and amending existing ordinances. CMDA maintains a library of ordinances and utilizes many other valuable resources to ensure that ordinances comply with the law and advance the interests of our clients.

## **II. *Defense Counsel***

CMDA handles all aspects of litigation on behalf of our municipal clients — pre-litigation investigation and liability assessment, pleading, discovery, alternative dispute resolution, motion practice, trial, and appeal. CMDA's comprehensive knowledge and experience in municipal law is unsurpassed and second to none. According to a national management consulting firm, CMDA is *"very aggressive and ultimately very effective in pursuing various avenues of defense."* Notwithstanding our expertise, CMDA makes every effort to ensure that our municipal clients have a voice.

## **III. *Educator***

CMDA believes that regular and ongoing education is necessary to protect and serve the interests of our municipal clients. CMDA's attorneys author handbooks, provide legal updates, offer training, and conduct seminars to educate our municipal clients on a diverse range of topics. CMDA's goal is to help municipal clients prevent litigation and develop a model of governance that not only provides efficient and effective public services, but also promotes democratic responsiveness and accountability.

### **Areas of the Law**

The depth of our municipal law experience will enable CMDA to provide all the necessary legal services required by the FLAJPC.

### **Freedom of Information (FOIA) and Open Meetings Acts (OMA)**

Our attorneys have in-depth knowledge of both the Freedom of Information Act (FOIA) and the Open Meetings Act (OMA) and have defended clients in cases stemming from alleged violations.

CMDA has prepared hundreds of responses to FOIA requests for our clients. Our attorneys know the explicit requirements of FOIA, including responses, disclosures, redactions, and exemptions.

CMDA regularly assists clients in determining how to operate within the OMA requirements. We explain to clients when closed meetings may be had, what information may be discussed, and how the minutes from those meetings must be prepared and stored.

Because of our knowledge in these areas, CMDA offers educational training and seminars to inform and educate clients on the Freedom of Information Act and the Open Meetings Act, as well as advising clients on how to prevent litigation. We routinely give on-site, complementary seminars and presentations to our clients and have authored handbooks on these topics.

### **Real Estate, Zoning, Land Use, and Growth Management**

CMDA attorneys advise planning commissions on matters involving drafting of zoning ordinances and amendments, hearings for special use permits, rezoning, and site plan reviews. We counsel zoning boards of appeal on variance requests, ordinance interpretations, and appeals from planning commission decisions. Our attorneys conduct seminars to educate municipal clients on ways to ensure that decisions of planning commissions and zoning boards of appeals coincide with the latest legislative developments and withstand legal challenges. The seminars are effective risk management tools aimed at helping our municipal clients avoid future litigation.

We assist our municipal clients with the purchase of land, sales of parcels of land, acceptance of donations of land, leasing and construction of facilities, and construction with consideration of the requirements of local, state, and federal laws. We frequently advise clients on contracts, options to purchase, and on bidding matters. Our attorneys have experience reviewing contracts as part of guiding our clients through the daily operations of an educational institution. We also handle and facilitate the sale, lease, or acquisition of property.

CMDA attorneys have successfully represented municipalities throughout Michigan before the Court of Appeals and the Michigan Supreme Court. Our firm has been involved in landmark cases, such as *Paragon Properties Co. v. City of Novi*, *Electro-Tech, Inc., v. City of Westland, et al.*, and *Coldsprings Township v. Kalkaska County Zoning Board of Appeals*, to name a few.

### **Intergovernmental Cooperation Agreements**

Countless municipalities are entering into intergovernmental agreements for the provision of services and programs. Our attorneys assist municipal clients with analysis and management of intergovernmental relations, development of strategic plans, and facilitation of employee relations. We provide legal advice and consultation to boards, commissions, councils, departments, and other levels of government on virtually every issue that arises in the context of municipal governance. Some of the issues in which CMDA provides legal advice and consultation, include intergovernmental operating agreements, government contracts, drafting ordinances, statutes and code, ordinance enforcement, public works infrastructure projects and improvements, labor and employment issues, taxation, finance, environmental regulations, condemnation and eminent domain, sewer and water, elections, insurance, health care, public disclosure obligations, administrative law, and public policy. CMDA frequently attends meetings to advise elected and appointed officials on complex and sensitive matters of public concern.

Although each agreement is unique, the law allows great flexibility in the establishment of these joint agreements between municipalities. Many examples of these agreements can be found throughout the state, including:

- Collaborative water authority
- joint operation of fire or police departments
- joint operation of dispatch systems
- joint operation of Parks and Recreation programs and facilities
- joint public transportation systems
- joint purchasing programs

Joint agreements are designed to allow participating municipalities to decrease the overall cost of administration, as well as create opportunities for better bargaining positions for the purchase of common goods and services used to carry out governmental functions.

Some communities have been hesitant to use such agreements because of a perceived loss of autonomy or control in the provision of services. That fear can be erased by a carefully drafted agreement that provides for input and oversight by all municipalities participating. Agreements are tailored to fit the specific local needs of the communities and reduce the cost of providing for those needs.

### **Labor and Employment Law**

CMDA has vast experience in labor and employment law. CMDA investigates and handles claims involving sex, race, age, religious, ethnic, and disability discrimination or harassment. CMDA is well-versed in Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, the Family and Medical Leave Act, the Whistleblowers' Protection Act, the Elliott-Larsen Civil Rights Act, the Persons with Disabilities Civil Rights Act, the Michigan Regulation and Taxation of Marihuana Act, and the Paid Medical Leave Act.

CMDA appears before pension boards, administrative boards, and various agencies — including the Michigan Employment Security Commission, the Michigan Employment Relations Commission, the National Labor Relations Board, the Michigan Civil Rights Commission, the Michigan Department of Civil Rights, the Act 78 Police & Fire Civil Service Commission, the Department of Labor, the Equal Employment Opportunity Commission, the Bureau of Workers' Disability Compensation, and the Michigan Occupational Safety and Health Administration's Wage and Hour Division — on behalf of our municipal clients. CMDA also participates in labor negotiations, conducts arbitrations, and defends claims in court.

### **Labor and Employment Relations**

Labor and Employment Relations is a very complex area of law. Understanding the law is just the beginning. It is critical that municipalities develop policies and procedures that protect the employees and, at the same time, safeguarding the financial well-being of the municipality.

The essence of relations - whether it is labor or otherwise, is fairness. Our Firm has had such broad experience in representing both management and labor that we have a unique perspective that is rare with any firm.

We have had amazing success on behalf of all the cities, counties, townships, community colleges and governmental authorities we represent. At the outset, we provide a great deal of clear and helpful advice that is meant to assist clients in being well-informed. Therefore, the city does not need to use our legal services as much because of the education and training we provide to assist your team.

### **Employment Litigation**

Our attorneys aggressively defend employers from claims of wrongful discharge, discrimination, harassment, sexual harassment, Family Medical Leave Act and Americans with Disabilities Act. We provide representation before state, federal, and governmental administrative agencies. CMDA enjoys a very high success rate for dismissals on motions supported by sound yet creative legal arguments. We are tenacious in our quest to obtain admissions from the opposing party employing effective cross

examination strategies during depositions. We work closely with our clients to search out evidence supportive to the defense. If the matter must be decided by a jury, our imaginative team of trial attorneys has successfully obtained favorable jury verdicts in most of our cases. When the liability exposure is unfavorable, our lawyers work to achieve closure with the most economical outcome.

Additionally, we are sensitive to the needs of our clients to establish and maintain good public relations. We consult with our clients on these needs and work with them to create strategies to address the issues.

### **EEOC and MDCR Charges**

Our Firm's successful representation of governmental entities in Federal and State civil rights charges before the Equal Employment and Opportunity Commission and the Michigan Department of Civil Rights gives our attorneys the ability to respond rapidly to the needs of employers. Issues we handle include sex, race, age, religious, ethnic, and disability discrimination/harassment under Federal Statutes: Title VII of the Civil Rights Act, the Age Discrimination in Employment Act and the Americans with Disabilities Act and the Family and Medical Leave Act. We represent clients also at the state level on Elliott-Larsen Civil Rights claims and Persons with Disabilities Act claims.

### **Whistleblower Protection Act**

Any employee who has been terminated can claim they were fired for inappropriate reasons, including whistleblowing. Our attorneys understand how these types of claims can negatively affect a municipality's reputation and operations, which is why we use our experience to aggressively fight these charges and protect the face of the company.

Our lawyers analyze current company policies and procedures to ensure clients obtain the necessary materials to best protect their rights should a whistleblower claim arise. Creating affirmative defenses now can avoid future liability down the road.

### **Torts**

CMDA is well-versed in tort law. CMDA defends statutory tort claims based on the exceptions to governmental immunity—highways, motor vehicles, public buildings, medical care, and proprietary functions—as well as statutory tort claims arising out of water and sewage disposal systems. CMDA defends intentional tort claims for false imprisonment, false arrest, assault, battery, malicious prosecution, abuse of process, defamation, invasion of privacy, tortious interference, fraud, intentional infliction of emotional distress, conversion, trespass, and the like. CMDA also defends tort claims for negligence, gross negligence, negligent infliction of emotional distress, and public nuisance.

### **Statutes**

CMDA has extensive experience defending claims based on various statutes that subject municipal corporations and their employees, officers, or elected officials to liability. CMDA defends claims arising out of or related to the Governmental Immunity Act, the Freedom of Information Act, the Open Meetings Act, the Concealed Pistols Licensing Act, the Drain Code, the Public Health Code (including but not limited to the ambulance/emergency care provisions and the forfeiture provisions), the Mental Health Code, the Revised Judicature Act (including but not limited to the public nuisance provisions and the mandamus provisions), the Elliott-Larsen Civil Rights Act, the Persons With Disabilities Civil Rights Act, the Whistleblowers' Protection Act, and other legislative schemes that impact municipal clients.

## **Civil Rights**

CMDA is well-versed in constitutional law. CMDA defends a wide array of claims involving constitutional challenges to legislative enactments and executive actions. CMDA defends civil rights claims under 42 U.S.C. § 1983 — most of which are based on the First Amendment, the Second Amendment, the Fourth Amendment, the Fifth Amendment, the Eighth Amendment, or the Fourteenth Amendment — and civil conspiracy claims under 42 U.S.C. § 1985. CMDA handles claims against supervisory officials that relate to actions ascribed to their subordinates. CMDA also handles claims against municipal corporations (or officials vested with policy-making authority) that relate to policies, practices, and customs. CMDA is intimately familiar with the principles of qualified immunity, among other doctrines that impact liability exposure.

## **ORGANIZATIONAL AND STAFFING PLAN / PROJECT MANAGEMENT**

**Haider A. Kazim** is an Equity Partner in the Firm's Traverse City office where he focuses his practice on municipal law, zoning and land use, FOIA/OMA, tax tribunal practice, employment and labor law, property law, and tort liability defense. Mr. Kazim has represented and defended municipalities throughout Northern Michigan and in the Upper Peninsula in zoning and land use disputes, ordinance enforcement actions, employment claims involving allegations of discrimination, harassment, whistleblowing, and tax tribunal appeals involving commercial, industrial and residential properties, golf courses, federally-subsidized low-income housing projects, as well as against tax-exemption claims. Mr. Kazim has represented police officers throughout Northern Michigan and the Upper Peninsula in cases involving allegations of police misconduct and violation of civil rights.

In his capacity as civil counsel for Antrim, Cheboygan and Otsego counties, Mr. Kazim advises the county board of commissioners, county administrator, and other county department heads and officials on a broad range of issues relevant to municipal and corporate law. Additionally, Mr. Kazim serves as civil counsel for Grand Traverse Metro Emergency Services Authority, Northern Lakes Community Mental Health Authority and Roscommon County Road Commission. He also represents Centra Wellness in employment and human resources matters.

Additionally, Mr. Kazim advises clients on all general corporate matters such as contract negotiations, drafting and implementation of policies and procedures and personnel issues. He also serves as advisor to the County Board of Road Commissioners.

Mr. Kazim frequently conducts seminars on municipal topics throughout the state involving zoning and planning, including how to make planning commission and zoning board of appeals' decisions withstand appellate challenge, latest legislative developments in zoning and planning law, Freedom of Information Act (FOIA), Open Meetings Act (OMA), and eliminating discrimination and harassment in the workplace.

He is a member of the State Bar of Michigan, Grand Traverse-Leelanau Bar Association, and Michigan Association of Municipal Attorneys. From 2014-2022, he has been named by Michigan Super Lawyers and Rising Stars as one of the top attorneys in the state. Additionally, he has been selected by readers of *The Record-Eagle* as the Top Lawyer in the Grand Traverse Area. He received a Juris Doctor degree



from Michigan State University College of Law in 2003 and a bachelor's degree from St. John's University.

Mr. Kazim has been a member of the State Bar of Michigan since 2003. He may be reached in our Traverse City office at (231) 922-1888 or [hkazim@cmda-law.com](mailto:hkazim@cmda-law.com).

**Gregory R. Grant** is a partner in our Traverse City office. He has extensive experience both as litigation counsel and corporate counsel to numerous Michigan municipalities. He is the former assistant city attorney for the City of Garden City and the City of Belleville and the former assistant township attorney for Canton and Plymouth Townships. He has also defended over 50 municipalities in both state and federal courts on a variety of legal issues.

Mr. Grant has extensive litigation experience in the areas of employment law, police liability, first amendment law, due process, Open Meetings Act (OMA) and Freedom of Information Act (FOIA), and has earned dismissals in each of these areas.

Mr. Grant has also represented brownfield redevelopment authorities, local prosecutors, and judges. He acted as prosecuting attorney in four Michigan courts, where he tried over 20 cases. Mr. Grant regularly attends city council and township and county board meetings advising on many legal and policy issues. He has also presented various topics at municipal law and law enforcement training seminars.

He is a member of the State Bar of Michigan. Mr. Grant has been named by a Rising Stars by Michigan Super Lawyers as one of the top up-and-coming attorneys in the state. He was named a Leading Litigation Lawyer by Traverse City Business News, and Boss of the Year by the Grand Traverse Area Legal Professionals. He received a Juris Doctor degree from the University of Detroit Mercy School of Law in 2005 and a bachelor's degree from the University of Michigan.

Mr. Grant has been a member of the State Bar of Michigan since 2005. He may be reached in our Traverse City office at (231) 922-9888 or [ggrant@cmda-law.com](mailto:ggrant@cmda-law.com).

### **Project Management**

Haider Kazim and Gregory Grant, backed by CMDA's well-trained support staff, are well-equipped to handle a robust caseload. Though attorneys currently maintain full caseloads, their support staff makes every effort to ensure that their schedule is flexible enough to accommodate situations that necessitate immediate action. In addition, they have developed and implemented procedures to ensure that they serve all of our clients in a prompt and efficient manner.

CMDA attorneys attend meetings in which they assess and balance workloads, discuss strategies, highlight updates in the law, and share past experiences with judges or other attorneys. The meetings ensure that the attorneys continually meet the needs of their clients and provide timely, effective, and high-quality representation.

Support staff scans and uploads all case-related documents, from e-mails to appeal briefs, to an electronic file management system stored on a secure server. The electronic file management system provides fast and efficient access to all case files. The attorneys continually strive to increase their efficiency through other uses of technology.

## COMPENSATION/ PROPOSED FEE STRUCTURE

Having represented governmental clients for 57 years, we are sensitive to the fact that our fees are ultimately paid from revenue generated by taxes and fees. By providing legal services efficiently and economically, CMDA helps preserve limited governmental resources. The breadth and experience of our attorneys in our municipal law practice group and labor and employment practice group means we know the law. We do not charge clients for unnecessary research or tasks.

CMDA's goal is to help municipal clients prevent litigation and develop a model of governance that not only provides efficient and effective public services, but also promotes democratic responsiveness and accountability. CMDA believes that regular and ongoing education is necessary to protect and serve the interests of our municipal clients. CMDA authors legal updates and handbooks, offers training, and conducts seminars to educate our municipal clients on a diverse range of topics.

CMDA bills in one-tenth hour increments on a monthly basis, with specific details provided of all activities. The following is a detailed list of our proposed legal fees.

Partner/Associate Hourly Rate	\$195.00
Paralegal Hourly Rate	\$100.00
Support Staff Hourly Rate	No charge
Courier Service	No charge
Copying	\$.10/ per page for black and white \$.25/ per page for color
Faxing	No charge
Mileage	No charge
Postage	No charge
Overnight Mail Charges	No charge
Travel Time	Standard Hourly Rate: 0-2 hours Half-Hourly Rate: Over 2 hours
<b>Other:</b>	
Filing Fees and Court Costs	Actual Costs
Witness Fees	Actual Costs
Deposition Fees	Actual Costs
Transcriptions	Actual Costs
Expert Witness Fees	Actual Costs
Exhibit Production	Actual Costs
Investigator Fees and Related Services	Actual Costs
Arbitrator Fees	Actual Costs
Expenses, Airline, Car Rental, Fuel Out-of-State Travel, Accommodations	Actual Costs

## CONFLICT OF INTEREST

CMDA is not aware of any past or existing client relationships from which a conflict of interest may arise if the FLAJPC selects and forms an attorney-client relationship with CMDA. CMDA has never brought or threatened legal action against the FLAJPC. CMDA does not currently represent any local units of government with concurrent jurisdiction with the FLAJPC.

With CMDA's rigorous conflict checking procedures, we can ensure we do not place any of our clients at risk because of a potential conflict. The FLAJPC would be notified immediately should a potential conflict situation arise.

## CLIENT SUPPORT

Our comprehensive knowledge, experience, and expertise in municipal law make us the ideal and best candidate to provide legal services for the FLAJPC. CMDA has provided legal services to hundreds of municipal clients throughout Michigan since 1965. We are confident that any legal issue which may arise within the FLAJPC can be handled in a quick, efficient and economical manner.

CMDA will handle all matters for the FLAJPC promptly and efficiently. Our attorneys and well-trained support staff are equipped to handle robust caseloads. Though our attorneys currently maintain full caseloads, our support staff makes every effort to ensure that schedules are flexible enough to accommodate situations that necessitate immediate action. In addition, we have developed and implemented procedures to ensure that we serve all our clients in a prompt and efficient manner.

Our Firm strongly believes that a successful and constructive partnership with clients starts with effective communication. Therefore, in order to best assist the FLAJPC, it is critical that we have on-going communications and discussions. We may be reached in whichever manner you deem to be most efficient, helpful and convenient- whether it is face-to-face meetings, telephone, cell phone or e-mail.

If an unscheduled, urgent meeting was to arise, our attorneys would make themselves available to attend the meeting personally. If we are not available to attend the meeting personally, we will use our Firm's technological assets to attend the meeting via teleconference or videoconferencing. Whether the meeting is scheduled or of an urgent matter, you can trust us to be there.

Clients deserve a quick response time to any matter. We will give the FLAJPC the highest priority and are committed to providing superior service. When legal assistance is requested, we will provide an estimated time of completion and will keep you apprised of any delays or special considerations. Our attorneys are available 24 hours a day by phone as necessary. We return all phone calls by the end of the business day or sooner. We have excellent staff that is aware of where we are at any given moment and can put us in touch with our clients immediately.

CMDA's goal is to help municipal clients prevent litigation and develop a model of governance that not only provides efficient and effective public services, but also promotes democratic responsiveness and accountability. CMDA believes that regular and ongoing education is necessary to protect and serve the interests of its municipal clients. CMDA authors legal updates and handbooks, offers training, and conducts seminars to educate its municipal clients on a diverse range of topics. With this type of guidance, we are confident the FLAJPC would see a reduction in litigation costs as well. CMDA's commitment to provide superior legal services and develop results-oriented solutions, along with our willingness to go the extra mile for our clients is what sets us apart from other law firms. We stand ready to guide the FLAJPC through any legal situation that may arise.

**BAUCKHAM, SPARKS, THALL, SEEGER & KAUFMAN, P.C.**

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**MEMORANDUM**

THIS DOCUMENT IS SUBJECT TO THE ATTORNEY CLIENT PRIVILEGE AND IS EXEMPT FROM DISCLOSURE UNDER MCL 15.243(g) AND MAY BE CONSIDERED IN A CLOSED SESSION UNDER MCL 15.268(1)(h)

**TO:** Fife Lake Area Planning Commission

**FROM:** Catherine Kaufman 

**RE:** Fife Lake Area Planning Commission composition and membership

**DATE:** April 5, 2022

Our firm has been engaged to provide analysis of the composition and membership of the Fife Lake Area Planning Commission (JPC). The Planning Commission is a joint planning commission established pursuant to PA 226 of 2003 (Joint Municipal Planning Act). The participating municipalities are the Village of Fife Lake and Fife Lake Township. We have been asked to provide an opinion regarding the appointment of elected municipal officials to the JPC and the appointment of employees to the JPC. Accordingly, I provide the following comments:

Composition of JPC/Elected Officials as members of the JPC

The JPC was formed pursuant to PA 226 of 2003. This act requires that the participating municipalities each adopt an ordinance that specifies, among other things, the composition of the JPC. I have reviewed the Village of Fife Lake's Ordinance (as provided). Section 5 provides for the composition of the JPC as follows: seven members in total: members 1, 3, 5 appointed by the Village Council; members 2,4,6 appointed by Township Board; seventh member appointed by both Township Board and Village Council. The ordinance (which incorporates the Agreement required by statute) requires that JPC members (except for 1) be registered electors of the jurisdictional area of the JPC.

The Joint Municipal Planning Act (PA 226 of 2003) is a separate statute from the Michigan Planning Enabling Act (PA 33 of 2008). Therefore, the limitations and requirements for Planning Commissions established or re-established under the MPEA do not apply to Joint Planning Commissions established under PA 226 of 2003. Moreover, although the MPEA contains limitations on the composition of a Planning Commission, those limitations do not apply to a Joint Planning Commission formed under the Joint Municipal Planning Act.

While the Agreement is silent as to any additional JPC membership requirements, there are good

reasons to limit the number of elected officials on the JPC. First, depending on the JPC membership, there might be a quorum of the Township Board and/or the Village Council if more than 1 elected official from each municipality is appointed to the JPC.<sup>1</sup> In such case, all JPC meetings would also have to be posted (per the Open Meetings Act) as a Township Board and/or a Village Council meeting. Second, pursuant to the MPEA, the Planning Commission is appointed by the chief elected official and confirmed by the legislative body, and will serve on the PC as a technical reviewing body for land use applications, master plan development and other planning related activities. MCL 125.3815 In most cases, the Planning Commission is seen as the workhorse commission that reviews and makes recommendations to the elected legislative body.<sup>2</sup> If the JPC is comprised of more than 1 elected official from each legislative body, the technical and intentionally neutral nature of the JPC may be compromised.<sup>3</sup>

Third, there is Michigan case law prohibiting elected legislative officials from attending PC meetings, in order to discourage undue influence by elected officials on Planning Commission decisions. The JPC should be mindful that each legislative body should avoid the appearance (and reality) of undue influence towards the JPC. If the JPC is comprised of several elected officials, this separation is lost.

The Village and Township may consider amending the JPC ordinance and Agreement to specify no more than 1 elected official from each municipal member (Village and Township) may serve on the JPC and that the terms of ex officio members are the terms of their elective office. Additionally, if the Village and Township decide to amend the JPC ordinance and Agreement, we recommend amending Section 4A which references a repealed statute (Act 168 of 1959, former Township Planning Act) as the basis for the JPC's planning powers and duties.

#### Employee serving as JPC member

Again, as noted above, the JPC was established pursuant to the Joint Municipal Planning Act (PA 226 of 2003), which is a separate statute from the Michigan Planning Enabling Act (PA 33 of 2008). Therefore, any MPEA limitations on PC membership do not apply to Joint Planning Commissions established under PA 226 of 2003. Notably, while the MPEA prohibits employees of the local unit of government from serving on a Planning Commission, the Joint Municipal Planning Act is silent on this matter. MCL 125.3815(5). Additionally, the Ordinance and Agreement do not prohibit employees from serving on the JPC. In this case, then, a local government employee may serve on the JPC, although such membership is discouraged. Again, having an employee serve on the PC is discouraged to avoid possible undue influence or impropriety, as the chief elected official could influence an employee's voting and positions on the JPC.

It is important to keep in mind the distinction between an employee and a deputy clerk or deputy

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<sup>1</sup> It is my understanding that the Township Board is 5 members and the Village Council has 7 members.

<sup>2</sup> The Planning Commission will likely be assigned authority to make administrative approvals such as site plans and possibly special use requests.

<sup>3</sup> The MPEA specifically provides that in a city or village not more than 1/3 of the PC may be ex officio members and that except as provided in this subsection, no elected officer or employee may serve on the planning commission. MCL 125.3815(5)



treasurer (in a township). A township deputy clerk and/or deputy treasurer are appointed to serve when their principal (township clerk or township treasurer) is unable to perform their statutory duties. In those cases, the deputy township clerk or deputy township treasurer steps in to perform the statutory duties. In such cases, a deputy township clerk or deputy township treasurer are not township employees and, under the MPEA, could serve on the PC. In many instances, however, a deputy township clerk and deputy township treasurer are assigned regular work tasks, may work regular work hours and do more than just serve when their principal is unable to do so. In these situations, the deputy township clerk and deputy township treasurer have bifurcated duties – at least part of which is an employee. And in these cases, where a deputy township clerk or treasurer also performs additional job duties, they could not serve on PC established under the MPEA.

#### Conclusion

The JPC is governed by the Ordinance and Agreement adopted pursuant to PA 226 of 2003. The Village and Township can amend the Ordinance and Agreement to clarify the above issues, if they choose to do so. In such cases, the Village and Township may want to look to the MPEA for guidance on issues of elected official membership on the JPC, employee membership on the JPC and terms of office for ex officio members.

If you have questions or would like to discuss this further, please contact me.

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