Detachment

From Home Rule Cities

In Michigan

Plan B Paper
for
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Development & Administration

Michigan State University

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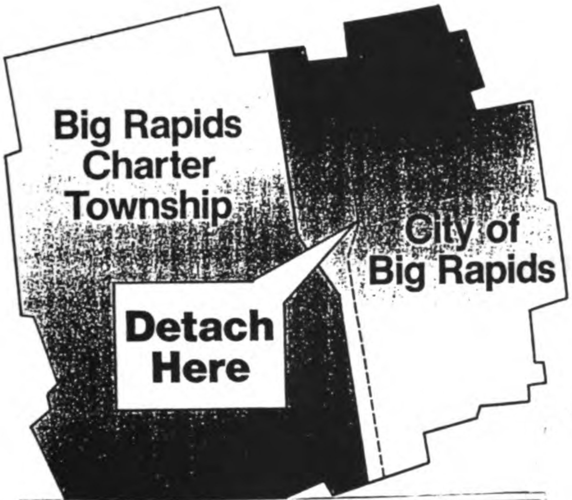
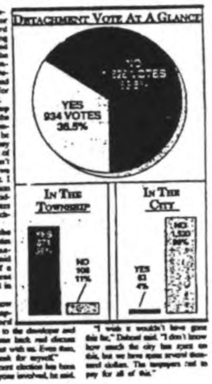


DAILY PRESS

Wednesday, February 10, 1993

Gladstone detachment fails

By TIM BISHOP
Daily Press Staff

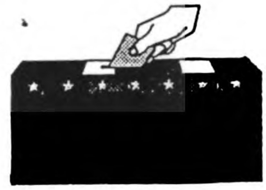


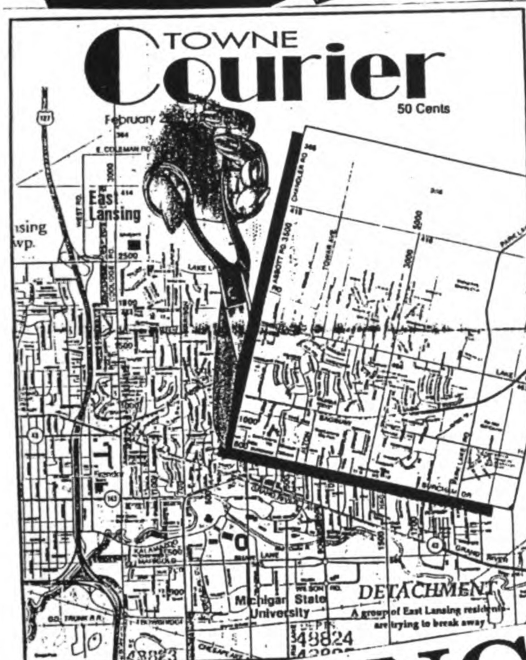
If you live in East Lansing or Meridian Township,

DETACHMENT

should concern you . . .

How will it affect you?
What can you do about it?





You are cordially invited
to an
Information and
Organization Meeting
to defeat
Detachment
at
7:00 P.M.
on
Wednesday, May 12, 1993
at the
East Lansing Public Library

VOTE YES MAY 14

YES is a vote against annexation

YES is the only way to stop the annexation process. Once the city filed their petitions the law took over and no one can stop the process. The City cannot withdraw its' petitions. The decision is totally in the hands of the Boundry Commission not our community.

YES supports the right to vote for everyone

THIS IS THE ONLY CHANCE ANY OF US WILL HAVE TO VOTE ON EITHER ISSUE. The City Commission did not have to deny their fellow neighbors the right to vote - BUT THEY DID! Now it is up to all of us to make it right. YES on May 14 gives everyone a voice in the future.

YES is the only way we can Control our own destiny as a community

Community Unity
P.O. Box 914, East Lansing, Michigan 48826

WARNING

LAPEER TOWNSHIP AND CITY TAXPAYERS

LAPEER CITY OFFICIALS ARE PLANNING A HOUSING DEVELOPMENT THAT CAN DOUBLE THE CITY'S POPULATION.

- You face new taxes ✓
- You face 1,750 new homes ✓
- You face new debt ✓
- You face worse traffic ✓

GET THE FACTS NOW!

VOTE **YES** TUESDAY, SEPTEMBER 14th TO STOP THE EXPLOSION AND RETURN APACHE RANCH TO LAPEER TOWNSHIP.

Neighbors

Summer 1993 *Special Edition* City of Lapeer Quarterly Newsletter

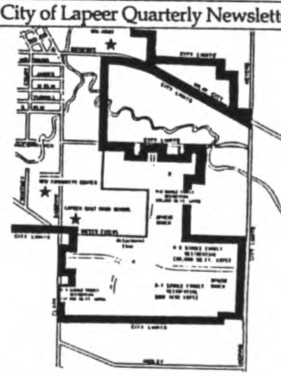
City Manager's Message

Detachment Election Special Edition

Dear Residents:

Despite objections from the City of Lapeer and the affected property owner, the Lapeer County Commission has approved a petition requesting a special election on the detachment (removal) of the Apache Ranch from the City of Lapeer. The Lapeer County Commission has scheduled the election for Tuesday, September 14, 1993. The decision to schedule the detachment election has set in motion a complicated financial and legal process that will have considerable and lasting impacts. This special issue of *Neighbors* will discuss some of the facts and consequences of detachment that we have identified.

George J. Strand
City Manager



Financial Implications

1. Division of Assets and Liabilities

If the detachment election is successful, Michigan Compiled Law Section of 123 which covers Act 38 of 1883, as amended, essentially calls for a division of "money, rights, credits" and "personal property" and an apportionment of "all debt" of the city. The city has determined that Lapeer Township would be entitled to 0.2955 percent of the city's total assets and debt. In our analysis, due partially to the city's long term debt, we have determined that the township government would owe the city approximately $30,000. The estimated figure will be updated upon completion of the city's 1992-1993 Fiscal Year Audit.

2. What if Lapeer Township doesn't agree with the city's division of assets and liabilities analysis?

The law provides that the city and township conduct a "joint settlement" meeting. If the parties cannot come to terms, the [illegible] to circuit court.

3. What effect would detachment have on the city budget?

The loss of future revenues for the city from the detached area is very significant. Based upon the Apache Ranch property being fully developed, the potential loss of annual revenue to the city is approximately $1.215 million. A breakdown follows:

Property Taxes	$ 515,000
State Shared Revenues	$ 295,000
City Income Tax	$ 405,000
	$ 1,215,000

4. What are the projected additional expenses the city will incur to provide services to the Apache Ranch?

The following is not expressed
or intended to be interpreted
as legal or accounting
analysis or advice;

nor does it represent
the position or opinion of the
Michigan State Boundary Commission.

Table of Contents

Introduction

Is the grass always greener on the other side of the city limit line? Since 1991, at least five Michigan communities--Big Rapids, Vassar, Gladstone, East Lansing and Lapeer--have faced detachment challenges. Residents in these cities and in their adjacent townships have petitioned their respective county commissions, asking for referenda that would remove land from city jurisdiction and return it to township authority. Outcomes have varied.

Statutory language defining the detachment process has existed since 1909 when the Home Rule Cities Act was first adopted. At that time, detachment and annexation procedures were identical.[1] Michigan's strong support of the Progressive Movement's reform agenda in the early years of this century is reflected in statute language that places complete decision-making power in the hands of voters. County Boards of Supervisors (later County Boards of Commissioners) were awarded only ministerial responsibility in these municipal boundary adjustment matters. They performed administrative reviews of referendum petitions and called for elections as prescribed in the Act, without evaluating the merits of the request or otherwise exercising personal discretion.

In 1968, the State Boundary Commission Act took effect and the

Home Rule Cities Act was amended to give a new, quasi-judicial Commission jurisdiction over city and village incorporations and consolidations.[2] Three members of the Commission would be State Commissioners appointed by the governor for three year terms; they would serve on all cases throughout the state. Two other Commission members for each case would be Local Commissioners, appointed by their respective county probate judges; these Commissioners would serve three year terms and participate on all State Boundary Commission cases in their county. One Local Commissioner would be a city resident and one would be a township resident in each county.

Initially, jurisdiction over annexations was deleted from the State Boundary Commission's purview because the Michigan Municipal League, representing cities and villages, and the Michigan Township Association, representing townships and charter townships, disagreed about acceptable annexation provisions and blocked passage of the legislation. Three years later, in 1971, a compromise was achieved and the statutes were amended to give the Commission jurisdiction over most annexation actions.[3]

Detachment had been mentioned in some drafts of the amendment legislation. However, the procedures for detachment, which were seldom used, were <u>not</u> addressed in the amendments as adopted. Whether jurisdiction over detachment was omitted from the State Boundary Commission's realm by oversight or by design is argued

to the present day.

Early sections of this paper will clarify the difference between detachment from a city and the more common practice of annexation to a city and acquaint the reader with the current city detachment decision-making process, as defined in Michigan statutes. The paper will also examine the effect of detachment decisions on municipal assets and liabilities.

This paper will briefly review recent detachment efforts, including the Big Rapids case that appears to have spurred enthusiasm for detachment, and it will describe the impact some of these detachments are having on State Boundary Commission cases. Three goals appear to motivate recent detachment efforts:

(1) township residents' desire to thwart annexation of township territory to a neighboring city by disrupting the contiguity of the proposed annexation area and the city;
(2) township residents' desire to reverse a State Boundary Commission annexation decision;
(3) and city residents' desire to change the municipality with taxing and servicing jurisdiction over their homes.

The paper will conclude with recommendations for improving the detachment decision-making process.

What is Detachment?

Overlapping vs. Exclusive Jurisdiction

In the United States, several units of government have overlapping rights to govern and tax land, as well as overlapping obligations to provide various public services to land and its residents. In addition to national and state jurisdictions, in Michigan most property is subject to the governance of a county, a city or a township, and a local school district. Further, most residents are part of a community college school district and an intermediate school district. Some township residents are also part of a village.

All of the above jurisdictions, except cities and townships, maintain overlapping service areas and coexist as taxing units. When township land is added to a village, it also remains in the jurisdiction of that township. However, when township land is added to a city, that land is removed from the tax base and servicing area of the township and added to the city's tax base and servicing area. Similarly, when land is removed from a city, its tax base and servicing obligation are transferred to a township. Local municipal governments in Michigan are typically loath to forfeit their development control and taxing authority over their limited land resources. Therefore, boundary adjustments between cities and townships tend to be matters of

great concern to the affected units of government.

Rural vs. Urban Taxation

Residents and property owners of land proposed for adjustment are usually very concerned about the difference in property tax rates they would be charged and the difference in services they would receive. Each **city** may charge up to **20 mills**, subject to each city's charter limitation, to finance general operations.[4]

However, Michigan's 1963 constitution limits the total amount of nonvoted millage that **all county and noncharter subcounty units** of government may levy against property to **15 mills.**[5] State law only guarantees that **general law townships** will be allocated authorization to levy **one of those mills.**[6]

Portions of the remaining maximum nonvoted millage are reserved as follows: counties, three mills; school districts, four mills; intermediate school districts, one-tenth mill; and community colleges without voted millage, one-quarter mill. General law townships in each county must compete with these local units to gain additional allocation, up to the maximum total of 15 mills (or up to a maximum total of 18 mills if approved in a countywide referendum) that may be levied against property by noncharter local units of government.

General law townships that become **charter townships** by township board resolution may levy **up to 5 mills without voter approval.** If a general law township becomes a charter township by voter approval, rather than board resolution, then the charter township may levy up to 5 mills without voter approval, **or up to 10 mills with voter approval,** for general operations.

(Voters may also approve special millage to a total of 50 mills for schools, parks, roads, water and sewer service, or other approved purposes, and may vote to approve millage in excess of all of these limits for general obligation debt.)

Rural vs. Urban Services

All Michigan townships were initially low density rural communities. Their lower revenue limits reflected an expectation of lower service demands. In many areas, however, these expectations have risen, particularly as many townships have sought to strengthen their tax bases by expanding and diversifying employment and by increasing housing opportunities. Charter townships' enhanced revenue authority recognized the suburbanization of many rural areas at the fringe of core cities and the increase in services typically expected by the new township residents migrating from cities.

Even so, as a result of revenue restrictions, residual patterns of low density development, and the on going perception of lower

demand for services, most general law township residents and many charter township residents lack access to public water or sewer systems. In addition, township officials have no direct funding capacity--and so, no direct ability to provide--for road construction or maintenance.

Annexation vs. Detachment

Boundary adjustment literature, Michigan case law and various Michigan statutes sometimes use the words detachment, attachment and annexation interchangeably to describe boundary adjustments that alter the jurisdiction of two local units of government. At other times, the terms detachment and annexation are reserved for two contrasting forms of boundary adjustment. This inconsistency creates confusion in common parlance. For consistency and clarity, the author will adhere to the more frequently employed *distinct* definitions of detachment and annexation, and will disregard the less specific term attachment altogether.

> The term **annexation** is reserved for the process of removing land from the jurisdiction of a township and adding it to the jurisdiction of an adjacent city. (Land may also be annexed to a village, but in that instance it also remains part of the township, and so is not part of the subject matter of this paper.)

Detachment is the reverse--the process of removing land from the jurisdiction of a city and returning it to the jurisdiction of the township from which it was originally incorporated. (The outcome of a detachment referendum has no effect on school district boundaries.)

Enabling Legislation, Amendments and Interpretation

In Michigan, the process of detachment from a home rule city is defined in the Home Rule Cities Act, P.A. 279 of 1909, as amended, M.C.L. 117, Sections 6,7 and 8. In addition, special case provisions for detachment are defined in Section 9b (1-5) of this act.

Petition Contents

To initiate the detachment process, signatures must be collected from qualified electors and freeholders representing at least 1% of the combined population of the affected city and township. At least 100 signatures must be collected, and at least 10 signatures must be secured from each unit of government.[7] A qualified elector is an individual who is eligible to register to vote, whether or not that individual has actually registered.[8] A freeholder is an individual with an ownership interest in property.[9] Because the statute requires that signers must be both qualified electors and freeholders, neither renters who are residents of the city or township, nor owners of rental residential, commercial or industrial property who are not also city or township residents are eligible to sign a detachment petition.

Theoretically, a detachment petition could be legally valid even if it contained no signatures of residents in the proposed detachment area and had no support from nonresident property owners in the proposed detachment area.

The petition must include a description of the area proposed for detachment[10], a map of the proposed detachment area that must be shown to each signer before signing, and an oath of a petitioner verifying that the map was so shown.[11]

Filing the Petition

The detachment petition must be addressed to the County Board of Commissioners and filed with the County Clerk[12], except in Wayne County[13]. At present, Wayne County is Michigan's only charter county. According to Wayne County's charter, an administrator, not the County Clerk, handles filings with the Wayne County Commission. Therefore, a detachment petition involving a city in Wayne County must be filed with the Wayne County Commission's Administrator.

Evaluation by County Commissioners

The Home Rule Cities statute directs the County Board of Commissioners to determine the legal sufficiency of the petition. This determination may occur at either a regular or special session of the County Commission, conducted at least 30 days

after the petition is filed.[14] One imagines this required delay is to allow time to verify that the minimum number of valid signatures have been collected and that the petition has been properly prepared. One assumes that this time should also be used for appropriate posting of notice of the agenda item to be considered. However, no special advertising or notification is required by this statute. In particular, there is no requirement that the residents or property owners in the area proposed to be detached be notified of the matter to be considered by the County Commission. If the County Commissioners determine that the detachment petition adequately meets the statutory requirements, then they must pass a resolution calling for a referendum on the question of detachment.[15]

If a second petition is filed with the County Commission that includes any of the same territory and proposes a change that would be in conflict with the original petition, then the later question may not be posed to the electors until the earlier question is decided. Petitions must be decided sequentially and not simultaneously. There is, however, a provision that allows one petition to be substituted for another if an election date has not yet been set, if the substitute includes all of the same territory, and if at least 4/5ths of the same people have signed the substitute petition.[16] There are no provisions in this statute for withdrawing a petition from consideration.

Scheduling a Referendum

If a general election is scheduled to occur no sooner than 40 days but no later than 90 days after the County Commission adopts its resolution, then the detachment question is to be posed at the next general election. However, if no general election is scheduled to occur within this time, then the resolution may establish a date for a special election that would precede the next general election.[17] (The statute does not specify the action to be taken when the next general election in the affected city and the next general election in the affected township do not coincide.)

It is interesting to note that the statute requires the referendum be combined with a general election if the latter is scheduled to occur within 40 and 90 days, but does not explicitly require that a special election be scheduled within 90 days (or within any set period of time) if the next general election would be sooner than 40 days or later than 90 days. In fact, the statute allows the County Commissioners to wait until the next general election, since it uses the permissive term "may", rather than "shall", to describe the scheduling of a special election.[18]

Process Obscured by Layers of Amendments

Unfortunately, all provisions of Section 8 do not lend themselves to such straightforward interpretation. This section was present

in the original act adopted in 1909 (P.A. 279), but the text has been amended in 1917 (P.A. 225), in 1953 (P.A. 169), and 1955 (P.A. 147). The resulting text attempts to address general provisions regarding incorporations, consolidations, annexations and detachments, as well as some provisions that only apply to some of these kinds of boundary change.

The clarity of this passage was reduced further by the adoption of P.A. 219 of 1970, known as the Annexation Act[19]. This act amended Section 9 of the Home Rule Cities Act by giving authority over most annexations to the State Boundary Commission, created in 1968. The amendment also specified that the State Boundary Commission had jurisdiction over incorporations and consolidations. So the role of the County Commissioners, as defined in Section 8, has been superseded by the State Boundary Commission, as defined in Section 9, in all city boundary adjustment matters except detachments. The language in Section 8, however, has not been revised to reflect this change.

Two Year Moratorium?

The County Commissioners may be prohibited from considering a petition covering the same territory, or any part of the same territory, more often than every two years unless the city's assessing officer can attest that at least 35% of the property taxpayers from the area petitioned have signed the petition.[20] One says may be prohibited because the precise meaning of the

statute is unclear. The relevant sentence in the statute begins with the general term petitions, which might refer to all varieties of petitions addressed in this section, but inserts the phrase, within the area proposed to be annexed at the end of the sentence.[21] Was it the statute's intent to allow only annexation petitions to be considered by the County Commission more often than every two years?

If one assumes that the Legislature intended to allow detachment petitions also to escape the two year moratorium if more than 35% of the proposed detachment area's property taxpayers sign the petition, then one must ask, "Precisely what two year interval should be measured?" Should the County Commissioners measure the time elapsed between the two petition filings; between the two meetings when the County Commissioners considered the petitions; between the election date (if any) for the prior petition and either the filing date of the later petition or the date of the County Commission's action; or some other time period? Furthermore, if the prior petition was rejected as invalid and no election was held, does the Commission's determination of legal insufficiency constitute being "considered by the board" and require observation of a two year moratorium?

Tallying Referendum Votes

The statute does not require separate tallies of detachment referendum votes cast in the township that would receive

jurisdiction over the area, in the proposed detachment area, or in the balance of the city. In the absence of special provisions, the Michigan Court of Appeals has ruled that all registered voters in the affected city and township may vote. The vote total is a combined tally of all votes cast on the question throughout the city and township, and the majority wins.[22]

Theoretically, all of the residents in the proposed detachment area could oppose (or favor) detachment and still be outvoted by others in the balance of the city and in the township. All of the other property owners in the proposed detachment area could oppose (or favor) detachment and their wishes would not even be counted unless they were residents and voters in the city or in the township.

Intergovernmental Conditional Detachment Without a Referendum

Section 9b of the Home Rule Cities Act defines specific circumstances which allow the detachment of territory from a city without a referendum. All of the following conditions must be met:

(a) the territory to be detached must have been annexed to the city since the city's original incorporation;

(b) the city cannot be providing water or sewer service in the area proposed for detachment;

(d) the city council and the board of the village or township to

which the territory will return must approve a resolution authorizing the detachment and confirming an intergovernmental agreement relating to the detachment;

(e) the territory may only be returned to the municipality from which it had previously been annexed.

The intergovernmental agreement may include conditions on the detachment relating to building restrictions, zoning or other matters in the area to be detached. The territory is immediately reannexed to the city if the city certifies, to the Michigan State Boundary Commission's satisfaction, either of the following:

(a) that the city can and will provide water and sewer services to the territory; or

(b) that the village or township has failed to comply with the terms of the intergovernmental agreement.[23]

Wheatfield Township/City of Williamston

A boundary change case involving the City of Williamston and Wheatfield Township provided the stimulus for amending the Home Rule Cities Act to enable detachment without a referendum. As noted above, statutory language defining the detachment process has existed since 1909 when the Home Rule Cities Act was first adopted. However, it was seldom used in recent times until Wheatfield Township in Ingham County successfully employed the technique to undo an annexation previously approved by the

Michigan State Boundary Commission.

In 1978, the State Boundary Commission ordered the annexation of approximately one square mile of land from Wheatfield Township to the City of Williamston (Boundary Commission Docket #77-AR-3). When the City of Williamston requested the annexation, one property owner was prepared to develop 210 acres of land near a highway interchange if the land were serviced by public water and sewer systems. Wheatfield Township could not provide those services. If the land were annexed to the City, the proposed development's demand for utilities would be sufficient to enable the city to extend water and sewer lines to this area and to offer public sewer and water service at a reasonable cost to 22 residents in the area as well. The Boundary Commission approved the annexation and the Township challenged the order in court.[24]

Litigation Derails Development

By 1980 when the court challenge was settled[25], the development opportunity no longer existed. Without the development, the City could not extend water and sewer service to the existing residences in the annexation area at a reasonable cost to the residential property owners. As a result, the property owners were paying a local property tax millage in the city 16 mills higher than it had been in the township, without receiving the public water and sewer service that had been the primary reason for the annexation request. The city could not tax these

properties at a reduced rate, even though they received fewer municipal services, because State law requires that all property of the same class be taxed at the same rate within a municipality.[26]

Conditional Detachment Amendments to Provide Tax Equity

The city and township sought an arrangement that would provide for fairer treatment of these property owners until the land was developed and the city could provide water and sewer service. At that time, however, Michigan statutes had no provisions for an intergovernmental conditional detachment agreement between a city and township. In response to this need, the Michigan State Legislature passed the amendments to the Home Rule Cities Act and the State Boundary Commission Act described above.[27]

Under the provisions of these amendments, a city and township could agree conditionally to detach contiguous land from the city to the township until the city was able to certify to the Michigan State Boundary Commission that it was willing and able to provide water and sewer service to the annexation area. The Commission could then order the reannexation of said territory without repeating the original evaluation process.

Detachment Referendum

Although the amendments were adopted and took effect on March 30,

1983, the techniques provided were not used by Williamston and Wheatfield Township to resolve their dilemma. Instead, residents of the two communities filed a detachment petition with the Ingham County Clerk, on July 13, 1983. On September 20, 1983, the Ingham County Board of Commissioners determined the petition was valid and ordered a detachment election.

William K. Fahey, Wheatfield Township's attorney, described the detachment campaign as follows:

> Wheatfield was at a distinct disadvantage to the city under the detachment procedure, since its voting population was only half that of the city. To overcome this disadvantage, the detachment advocates had to campaign hard, canvassing door-to-door throughout the township and the city. The message they carried was one of equity and fairness. The original annexation was against their will; it resulted in higher taxes; and even five years after the annexation the city had still not delivered on its promise of "urban" services to the square mile annexed.[28]

On election day, November 8, 1983, 62% of those voting (468 of 750) favored the detachment, including 96% of the township voters and 44% of the city voters. The City of Williamston challenged the vote counting technique in the courts, arguing that the defeat of the referendum in the city should be sufficient to defeat the question. On April 8, 1985, the Michigan Court of Appeals ruled that the referendum results had been properly certified, in accordance with the provisions of the Home Rule Cities Act[29] i.e., that the outcome of the referendum was determined by the <u>total</u> tally of votes from both communities. The detachment initiative had succeeded in reversing an annexation approved by the State Boundary Commission.

Detachment Implementation: Division of Assets & Liabilities

Since a detachment of city territory to a township transfers additional liabilities for the township receiving the detached territory, it is only fair that a pro rata share of the city's assets should accompany a detachment.
--William K. Fahey, attorney representing several Michigan townships.[30]

...Act 38 calls for the apportionment of "All Debt" while subjecting only "money, rights, credits and personal property" to apportionment on the asset side of the ledger. This is obviously to protect the City from which property is being detached from erosion of its property tax base for paying various outstanding long-term debts over time.
--Kenneth R. Olson, CPA serving several Michigan cities involved in detachments.[31]

Adjustment of Property Rights & Liabilities

Each of the statements above is correct, although each reflects only one jurisdiction's perspective. Together they capture the basic reasoning that underlies the adjustment of municipal property rights and liabilities when jurisdiction over territory is redistributed through detachment.

The township receiving territory also assumes the responsibility to provide basic township services to that territory and its residents, if any. Assuming no immediate change in the property's value, it is likely that the land will generate less revenue for the township than it generated for the city because the township's millage rate will be lower. Whether or not the

detached property generates sufficient revenue to cover the cost of the services required (or expected) by the property owners becomes a concern for the township. The additional territory may create the marginal increase in demand that will necessitate significant investment in township infrastructure, such as fire-fighting equipment or facilities, water towers or sewer capacity. The township, therefore, seeks a portion of the city's assets to support the new territory.

Meanwhile, the city will have lost part of its revenue base that previously helped finance the cost of operating city services. Although the city is no longer responsible for serving this land following detachment, the reduction in demand may not cause a comparable reduction in the city's operating cost unless a considerable area of the city is detached. Only a portion of this dilemma is addressed in the statute. The statute recognizes that the city's past willingness to go into debt would have partially relied on projected revenue from this property, and that the city loses a portion of its revenue source when detachment occurs. Therefore, the city transfers a part of its indebtedness to the township that received the detachment area.

1883 Legislation Language is Outdated

Act 38 of the Public Acts of 1883, as amended, M.C.L. 123.1-123.11 and 123.33, mandates a procedure to be followed to apportion certain city assets ("the moneys, rights, credits and

personal property" belonging to the city,) and "all [city] debts" between the city and township after a detachment. However, the State of Michigan has never adopted administrative rules to define how this procedure is to be implemented; the detachment process has rarely been implemented in recent years; and no state or county board, commission, agency or department is assigned any monitoring or regulatory responsibility to assure consistent implementation of Act 38's provisions as settlements are adopted. In addition, public accounting practices have changed over the past 110 years.

Therefore, as community members attempt to anticipate the financial impact, on either the city or the township, prior to voting in a referendum, or as city and township officials attempt to implement Act 38 following a detachment decision, individuals are faced with ambiguous statutory instructions, little guidance from case law, and almost no modern precedent.

Kenneth R. Olson, C.P.A., has had the most experience applying the accounting instructions of this act in modern times: He has participated in more than one case. Mr. Olson represented the City of Big Rapids as that community negotiated an apportionment agreement with Big Rapids Charter Township in 1992. In this instance, "the approach taken was largely accepted by the CPA representing the township involved as **a reasonable approach to modern day interpretation of outdated language in the 1883**

statute.[32] [Emphasis added.] Mr. Olson offered preliminary counsel to the City of East Lansing in 1993, but ultimately, no detachment referendum was conducted, so no apportionment was required. At present, he is representing the City of Lapeer as it strives to reach a settlement agreement with Lapeer Township. Our discussion of how city assets and liabilities should be treated will rely on Mr. Olson's analysis and recommendations for determining a fair and equitable apportionment following detachment.

The Apportionment Factor: $\frac{SEV_{detachment\ area}}{SEV_{prior\ city\ total}}$

Act 38 calls for the calculation of an apportionment factor that represents the value of taxable property in the detachment area relative to the whole value of taxable property in the city prior to the detachment, according to the city assessment roll as it existed immediately prior to the detachment.[33] The data necessary to calculate this factor is readily available from a city's assessor.

Begin with an Audited Annual City Financial Statement

Mr. Olson has designed a worksheet to help communities determine the net value of their assets and liabilities subject to apportionment. His system begins with the city's **audited annual financial statement** (prepared in accordance with modern, generally accepted accounting principles,) that most nearly

matches the date a detachment occurred. The audited statement is the most reliable data available regarding the financial condition of a city, and so is the best starting point from which to calculate the assets and liabilities subject to apportionment.

Various adjustments are needed in order to arrive at an overall net figure that fairly represents the assets and liabilities subject to apportionment under Act 38. Mr. Olson's recommendations regarding these adjustments are discussed below.[34]

Apportionment of Debts

Act 38 plainly states that the apportionment factor is multiplied by all of the city's debts, and that this amount of debt is transferred to the township.[35] To facilitate this calculation, Mr. Olson recommends that the city's annual statement be adjusted to reflect all debts. **Long-term debt payable** must be added to the worksheet "because of nuances of governmental accounting which presently exclude recording certain debts on the Balance Sheet although their disclosure is required."[36] This adjusts for the accounting convention of generally not recording the full liability for long-term debt on an audit statement because the full value of the assets are recorded elsewhere. To fully record the debt on the balance sheet would throw it out of balance.

Apportionment of Certain Assets: "...moneys, rights, credits and personal property..."

The apportionment factor is multiplied by the sum of the city's moneys, rights, credits and personal property. The implicit rationale is that the detachment territory not only was itself a portion of the city's wealth as a tax base, but also that its existence as part of the city's tax base made a portion of the city's other assets possible. So, in order to fully transfer the territory's value to the township, a percentage of the city's other wealth must be transferred to the township as well.

Omit City-Owned Real Estate Not in the Detachment Area

The Act selects certain assets to which the apportionment factor is applied, rather than "all assets." The largest category of assets not included among "moneys, rights, credits and personal property," is **real estate**. Therefore, the value of real property owned by the city, including buildings and infrastructure assets, should be removed from the worksheet balance statement (except for city-owned real estate in the detachment area itself, a category addressed later.) Not including the value of city-owned real estate in the assets to be apportioned remains a reasonable provision of the 1883 legislation. This means that a city would not be faced with possibly liquidating municipal buildings, like city hall or a fire station, in order to pay a percentage of cost or value to the township.

Exclude the Value of All of the City's Fixed Assets

Mr. Olson suggests that the value of **all fixed assets** owned by the city should be excluded from the worksheet balance statement, since doing otherwise would neither be practical nor the likely intent of the 1883 legislation. He states,

> Recording the cost of fixed assets on the records and financial statements of local units of government is a relatively modern (versus 1883) accounting requirement and many governmental units still ignore this requirement and accept qualified audit opinion.[37]

To illustrate the impracticality of including fixed assets in the apportionment, consider the following possibility. If the apportionment factor were, for example, 20%, one might imagine a frustrated city manager sawing off 1/5 of the city council's conference table, and delivering this package to the township, claiming it represented 1/5 of that asset. Or if all fixed assets were represented by their book value, and the city had little cash, the city manager in our example might be forced to sell the council's conference table in order to raise enough capital to send one-fifth to the township and buy a lower quality table with the remaining funds. Until recently, it was unusual to have fixed assets other than real estate recorded on a city's books. Therefore, the 1883 statute probably did not intend to force a city to divide its tables, chairs and similar assets.

Remove Funds and Property the City Holds for Others

Mr. Olson concludes that all **fiduciary funds** held by the city in

trust for others are not subject to apportionment. Fiduciary funds, such as deferred compensation payable to employees, should be subtracted on the worksheet because these funds are not available for distribution by the city.

He suggests that the net book value of a city's **sewer and water systems' plants, related facilities and equipment** are not truly assets of the city. This infrastructure is owned by the users of the system who have paid for its construction, hook-up and maintenance, and who pay for its continued use.

Mr. Olson proposes that **enterprise reserves required by bond issues,** e.g., bonds for wastewater treatment facilities or water systems, and **cash that is restricted or reserved due to federal regulations,** e.g., Environmental Protection Agency regulations governing wastewater treatment enterprises, also should be subtracted on the worksheet. Bond ordinances and state and federal grants typically include requirements that certain amounts be set aside for future infrastructure repair or replacement. These dollars may not be distributed except for their stated purposes; therefore, these amounts should not be subject to apportionment.

Applying the same reasoning, Mr. Olson advises cities to subtract **capital project funds** that only contain bond revenue or other restricted purpose funds that may only be used for the purposes

for which the funds were established. Typically, money is only held in these accounts for a brief time. The funds are then expended for infrastructure assets, like city streets, that are not recorded on the balance sheet because it is not anticipated that any entity but the city will ever own them.

Likewise, **restricted special revenue funds** should be subtracted because the city has no discretion to redirect the use of these funds. The funds are controlled by separate boards or by grant terms and have only begun to appear on city balance sheets recently because of changes in accounting rules. Cities are now required to list these funds because they have *some* authority over the funds them: e.g., who is appointed to the board. As was the case with fiduciary funds, these amounts should not be subject to apportionment because these amounts are not available for distribution by the city.

All non-available assets (e.g., encumbrances, prepaid expenditures, restricted cash, and receivables of uncertain collection) should not be available for apportionment. These amounts should be subtracted from the worksheet because they represent assets not available for distribution.

Remove *Accounting Only* Debits

Certain *accounting only* balance sheet debits should be subtracted

from the worksheet. Statement entries indicating **amount available** in the debt reduction fund and **amount to be provided** for general long term debt are merely balancing debits to match the amount of outstanding long-term debt, not actual assets.

Add Liabilities that are Not Fully Posted on the Annual Statement

Municipalities and businesses typically differ in their manner of recording their obligation to pay employees' accumulated sick leave and annual leave. Generally, a municipality's audited statement has only been required to post a portion of its sick leave and annual leave obligation, rather than the full obligation that would be due if all employees left (not retired) on the day the statement is dated The business practice is to record the full obligation.

To fully and accurately present the city's net assets and liabilities, Mr. Olson advises that the city's statement be adjusted to the business standard. He advises that the city record the **additional liability earned and payable to employees on termination,** even if those employees have not yet been employees long enough to vest those earnings, if the employees are expected to continue to work for the city. This worksheet adjustment makes the liability statement comparable to a business statement.

Recent changes in accounting rules have created another

difference between generally accepted accounting principles for municipalities and for business entities. Businesses are required to post actual **post-employment benefit obligations being accumulated** (e.g., health insurance coverage to employees upon retirement). At this point in time, municipalities are only required to *reveal* such benefit obligations. They are not required to post these amounts on the balance sheet. In advice to the City of Lapeer, Mr. Olson recommended posting an adjustment that represented an estimate of the obligation to current retirees for the next ten years and the accumulated liability for all full time current employees for their years of service to date. A more exact estimate would likely require an actuarial analysis of each employee.

A **contingent liability** may be a third amount that should be added to the worksheet. A city may be faced with a potential obligation that will materialize only if certain events occur in the future: e.g., possible loss resulting from a lawsuit. If the loss associated with the potential obligation could not be reasonably estimated at the time the statement was audited, the auditors would have only required that the details of the contingency be *disclosed*. However, if the amount of loss can be reasonably estimated at the time the apportionment occurs, then that amount should be recorded as an adjustment to the worksheet.[38]

Calculate Net Assets Minus Liabilities

With the adjustments described above, a city may begin with an audited annual statement and end with a combined balance sheet that enables one to calculate a city's net assets subject to apportionment minus its liabilities. The apportionment factor is multiplied by this amount. The product is a single figure defining the amount due from the city to the township (if the city's net assets subject to apportionment were greater than its liabilities), or due from the township to the city (if the city's debts were greater than the assets subject to apportionment).

Sale of City-Owned Land in Detachment Area

There are some exceptions to be considered when calculating the net amount owed by a city to a township, or owed by a township to a city. If there is city-owned land in the detachment area, other than a cemetery, then Act 38 requires the city to sell that land and distribute the proceeds according to the apportionment factor. The township is permitted to purchase that real estate.[39] Curiously, the township is neither guaranteed the right of first refusal to purchase the property, nor required to be the land buyer of last resort.

Neither does the Act tell the city how it should calculate the sale price of the land (e.g., SEV x 2) or how it should conduct the sale (e.g., by auction). What if the city received no offer

that it considered *bona fide* and reasonable? What if the township had insufficient liquidity to pay the purchase price, less the percentage that would be returned to the township, and were unable or unwilling to finance this purchase?

If the city were willing to own land in the township's jurisdiction, could the city or its agent (e.g., its economic development corporation or municipal airport authority) purchase the property? (In effect, the city would retain ownership but pay the township a sum equal to the apportionment factor times some estimate of market value.) If no one were interested in buying the property, could the property remain offered for sale in perpetuity, with no distribution of sale proceeds to the township? How long would it be legitimate for the property to remain for sale? How aggressively would the city have to market the property? The statute leaves the resolution of all these issues in the hands of the Circuit Court.

Transfer of City-Owned Cemeteries in Detachment Area

Act 38 makes special provision for the direct transfer of land ownership only for city-owned cemeteries. If the city owns a cemetery in the detachment area, then ownership automatically transfers to the township without any sale or distribution of proceeds.[40]

This provision was apparently included due to the difficulty of determining the fair market value of a municipally owned cemetery, the likelihood that a private sector purchaser could not be found, and respect for the continued service expected when people were interred. In effect, the act requires the township to assume from the city the responsibility for operating the cemetery. As we will see, this requirement recently became a point of contention in a post-detachment settlement between the City of Big Rapids and Big Rapids Charter Township.

Had the Act been written in 1993, instead of 1883, a wider array of municipally owned (and quasi-municipally owned) and operated facilities might have been considered. In the Big Rapids case, municipally owned property in the detachment area included not only a cemetery, but also a swimming pool, fairgrounds, an airport and an industrial park. (These last two uses had not even been invented when the original legislation was drafted!)

Special Assessment Districts & Other Unpaid Levies

Act 38 provides that detachment does not alter the required payment by property owners in the detachment area of previously existing debt. The township must accept responsibility for collecting any tax that remains unpaid at the time of detachment that was levied in the detached area. If the detachment area includes a special assessment district, if the special assessment was levied prior to the detachment, and if the assessment has not

yet been fully paid when the detachment occurs, then the Act provides that the township must continue to collect any unpaid special assessments for the city.

If the detachment area has been subject to special taxes to support bond issues, then the city and the township must agree on an appropriate division and assumption of the debt. If they are unable to agree, then the Circuit Court is granted the power to apportion responsibility for payment. Property owners must be given credit for any payments already made and their land may be sold to collect delinquent taxes.[41]

No Adjustments for Loss of Potential Revenue

Act 38 includes no adjustment for a city's lost opportunity to increase property tax revenue from future development in the detachment area, or the lost opportunity to increase income tax revenue or other population-based sources of revenue from future occupants of the detachment area. Neither does Act 38 require a city to account for expenses it will not incur since it will not be required to provide service to any existing or future development in the detachment area. This is reasonable. To do otherwise would require prognostication beyond human ability.

Joint Settlement Meeting

Act 38 directs that a joint settlement meeting be called "[a]s

soon after [the detachment] as practicable." No penalty is provided for delaying this meeting; nor is there a point beyond which the jurisdictions automatically forfeit any settlement claim if no meeting is called. Either the township may serve notice to the city's mayor or the city may serve notice to the township's clerk. The notice must specify the object, time and place of the meeting, and must be served at least twenty days prior to the meeting date.[42] The mayor is required to appoint four members of the council to meet with the township board at the designated time and place. Together, they are directed to make a "fair and equitable" division of the city assets designated in the act and apportionment of the indebtedness of the city from which land was detached.[43]

Appeal to Circuit Court

The Act appears to create an incentive for a municipality to call the joint settlement meeting. Only the city or township serving notice of the meeting is explicitly given the right to file in Circuit Court if any of the following occur:

--the mayor is served and neglects or refuses to appoint council members who should attend the meeting;

--the township clerk neglects or refuses to notify township board members of the time and place of the meeting;

--the committee is formed but neglects or refuses to meet;

--the committee meets but neglects, refuses or fails to arrive at a settlement.

If a complaint is filed, then the Act empowers the Circuit Court to fix the amount of assets to be transferred and to apportion the liability for indebtedness.[44]

However, it seems likely that the Circuit Courts of today would entertain either community's complaint that an agreement could not be reached. If only the community that called the meeting could object to lack of progress, then a community trying to avoid making large payments to its neighbor could delay that action forever by calling the meeting, then refusing to proceed with good faith negotiations.

Must the Settlement Correspond to the Apportionment Described Above?

It is likely that any mutually acceptable settlement that the communities negotiate will be valid, even if it varies from the provisions of the statute. Since the statute includes no penalties for using some other method for determining apportionment, it is likely that its provisions should be considered advisory for the directly affected communities. No State agency or other party is required to review and approve the settlement, and the statute only gives the directly involved communities the right to take the matter to court. As Thomas Martin, a specialist in Michigan intergovernmental relations, once remarked, "If it works politically, it won't be challenged legally."[45]

Difficulty Interpreting Act 38

When Act 38 was adopted, in 1883, the procedures for annexation had not yet been distinguished from detachment procedures. The two terms were often used interchangeably, and the Act did not include definitions of terms. The Act's provisions assume that either a city or a township may lose territory and also that either a city or township may receive territory. The legislators tried to write each section of the Act to allow both units of government to be on either side of the transaction, and to describe their rights and obligations in the procedure in every possible combination. In the resulting text, it is often difficult to understand just who owes what to whom under what circumstances! An example of the result follows:

> *Sec. 8 Upon payment of any of its indebtedness existing prior to said change of boundary by any city or township, the boundary of which has been changed as provided for in this act, the remaining cities or townships, the boundaries of which have been changed by said division, shall be liable to and pay to the city or township paying any such indebtedness their pro rata share of the indebtedness so paid.*[45]

Interpretation of this passage and others in the Act is currently determined by the best collective judgement of the communities involved in each detachment. To date, their interpretations and applications have not been tested in Michigan's courts.

Recent Cases, Intentions, Outcomes

The following cases present examples of recent detachment efforts motivated by three different goals:

(1) township residents' desire to thwart annexation of township territory to a neighboring city by disrupting the contiguity of the proposed annexation area and the city;

(2) township residents' desire to reverse a State Boundary Commission annexation decision;

(3) and city residents' desire to change the municipality with taxing and servicing jurisdiction over their homes because of dissatisfaction with city policies.

The first goal sees the detachment process cleverly applied to gain a tactical advantage in an annexation battle. Anti-annexation leaders maneuver their voting forces to accomplish a short-range objective: disrupting contiguity between the city and a proposed annexation area before the annexation decision occurs. To meet the second goal, detachment is also used as a tactic, this time to gain a particular, short-term end--the reversal of an annexation decision. The detachment procedure can be an expedient way to maneuver voting forces to change the outcome of

a particular annexation battle. Only the third goal suggests that its petitioners are planning the strategic use of detachment as an artful means to accomplish a long-term, overall change of vital importance to its proponents in its own right.

Disrupting Contiguity

I. Big Rapids Charter Township/City of Big Rapids

Five years after residents of Wheatfield Township successfully employed a detachment initiative to undo an annexation approved by the Michigan State Boundary Commission, the City of Big Rapids petitioned the Boundary Commission to annex about 2300 acres of territory in Big Rapids Charter Township (SBC Dockets #90-AR-4 and #90-AR-6, filed December 18, 1990). The proposed annexation area lay between the western city boundary and U.S. Highway 131. The City argued that the annexations were logical extensions of its boundaries because the areas were contiguous to the City of Big Rapids, within the path of past and probable future urban growth, where the City could provide a broad range of municipal services.

A group called "Citizens for Detachment" led an effort designed to preempt the Commission's decision-making authority by disrupting the contiguity between the city and the township territory the City sought. Detachment supporters proposed to detach approximately 1.75 square miles of land along the western

edge of the city, including all territory at the western edge of Big Rapids that was contiguous to the proposed annexation area.

The eligible voting population of the city (5638) was three and one-half times that of the township (1528).[47] The anti-annexation/pro-detachment group knew that if voters responded to the detachment question solely on the basis of municipal loyalties or municipal interest, the referendum on detachment would be resoundingly defeated. The detachment campaign painted City officials as greedy land-grabbers of potential tax base along the highway interchange. Pro-detachment campaigners accused City officials of purposely dividing the proposed annexation area into two areas, each with 100 or fewer residents, to circumvent Township and City residents' right to conduct a referendum if the State Boundary Commission approved annexation. Voters were urged to approve the detachment in order to control their own destiny as a community. Supporting detachment was equated with supporting citizens' right to vote to determine what land in the community would be in which jurisdiction.[48]

The detachment area comprised some residential property and a fairgrounds owned by a fairgrounds association, as well as the city-owned airport, industrial park, swimming pool and cemetery. Detachment organizers first considered including only the city-owned property in the detachment proposal, not subjecting residents to a jurisdictional change they might not individually

favor. However, Township leaders believed this might not accomplish the intended disruption of contiguity between the city and the proposed annexation land. Another provision in the State's Home Rule Cities Act provides that a city may unilaterally annex, by majority affirmative vote of the city council, any city-owned property contiguous to its existing boundary that is vacant or park land and includes no residents.[49] If only city-owned park or vacant land were included in the detachment, it was feared that the City Council would immediately reannex the land by city resolution.[50]

Prior to the referendum election the Township Board unanimously passed a resolution indicating its willingness to enter into a conditional land transfer agreement, under the provisions of Public Act 425 of 1984, as amended, to return to the City all jurisdiction over the city-owned property if the detachment referendum passed. The Township also declared it would work with the City to assure that individual residential property was returned to the City if the owners wished.[51]

These transfers would effectively return land jurisdiction to the *status quo* prior to the annexation request, with one important difference: As long as the agreement remained in place, the Township would have a barrier preventing westerly annexation. Michigan case law had established that land to be annexed must be contiguous to the receiving municipality.[52] An opinion from the

Michigan Attorney General (Opinion No. 6667) issued on November 13, 1990, had ruled that land for which some or all jurisdiction had been *conditionally* transferred under the provisions of P.A. 425 remained township land for the purpose of determining contiguity unless and until a permanent transfer occurred. Therefore, land subject to a P.A. 425 conditional land transfer agreement could not be used by the City (i.e., the receiving municipality) to establish contiguity with other land in the Township for annexation purposes.[53]

At the referendum on May 14, 1991, voter turnout in Big Rapids was low. Fewer than 24% (1345) of the registered voters in the city went to the polls--and 35% (470) of those voters cast ballots in favor of detachment! Meanwhile, in Big Rapids Township, nearly 50% (756) of the registered voters cast ballots, and 91% (688) favored detachment. With over 55% of the combined tally voting in favor of detachment and only about 45% opposing detachment, the detachment was approved.[54]

On December 17, 1991, the State Boundary Commission found, "The subject territory [proposed for annexation] is no longer contiguous to the City of Big Rapids and therefore no annexation can take place."[55] The detachment initiative had succeeded in preempting the State Boundary Commission's action on the question of annexation.[56]

The Township was willing to forgo any payment that might result from the division of assets and liabilities outlined in Act 38 if the City took back all the city-owned property under a P.A. 425 agreement. The City would have been pleased to accept most of the city-owned territory back into its jurisdiction, but not *all* of it. It had cost the City about $120,000 annually to maintain Highland Cemetery, a city-owned cemetery in the detachment area. The City did not want that expense back. The Township was using volunteers, prison labor, and other cost-saving techniques not available to the City to operate the cemetery for about $30,000 annually. The Township was unwilling to transfer the revenue-neutral and revenue-generating land without also returning the cost item.[67]

Ultimately, no P.A. 425 agreement was reached between the City and Township. Instead, on October 19 and 20, 1992, the City and Township approved a Mutual Settlement Agreement covering any claims under Act 38. The City agreed to make a one-time payment of $43,499.30 to the Township for Township claims to state revenue sharing funds and local property taxes already paid for property in the detachment area. In addition, the City agreed to make annual payments of $15,000 (plus annual increases of 5% or less to adjust for inflation) to help the Township maintain and operate Highland Cemetery. The agreement included a "mutual waiver and release of 'Act 38' rights".

To date, all of the detached territory remains in the Township's jurisdiction. The City is a property owner operating its industrial park, swimming pool and other facilities in the Township.

II. Escanaba Township/City of Gladstone

About one year later, residents in an Upper Peninsula community chose the same strategy to remove an annexation question from the State Boundary Commission's jurisdiction. A developer had been discussing with Escanaba Township officials his plans for creating a residential community, primarily for retirees, including a small commercial area, a clubhouse, and a golf course or other open recreational space, on 355 acres of property in Escanaba Township. On the west, the proposed development would abut other residential subdivisions launched by this developer in the township. On the east, the new development would abut the City of Gladstone.

His development would need public water and sewer service because the small lots planned for the retirees could not be served by septic systems and private wells. The developer believed that cluster development, as implemented in many communities using Planned Unit Development techniques, would offer the best use of the land, allow housing development to be concentrated near a small commercial area, and preserve an open recreational area as a buffer between existing (primarily stick-built) housing and his

prefabricated housing on concrete slabs.

The Township did not have public sewer or water service; the City had both. The developer preferred that his property remain in the township with sewer and water service extended from the City under a P.A. 425 agreement. He pursued this option with Township and City officials for several months. His second choice would be to seek annexation to the City. Negotiations between the City and Township stalled.

On August 12, 1992, a detachment petition was filed with the Delta County Clerk. If the detachment were successful, it would end nearly all contiguity between the City and the developer's property. Alarmed, the developer filed an annexation petition with the State Boundary Commission on August 14, 1992.

While the decision makers and timelines were different in each process, all three actions--the P.A. 425 negotiations, the detachment petition and the annexation petition--were attempts to resolve the same concerns of the two communities over the development proposal. Furthermore, the first action to be completed would greatly affect the course of the two remaining actions.

On November 17, 1992, the State Boundary Commission approved the legal sufficiency of the annexation petition and set January 7,

1993, as the date for a public hearing on the proposal. On December 2, 1992, Delta County Commissioners approved the legal sufficiency of the detachment petition and set February 9, 1993, as the referendum election date. The City withdrew from further discussion of a P.A. 425 agreement unless Township officials publicly opposed the detachment proposal. Township officials would not oppose the detachment unless the City first signed a P.A. 425 agreement. The stalemate (and the annexation proceedings) continued.

On February 9, 1993, 43% (979) of the registered voters in the Township cast ballots. Nearly 89% (871) supported the detachment, while 11% (108) opposed it. However, the Township's population of registered voters was only two-thirds the size of the City's voter population. Turnout in the City was over 50% (1583), and City voters overwhelmingly rejected detachment--only 4% (63) "Yes" against 96% (1520) "No". Since over 63% of the total votes cast opposed detachment, the referendum was defeated and contiguity with the proposed annexation area was maintained.[58] On June 15, 1993, the State Boundary Commission approved annexation of a portion of the developer's 355 acres. The exact area approved is currently in dispute in Ingham County Circuit Court.[59] The two communities have not executed a P.A. 425 agreement covering any of the developer's property.

Reversing Annexation

I. Tuscola Township/City of Vassar

On May 19, 1992, the State Boundary Commission approved the annexation of a commercial area in Tuscola Township to the City of Vassar (SBC Docket #91-AR-2). The Commission's primary concern was the potential health hazard created by inadequate septic service in the area, as evidenced by raw sewage in open drainage ditches. The Township did not have a public sewer system; the City did. The City was unwilling to extend that sewer service to the commercial area unless the land were annexed into the city.

Most of the commercial land was owned by individuals who did not mind being annexed to receive municipal water and sewer service. Unfortunately, several residential properties were mixed in with the commercial properties, and their owner-residents generally were fierce in their opposition to annexation. They resented being brought into a jurisdiction against their will, objected to being forced to hook into a sewer line extended to benefit commercial property while their residential septic systems were still adequate, feared the cost of the sewer and water lines and the City's higher millage rate, and felt personal antipathy for Vassar's city manager. Meanwhile, Township officials objected to losing a substantial portion of their tax base and potential commercial and residential customers for a future sewer system.

A detachment petition was circulated among voters in the Township and the City in an attempt to undo the Commission's annexation action, and a detachment referendum was conducted on September 15, 1992. The detachment question passed even though the number of registered voters in the City exceeded the number of registered voters in the Township (approximately 1897 against 1578). While the outcome might be partly explained by the low (28%) voter turnout in the City, the result was largely due to strong support of detachment by City voters: Of the City residents voting, 69% (367) voted in favor of detachment and only 31% (168) voted against! Meanwhile, in the Township, 55% (871) of the registered voters cast ballots and nearly 96% (783) voted for detachment. Fewer than 4% (31) in the Township voted against detachment. [3 ballots were spoiled.] Eighty-five percent of the total vote supported detachment.[60]

The detachment process was successful in overturning an annexation approved by the State Boundary Commission. The strongest supporters of the annexation, the commercial property owners, typically were not residents and registered voters in either the City or the Township, so they were not eligible to vote in the detachment election. To date, the commercial property owners' sewer and water service is unchanged and no joint settlement meeting has been called by either community to discuss a division of assets and liabilities.

II. Lapeer Township/City of Lapeer

The detachment election involving Lapeer Township and the City of Lapeer was also conducted to undo a State Boundary Commission annexation decision. On July 20, 1992, the Commission approved the annexation of approximately 430 acres of land, part of an area known as Apache Ranch (SBC Docket #91-AP-20). The property owner had requested annexation of an even larger area. The developer sought sewer and water extensions from the City for the moderate-income, single-family housing subdivisions the firm would construct.

Detachment supporters succeeded in petitioning for a referendum to remove the annexed territory from the City and return it to the Township. The Lapeer County Commission scheduled the election for September 14, 1993, despite objections by the City of Lapeer and the property owner. Prior to the referendum, in a special edition of the City's quarterly newsletter, City officials presented information to City residents about the annexation process and the anticipated effect of the proposed housing development as well as information about the detachment process.

A newsletter prepared by detachment supporters, the Lapeer Area Citizens Committee, distributed immediately before the referendum, urged residents to vote for detachment to reverse the annexation, claiming that the proposed development would lead to

the destruction of prime farmland, more traffic congestion, higher taxes for new schools, and higher City debt for utility construction. The newsletter also accused "the power clique" at City Hall of land grabs, costly decisions, and poor natural and financial resource management.[61]

Although voter turnout in the Township was low (34%), the voters overwhelmingly favored the detachment (i.e., they opposed the annexation that would have permitted land, perceived by some to be prime farmland, to be developed for housing). Over 93% (978) voted for detachment; fewer than 7% (73) opposed it.[62] Voter turnout in the City was even lower (20%), and once again the detachment effort benefited from support by City voters: 58% (525) voted for detachment and only 42% (379) opposed it. Nearly 77% of the total vote favored the detachment.[63]

Early in the morning, on the day after the referendum, City officials served notice to the Township clerk, calling for a joint settlement meeting to determine the division of assets and liabilities. According to the City's earliest estimate, the Township would owe the City $48,374. At present, negotiations are still underway.[64]

Protesting City Policies

Meridian Charter Township/City of East Lansing

This most recent case, the proposed detachment of territory in East Lansing and its return to Meridian Charter Township, is probably closest to the situation envisioned in the detachment provisions of the Home Rule Cities Act. The motivating concerns appear to be quite different from those in the previous cases.

In January 1993 a group of residents in the City's most wealthy housing area objected to several recent city policies. They felt their concerns were being ignored; they believed they were paying more property taxes but receiving fewer services than other areas of the city; and they believed Meridian Charter Township would provide a more pleasing bundle of desired services at a lower cost. The group called itself ENUFF, East Lansing Neighbors United for Fairness, and circulated a detachment petition proposing to remove the northeast quadrant of the City.

Another group, Community Unity, soon formed to oppose ENUFF's effort with information about the benefits of remaining in the City. This group analyzed the services and expenses property owners in the detachment area might actually encounter; they voiced grave uncertainty about the effect of applying the division of assets and liabilities provisions of Act 38 to the City if detachment occurred.

Ultimately, the detachment petition was determined to be invalid, so no referendum was held. Active members of ENUFF and other City residents who agreed with portions of ENUFF's objections have since taken more traditional paths to power over City policy. When a member of the City Council died, ENUFF leaders lobbied for, and won, a replacement more politically acceptable to them. That individual was elected to his own term in the general election that followed in November. The Mayor, a member of the five-person City Council, chose not to run for reelection. Her seat and another incumbent's were taken at the November election by candidates campaigning on platforms compatible with ENUFF's concerns. The detachment controversy and election results seemed to alert the entire Council to the need for responsiveness to constituent complaints. At present, the East Lansing City Council is reexamining several of its more controversial policies.

Conclusion

Caution: Heavy Load

Municipal boundary adjustments are weighty matters that affect individuals, households and businesses in dramatic ways for long periods of time. Levels of service and the cost for services may differ vastly from one jurisdiction to the next. Similar properties may have widely differing values depending on the image of the community in which the property is located. Major investments in private property, business development, public facilities and public infrastructure are based on long-term projections and expectations about the size, composition and quality of communities. Many individuals feel a deep, emotional identification with their particular community.

No boundary adjustment matter should be considered without ample information about existing conditions, what changes are desired, and what the effect of those changes may be. Boundary adjustment should be a cautious and deliberative process, not an emotional and political process. For these reasons, popular referenda are a particularly unsuitable way to determine boundary adjustments.

Quality Tools Needed: Compile and Codify the Process

To make good decisions about boundary adjustments, people need to understand how change could occur, what guidelines for change

should be applied, what information is needed to evaluate the request, and what the effect would be if the request were granted. With the present detachment process, the decision-makers--the petitioners and the voters in the affected city and township--lack all the tools necessary for performing their task well.

At a minimum, the State Legislature should require that the statutes, rules and judicial interpretations relating to detachment and other boundary adjustment matters be compiled and codified so that their meaning and directions are clear. All laws and sections of laws relating to detachment and other boundary adjustment matters should be assembled and arranged systematically. Sections of existing statutes that have been superseded by more recent legislation must be repealed and removed. Passages intended to describe a process should be clarified by adopting administrative rules. These rules should be reviewed and revised at regular intervals to keep them current.

Require a Public Hearing

Prior to a detachment referendum, voters are vulnerable to exaggerated claims of harm or hyperbolic estimates of benefits that might result from detachment. Likewise, because the financial impact of detachment is uncertain, voters may be uninformed about a significant cost or benefit of detachment to

themselves, their community, or to either municipality.

Requiring a representative of the petitioners, the City and the Township to participate in a public hearing on the proposed detachment would give citizens a public forum in which to ask questions, express opinions and learn about the proposal from three different perspectives.

Clarify the Financial Effects of Detachment

As the detachment statute regarding the apportionment of assets and liabilities stands today, voters are asked to make what must be an uninformed choice. Neither City officials nor Township officials, neither voters in the detachment area nor voters in the balance of the city or township can predict with any certainty the financial effect of a proposed detachment. The language in Act 38 is ambiguous and arcane. No administrative rules exist to guide implementation of this statute. Case law on the subject is minimal.

Ideally, voters should know before the referendum what personal and community financial effects to anticipate. The language in Act 38 should at least be revised and clarified to reflect current municipal accounting procedures. Ideally, the process of calculating the net payment one community may be required to make to another should be reduced to a model in administrative rules. The affected City and Township could then be required to provide

certified estimates of the appropriate financial information at the public hearing. Alternatively, the State Legislature might choose to eliminate the complicated calculations from the current act and substitute a more straightforward formula, based on readily available public demographic and financial data, to simplify the estimation process.

Rely on a Panel of Wise Counsellors

The impact of the procedural improvements listed above would depend on the active and rational participation of the city's and township's electorate. It would be prudent to place decision-making responsibility for detachment questions in the hands of the State Boundary Commission, the body that is now responsible for resolving most questions of municipal annexation, incorporation and consolidation.

The Commission would be responsible for carefully weighing all concerns presented at the public hearing, then judiciously balancing and mediating among competing community needs and individual interests. Playing a relatively unbiased and disinterested quasi-judicial role, the Commissioners would be free to make a dispassionate decision.

Eliminate Detachment's Tactical Utility; Maintain Its Strategic Focus

If the detachment process were dovetailed with the annexation

process, petitioners would lose most of their ability to use detachment as a means of preventing or reversing a Boundary Commission annexation decision. Toward this end, the Legislature should require a moratorium period following the Commission's approval of an annexation, during which a new petition requesting detachment of any annexed territory would not be considered.

Cities providing a full range of urban services to an area should receive a large measure of immunity from detachment against their will, just as charter townships that provide full urban services do now. This helps protect the community's long-term investment in utility lines, services and other infrastructure.

On the other hand, petitioners should have the opportunity to present cogent arguments and rationales in support of strategic detachment to further long-range community goals.

Prospects for Change

The Michigan Township Association is aggressively promoting detachment as a defense against annexation and a way to conduct referenda on Boundary Commision decisions when the number of residents in an approved annexation area is fewer than 100. The Michigan Municipal League, on the other hand, has not yet exercised its influence to support a change in the detachment statutes. Until one or both of these powerful lobby groups demand change, the State Legislature is unlikely to focus its

attention on the detachment statutes. Cities, Townships and their petitioners will have to muddle through the process, demanding information and public forums and trying to generate strong public interest in these complicated issues.

Notes

[1] Home Rule Cities Act, P.A. 279 of 1909, as amended, Section 8, M.C.L. 117.8.

[2] State Boundary Commission Act, P.A. 191 of 1968, M.C.L. 123.1001-123.1020, and the Home Rule Cities Act, Section 6, M.C.L. 117.6.

[3] State Boundary Commission Act, M.C.L. 123.1001-123.1020, and P.A. 219 of 1970, commonly called "the Annexation Act," which amended the Home Rule Cities Act, Section 9, M.C.L. 117.9.

[4] General Property Tax Act, P.A. 206 of 1893, as amended, M.C.L. 211.107a.

[5] Michigan Constitution, Article IX, Section 6 (1963).

[6] General Property Tax Limitation Act, P.A. 62 of 1933, as amended, M.C.L. 211.211.

[7] Home Rule Cities Act, Section 6, M.C.L. 117.6.

[8] Michigan Election Law, P.A. 116 of 1954, as amended, M.C.L. 168.10 and 168.492; Michigan Constitution, Article II, Section 1 (1963), as amended by U.S. Constitution Amendment XXVI, which lowered the voting age to eighteen. At present, Election Bureau staff from the Michigan Department of State have drafted statutory language that would require the definition of *qualified elector* in the state's Election Law to include being a *registered voter*. The State Legislature is expected to act on this proposal prior to January 1, 1995.

[9] Black, Henry Campbell, M.A., Black's Law Dictionary, St. Paul, Minn., West Publishing Co., 1983, page 339, definitions for *freehold* and *freeholder*.

[10] Home Rule Cities Act, Section 7, M.C.L. 117.7.

[11] Home Rule Cities Act, Section 6, M.C.L. 117.6.

[12] Home Rule Cities Act, Section 8, M.C.L. 117.8.

[13] Source: Al Montgomery, Clerk, Wayne County Commission, November 22, 1993.

[14] Home Rule Cities Act, Section 8, M.C.L. 117.8.

[15] Ibid.

[16] Home Rule Cities Act, Section 8a, M.C.L. 117.8a.

[17] Home Rule Cities Act, Section 8, M.C.L. 117.8.

[18] The pertinent passage of M.C.L. 117.8 includes the following: "*...said board of [county commissioners] shall, by resolution, provide that the question of making the ...change of boundaries shall be submitted to the qualified electors of the district to be affected at the next general election, occurring in not less than 40 days after the adoption of such resolution, and if no general election is to occur within 90 days, said resolution may fix a date preceding said general election on such question...*" [Emphasis added.]

[19] State Boundary Commission Act, M.C.L. 123.1001-123.1020.

[20] Home Rule Cities Act, Section 8, M.C.L. 117.8.

[21] The pertinent passage of M.C.L. 117.8 includes the following: "*...Provided further, That a petition covering the same territory, or part thereof, shall not be considered by the [county commissioners] oftener than once in every 2 years, unless such petition shall have been signed by a number of taxpayers assessed for real property taxes within the area proposed to be annexed ...equal to 35% of the total number of names...being assessed for real property taxes within the area proposed to be annexed,...*" [Emphasis added.]

[22] 142 Mich App 714, April, 1985; City of Williamston v. Wheatfield Township.

[23] Home Rule Cities Act, Section 9b, M.C.L. 117.9b.

[24] SBC Findings of Fact and Order, Docket 77-AR-3, Wheatfield Twp./City of Williamston, signed October 24, 1978, by David R. Calhoun, SBC Chairman; and SBC Findings of Fact and Order, Docket 81-AR-9, Wheatfield Twp./City of Williamston, signed July 26, 1983, by David R. Calhoun, SBC Chairman.

[25] Ingham County Circuit Court Case No. 78-22-627-AS. Wheatfield Twp. and James Porter vs. the Michigan State Boundary Commission and the City of Williamston. Filed December 20, 1978; closed December 2, 1980, following ruling by Judge Thomas L. Brown.

[26] Michigan Constitution, Article IX, Section 3 (1963). "*The legislature shall provide for the uniform general ad valorem taxation of real and tangible personal property not exempt by law.*"

[27] Home Rule Cities Act, Section 9b, MCL 117.9b, and State Boundary Commission Act, Section 12b, MCL 123.1012b.

[28] William K. Fahey, "Boundary Adjustment Is a Two-Way Street," Michigan Township News, July 1991, p. 9.

[29] 142 Mich App 714, April, 1985; City of Williamston v. Wheatfield Township.

[30] William K. Fahey, "Boundary Adjustment Is a Two-Way Street," Michigan Township News, July 1991, p. 11.

[31] Letter from Kenneth R. Olson, CPA, to George J. Strand, City Manager, City of Lapeer, October 14, 1993, p. 2.

[32] Ibid., p. 1.

[33] Division of Territory Act, P.A. 38 of 1883, as amended, Section 1, M.C.L. 123.1.

[34] Letter from Kenneth R. Olson, CPA, to George J. Strand, City Manager, City of Lapeer, October 14, 1993.

[35] Division of Territory Act, Section 4, M.C.L. 123.4.

[36] "Rationale and Explanations of Worksheets," attachment to letter from Kenneth Olson to George Strand.

[37] Ibid.

[38] Statement of Financial Accounting Standards, No. 5, "Accounting for Contingencies" (Stanford: Financial Accounting Standards Board, 1975), par. 8.

[39] Division of Territory Act, Section 2, M.C.L. 123.2.

[40] Division of Territory Act, Section 3, M.C.L. 123.3.

[41] Division of Territory Act, Sections 11 and 23, M.C.L. 123.11 and M.C.L. 123.23.

[42] Division of Territory Act, Section 5, M.C.L. 123.5.

[43] Division of Territory Act, Section 6, M.C.L. 123.6.

[44] Division of Territory Act, Section 7, M.C.L. 123.7.

[45] Thomas Martin, Director, Office of Policy and Legislative Affairs, Michigan Dept. of Commerce, addressing a graduate urban planning class at Michigan State University, Spring 1991.

[46] Division of Territory Act, Section 8, M.C.L. 123.8.

[47] Source: Ruth Hayes, Mecosta County Clerk, January 4, 1994.

[48] "Vote Yes May 14 [1991." Handout distributed by "Citizens for Detachment," David K. Johnson, Treasurer.

[49] Home Rule Cities Act, Section 9(8), MCL 117.9(8).

[50] Source: Maxine McClelland, Supervisor, Big Rapids Charter Township, January 25, 1994.

[51] Letter from McClelland to voters in the City of Big Rapids, May 9, 1991.

[52] 401 Mich 641, October, 1977; Midland Township v. Michigan State Boundary Commission. *"...{A}nd territory annexed to a city must adjoin the city."*

[53] State of Michigan, Attorney General Opinion No. 6667, November 13, 1990.

[54] Hayes, January 4, 1994.

[55] State Boundary Commission, Findings of Fact & Orders, Dockets #90-AR-4 and #90-AR-6, December 17, 1991.

[56] Big Rapids Charter Township was simultaneously pursuing another defense against annexation, a P.A. 425 agreement with Green Township. A conditional land transfer *between two townships*, purportedly for economic development purposes, would be certain to provoke discussion, and probably litigation, if it secured annexation immunity for the townships. The Commission avoided the need to examine the legitimacy or impact of P.A. 425 agreements between two townships since the lack of contiguity removed the Commission's authority to consider the Big Rapids annexation.

[57] McClelland, October 9, 1992.

[58] Source: Wally Thorsen, Delta County Clerk, December 23, 1993, and January 28, 1994.

[59] Ingham County Circuit Court Case No. 93-75163-AA, Escanaba Township v. the Michigan State Boundary Commission. Filed July 14, 1993, with Judge William E. Collette.

[60] Source: Mary Lou Blasius, Tuscola County Clerk, January 3, 1994.

[61] Warning: Lapeer Township and City Taxpayers. Newsletter

distributed by "Lapeer Area Citizens Committee". September 1993.

[62] Source: Barbara Seely, Lapeer Township Clerk, January 26, 1994.

[63] Source: Donna Cronce, Deputy City Clerk, City of Lapeer, January 25, 1994.

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