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ATTORNEYS AT LAW

May 3, 2012

Lake Township Board
PO Box 429
Caseville, MI 48725-0429

Chandler Township Board
3162 N Maxwell Road
Pigeon, MI 48755-9731

Honorable Township Board Members:

Re: Proposed Conditional Transfer under Act 425

Our office is helping the Owners of several properties in Lake Township who are attempting to promote an economic development project on their properties. To allow the proposed economic development project to proceed, the Owners request that their properties be conditionally transferred from Lake Township to Chandler Township under Act 425, as further explained in this letter.

Over the last 30 years, Act 425 has enabled nearly 400 agreements across the state for new economic development projects, and that number has been rapidly increasing in the last 10 years (even in Michigan's current poor economy). Act 425 provides unique development benefits for both townships and property owners that bear your consideration.

Act 425 allows two townships to transfer property, share tax revenues, and achieve economic development for the mutual benefit of both townships and property owners. Allowable projects under Act 425 can include any industrial enterprise, commercial enterprise, or housing development.

The Owners' property is currently leased to a prominent energy company for wind energy development. This presents the community an ideal opportunity for economic development, a source of sustainable green power in your area, and the preservation of vast stretches of fertile farmland because of the wide spacing between wind energy facilities.

In a February 2012 election, a majority of the Lake Township voters rejected the Lake Township Board's zoning proposal for orderly development of wind energy facilities. Although the Owners were disappointed by this election result, they strongly believe that the Lake Township Board's orderly wind energy and economic development goals can still be accomplished by a conditional transfer under Act 425 between Lake Township and Chandler Township.

The Owners' properties that are proposed to be conditionally transferred are shown on the enclosed map. These properties are all in the southern portion of Lake Township, well away from Lake Huron. The Lake Township voters in the recent zoning referendum election were falsely told, and many voters might have been deceived, that the Lake Township Board was proposing to locate wind

energy facilities along Lake Huron, or even “offshore” in Lake Huron. Although nothing could be further from the truth, this Act 425 proposal will help guarantee that only the southern portion of Lake Township will be used for wind energy economic development. This should appease the concerns of those citizens who may have incorrectly believed otherwise.

Here is a summary of how Act 425 works: The two townships would agree for a fixed time to conditionally transfer the Owners’ property from Lake Township to Chandler Township. During the conditional transfer, the Owners’ property would be part of Chandler Township for all purposes, including taxing, assessing, elections, zoning, and other ordinances. The Owners would pay Chandler Township property taxes at Chandler Township millage rates and would be subject to all Chandler Township ordinances and regulations.

One of the flexible and beneficial features of Act 425 is that it allows the two townships to equitably share the taxes and other revenues derived from the transferred properties. The amount and types of revenues that can be shared are subject to flexible negotiation between the two townships.

Another flexible benefit of Act 425 is that it allows the two townships to share the responsibility for services to the transferred properties. Services such as fire protection, gypsy moth spraying, recreation, parks, beaches, recycling, libraries, water, sewer, and other township services may be provided to the transferred territory by either one of the townships, depending on what arrangements may be most efficient, convenient, and agreeable between the townships.

A key benefit of Act 425 is that it does not require that all the transferred area be contiguous to (touching) the township to which it is transferred. And unlike annexation, it is legal under Act 425 to leave “islands” of property in Lake Township that will not be conditionally transferred. In this way, Act 425 allows those landowners who do not wish to have their properties transferred to remain in Lake Township. The Owners don’t want to force the conditional transfer on any land owners who do not want to participate in economic development. That is only fair.

The amount of time that the conditional transfer remains in effect is subject to agreement between Lake Township and Chandler Township. Under Act 425, the maximum period of a conditional transfer is 50 years, but a shorter time is also possible. We would suggest that the length of the conditional transfer, as well as the amount of shared taxes, be agreed between the two townships so that both believe they are treated equitably. There are substantial financial benefits to be derived by both townships by allowing this economic development to occur, so mutual cooperation is essential.

The Owners recognize that Lake Township and Chandler Township have not entered into an Act 425 agreement before, and of course the townships may need some assistance to draft a suitable agreement under Act 425. That is why the Owners have engaged the services of our law firm. Since the adoption of Act 425 in 1984, our law firm has represented townships in drafting dozens of Act 425 agreements across the state. The Owners understand that there are legal and transactional costs involved in negotiating and drafting an Act 425 agreement, and they are willing to bear our legal fees for developing an Act 425 agreement for the townships.

The process of adopting an Act 425 agreement works like this: First, the townships must negotiate and draft a mutually-acceptable agreement. Next, the two townships must post notices and conduct

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public hearings on the proposed conditional transfer (which may be a joint hearing between both township boards).

After the public hearing or hearings, the boards wait for 30 days to see if any citizens seek a referendum on the Act 425 transfer. A referendum election is required if a petition is submitted within 30 days of the public hearings by at least 20% of the registered electors who reside within the proposed transfer area (the area in the attached map). On the other hand, if there are no residents in the transfer area, a referendum will be held if there is a petition submitted by the owners of at least 50% of the land within the proposed transfer area.


If the 30 days pass without a sufficient referendum petition, the two townships may then sign the agreement. The Act 425 transfer becomes effective on the filing of the agreement with the County Clerk and the Secretary of State. Once filed, the Act 425 agreement controls the jurisdiction over the transferred area for the duration of the transfer.

We would be very pleased to work with Lake Township and Chandler Township to achieve a conditional transfer and an economic development project under Act 425. Please consider this proposal at your Board's next meeting and advise whether your Board is interested in pursuing this economic development opportunity under Act 425, as requested by the Owners. Once the Owners receive your consent to move forward, we would like to discuss the details of a mutually beneficial Act 425 agreement with both townships.

Thank you for your consideration.

Very truly yours,

FAHEY SCHULTZ BURZYCH RHODES PLC



William K. Fahey

WKF/rjj

Enclosures

Cc: Property Owners
Walter J. Salens

