

NOLAN LAW, LLC

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December 22, 2014

SENT VIA CERTIFIED MAIL TO:

Florence Penfold
Meade Township Clerk
4399 Barrie Rd.
Kinde, MI 48445-9731

SENT VIA FACSIMILE TO:

John Ferris, Esq.
237 E Huron Ave
Bad Axe, MI 48413

Re: Meade Township Referendum

Dear Mr. Ferris and Ms. Penfold:

I am writing in regard to the December 17, 2014 correspondence that Ms. Penfold sent to my client, Rita Parsch, purportedly finding the Referendum Petitions submitted by Ms. Parsch to be "inadequate" and refusing to submit Meade Township Resolution 2014-3, Wind Energy Overlay District to the electors for their approval or rejection.

Notably, this correspondence to Ms. Parsch contains no explanation whatsoever for the basis of Ms. Penfold's purported finding that the petitions are inadequate. It is my understanding that Ms. Parsch contacted Ms. Penfold via telephone to try to determine the basis for her finding. Ms. Penfold refused to provide an explanation, and curiously, instead instructed Mrs. Parsch to talk to the Meade Township Supervisor to identify the basis of Ms. Penfold's finding as the Meade Township Clerk.

Issuing a declaration that the petitions are "inadequate" without explanation is unlawful. Such conduct is essentially the definition of arbitrary and capricious. A Township Clerk may not simply declare petitions invalid and refuse to explain the basis of such a finding. "Because I said so" simply isn't good enough. Therefore, I respectfully request that Ms. Penfold identify the basis for her purported finding with specificity in writing.

Ohio Office

405 Madison Ave., Suite 1000
Toledo, Ohio 43604

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101 E. Adrian St.
Blissfield, MI 49228

Although Ms. Penfold has refused to explain the basis of her decision to Ms. Parsch, she apparently decided to reveal the basis of her decision to the Huron Daily Tribune. According to December 20, 2014 article appearing in the Huron Daily Tribune, Ms. Penfold indicated that the petitions were inadequate because “[i]t didn’t tell the voter exactly what they were voting for.” Furthermore, Mr. Ferris, purportedly informed the newspaper that “it did not pose a yes or no question that voters may see on the ballot.” However, as I am sure that Mr. Ferris is well aware, it is the obligation of the Township Board to create the language that will appear on the ballot, not the party circulating the petition.

It is well settled that, “the amendment of the zoning ordinance, including an amendment of the text of the ordinance and amendment of the zoning map (generally referred to as a rezoning), represents legislative action.”¹ Regardless of the label used, the altering of the Meade Township Zoning map to create a new classification of land use (Wind Energy Overlay District) constitutes an amendment of the Meade Township Zoning Ordinance and is therefore controlled by the provisions of the Michigan Zoning Enabling Act, MCL 125.3101, et seq. Pursuant to MCL § 125.3402(1), “[a]mendments or supplements to the zoning ordinance shall be adopted in the same manner as provided under this act for the adoption of the original ordinance.”

MCL § 125.3402(3)(c), which states, in pertinent part:

If a petition is filed within 30 days after publication of the ordinance, the clerk of the legislative body determines that the petition is adequate and the ordinance or part of the ordinance is approved by a majority of the registered electors residing in the zoning jurisdiction voting on the petition at the next regular election or at any special election called for that purpose. **The legislative body shall provide the manner of submitting the zoning ordinance or part of the zoning ordinance to the electors for their approval or rejection** and determining the result of the election. *(Emphasis added.)*²

Pursuant to the plain language of MCL § 125.3402(3)(c), **it is the Township Board’s obligation to create the language for the ballot, not the party submitting the petitions.** Since Mr. Ferris helped prepare the ballot language for Brookfield Township in Huron County when referendum petitions were submitted to overturn the Brookfield Township Board’s attempt to repeal their zoning ordinance, I am confident that he understands this obligation.

¹ Michigan Zoning, Planning and Land Use, Section 3.8 (ICLE 2010). See also, Sun Communities v. Leroy Twp., 241 Mich App 665, 669; 617 NW2d 42 (2000), citing Schwartz v. City of Flint, 426 Mich App 295, 307-308, 395 NW2d 678 (1986).

² See also, Soss v. Whiteford Twp., et al., Unpublished Court of Appeals, decided October 4, 2007 (Docket Nos. 278914, 278915) (“Moreover, under MCL 125.3402(3)(c), it is for the board, rather than the clerk, to formulate ballot language and ensure that it is not prejudicial to either side.”)

As is evident from the plain language of MCL 125.3402(3)(c), it is incumbent upon Ms. Penfold and the Meade Township Board to draft clear ballot language that gives the voters a “yes or no” vote. I would propose, “Shall the Meade Township Zoning Ordinance be amended as described in Meade Township Resolution 2014-3 to create a wind energy overlay district to regulate wind energy systems within Meade Township?” Again, nearly identical language has been used in other jurisdictions.

Furthermore, to the extent that Ms. Penfold has determined the petitions to be “inadequate” because she believes that the language of the petition is too confusing for the Meade Township voters, it appears that Ms. Penfold has exceeded the scope of her authority as a Township Clerk. This issue was addressed by the Michigan Court of Appeals in Soss v. Whiteford Township.³ In Soss, the Whiteford Township Clerk found the petitions to be inadequate because she believed the language of the petitions was misleading, and as a result of this misleading language, the signatures on the petitions amounted to forced signatures. This is very similar to the statement Ms. Penfold made to the Huron Daily Tribune, indicating that the language of the petition was not clear to those signing the petition. The Michigan Court of Appeals rejected this argument, noting that “in general, municipal clerks are charged only with ministerial duties and do not have the judicial authority to perform such functions as statutory construction.” The Court of Appeals then concluded:

[T]he clerk’s adequacy finding involves determining whether the petition was timely filed, whether it was signed by registered voters, whether the voters resided in the applicable jurisdiction, and whether the required number of registered voters signed the petition, which includes a determination of the number of voters who participated in the last general election in which a governor was elected ... the petition must include the basic information concerning the nature of the zoning action at issue upon which the electorate could potentially vote.⁴

Similar statements were made by the Michigan Court of Appeals in Meridian v. East Lansing wherein it was held that the language of the petitions “must be in sufficiently clear terms so that those signing the petition can be assumed to have understood to what it was they were appending their signatures.”⁵

Is it really Ms. Penfold’s position that the voters of Meade Township could not understand that signing the petition would give them a referendum election on Meade Township Resolution 2014-3 and the “Wind Energy Overlay District” approved on November 11, 2014? Considering the amount of press coverage that this issue has received, and the fact that more people than ever have attended Meade Township Board and Planning Commission meetings concerning wind energy, it is the height of absurdity to assume that the more than 140 voters of Meade Township who signed the

³ Id.

⁴ Id. (*Emphasis added.*)

⁵ Meridian v. East Lansing, 101 Mich App 805, 300 NW2d 703, 705 (1980).

petitions did not understand that signing the petitions at issue would give them a referendum election on the Wind Energy Overlay District.

Furthermore, referendum petitions concerning changes to township zoning with nearly identical language have been used in numerous places throughout Michigan. Specifically, nearly identical language was used in Riga Township, Palmyra Township, Seneca Township, and Brookfield Township (where Mr. Ferris was the Township's attorney). In fact, nearly identical language was approved for a Huron County referendum election involving the adoption of a wind energy overlay district. The only differences between those petitions and the petitions at issue were the names of the townships and the specific names of the legislation at issue. By rejecting Ms. Parsch's petitions as being too confusing, is Ms. Penfold indicating that Meade Township voters are not as intelligent as voters in other areas of Michigan, including other parts of Huron County, who apparently understood such language when signing their petitions? Surely Ms. Penfold has more respect for her constituents than that.

Michigan law clearly favors giving the citizens the right to vote on such issues. The Michigan Court of Appeals held in Meridian v. East Lansing that

all doubts as to technical deficiencies or failure to comply with the exact letter of procedural requirements are resolved in favor of permitting the people to vote and express their will on any proposal subject to election. The results of the election may be deemed to cure any procedural deficiencies resulting in placement of the question on the ballot.⁶

In the present matter, it is beyond dispute that the Notice of Intent was submitted in a timely manner, the petitions were filed in a timely manner, the petitions were signed by registered voters who reside in the jurisdiction, and the required number of signatures were submitted. In fact, over 140 signatures were submitted, when only 45 signatures were required. And the petitions clearly identify "the basic information concerning the nature of the zoning action at issue" by identifying the name of the legislation upon which they are seeking a vote - "Meade Township Resolution 2014-3, Wind Energy Overlay District, Amendment to the Meade Township Ordinance 2013-1, as approved by the Meade Township Board on November 11, 2014." And even if Ms. Penfold believed that this language was somehow confusing, the fact that only one legislative action was taken by the Meade Township Board on November 11, 2014 should make it extremely simple to identify the "nature of the zoning action at issue."

In light of the foregoing, as well as the proclamations of the Michigan Court of Appeals in Soss and Meridian, I respectfully request that Ms. Penfold reconsider her finding that the petitions submitted by Ms. Parsch were "inadequate" and instead, certify the petitions and schedule this matter for the May 2015 election. Please be advised that failure to certify these petitions and schedule the election will result in litigation being initiated against Meade Township to obtain a Writ of Mandamus. Furthermore, if

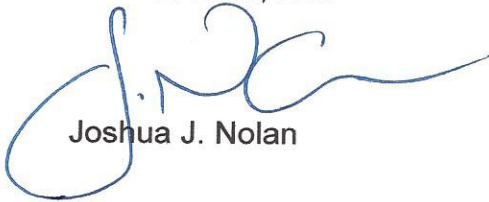
⁶ Id. (*Emphasis added*)(citations omitted).

Ms. Parsch is forced to initiate litigation, she may choose to bring claims against Meade Township for violation of the Michigan Freedom of Information Act, Michigan Open Meetings Act, as well as 42 USC § 1983. In that event, Ms. Parsch will seek to recover all actual and punitive damages due her, as well as attorney's fees incurred in prosecuting this action against Meade Township. Ms. Parsch has no desire to initiate litigation against her own township, but she will take whatever actions are required to protect the rights of Meade Township citizens to a referendum election on the Wind Energy Overlay District.

I look forward to your prompt written response.

Sincerely,

NOLAN LAW, LLC

A handwritten signature in blue ink, appearing to read "J. Nolan", with a long horizontal flourish extending to the right.

Joshua J. Nolan