

Memo

To: Township Board
From: Holly Brandt, Clerk
Date: December 19, 2018
Re: Belle Terre Litigation – Milford Hills Properties/RPL of Michigan vs. Charter Township of Milford

The Township Clerk asked the Township Attorney's office to address your inquiry regarding the *Milford Hills* litigation, so the following information was compiled for your review. We attempted to keep this summary as brief as possible, but an entire year of litigation has occurred, and we did not want to leave out any part of that process.

Two separate lawsuits were initially filed against the Township, which were both being handled by the Township's liability insurance carrier. The Township's defense of those matters was assigned to O'Connor DeGrazia Tamm & O'Connor, PC, and any litigation strategy or negotiation between the parties throughout the course of litigation has been exempt from public discussion under the Open Meetings Act.

The Township's legal counsel cannot directly provide legal advice to the residents, and any communication the Township Attorney may have with Township officials/consultants regarding litigation strategy and negotiation is also exempt from public disclosure. As such, our office suggests that interested parties, such as neighboring property owners, should consult with separate legal counsel to address any legal questions or concerns that may arise.

Having said that, the Township has been providing monthly updates to its residents regarding procedural matters and posting/sharing any documents that have been filed with the Court which constitute public records. To that end, you will find copies of each document mentioned in this communication on the Township's website.

Milford Hills Properties, Inc and RPL of Michigan, Inc. vs. Charter Township of Milford, Oakland County Circuit Court Case No. 2017-162642-CZ, filed December 18, 2017 (Hon. D. Langford Morris)

- In 2017, Plaintiffs sought to develop approximately 66 acres of land on the northwest side of North Milford Road, which was zoned Suburban Residential (R1S) and Restricted Office (RO1). Plaintiffs sought conditional rezoning for a Single Family Residential (R1) zoning classification, which was rejected by the Township.
- Plaintiffs filed a Complaint against the Township on December 18, 2017, asserting a jury demand and alleging nine different claims involving promissory estoppel, unconstitutional takings, substantive due process violations, tortious interference, fraudulent misrepresentation and innocent misrepresentation. Plaintiffs asserted damages exceeding \$91,000,000, plus an alleged \$11,000,000 per day for being unable to develop the property.
- The Township filed its Answer and 23 Affirmative Defenses on February 7, 2018, and followed up with Interrogatories and a Request to Produce Documents against the Plaintiffs on February 20, 2018. On February 24, 2018, the Court issued a Scheduling Order, requiring discovery to be complete by September 17, 2018, and setting the matter for case evaluation in October 2018. As a procedural matter, trial was set for February 25, 2019, but the litigation was still in the beginning stages at that time.

Milford Hills Properties, Inc. vs. Charter Township of Milford, Oakland County Circuit Court Case No. 2018-163137-AA, filed January 16, 2018 (Hon. Phyllis McMillen)

- After Plaintiffs’ request for conditional rezoning was denied by the Township, in order to comply with procedural requirements for stating certain constitutional claims in Michigan, Plaintiff filed an application for a use variance with the ZBA. A hearing was held with the ZBA on December 13, 2017, and the variance was unanimously rejected. Due to time limitations for filing an appeal, Plaintiff appealed the ZBA decision by filing a Claim of Appeal with the Oakland County Circuit Court. As this type of appeal was not considered a “pleading” under MCR 2.110(A), the ZBA appeal and the lawsuit challenging the denial of the rezoning request could not be joined.
- Plaintiffs filed the record on appeal with the Court, and the Township filed an Appearance on February 13, 2018.

On April 11, 2018, Judge Langford Morris entered a Stipulation Regarding Claims, in regard to Oakland County Circuit Court Case No. 2017-162642-CZ, Milford Hills Properties, Inc and RPL of Michigan, Inc. vs. Charter Township of Milford (Hon. D. Langford Morris), and, on April 12, 2018, Judge McMillen entered a Stipulated Order of Dismissal, in regard to Oakland County Circuit Court Case No. 2018-163137-AA, Milford Hills Properties, Inc. vs. Charter Township of Milford. Those two documents filed by the Court reflected the action taken by the parties, whereby they agreed to dismiss the ZBA appeal, so that all matters could be litigated in one case, that being the litigation docketed with Judge Langford Morris.

A hearing was conducted on July 25, 2018, whereby the Township’s legal counsel moved to adjourn the dates set forth in the Court’s initial Scheduling Order to allow more time for discovery. Milford Hills did not oppose the Motion and did not appear at the hearing. The

Court granted a 90-day adjournment, and set a new schedule, which included the following dates:

- Lay and Expert Witness Lists are due November 16, 2018
- Discovery Cutoff is December 17, 2018
- Case Evaluation will be conducted in January 2019
- Dispositive Motions must be filed by February 15, 2019
- Trial is set for June 17, 2019

In September 2018, Plaintiffs served the Township with its First Set of Interrogatories and Requests for Production of Documents, which sought to identify the Township's witnesses and documents concerning the operation of the Ridge Valley wastewater treatment plant. The information requested took quite a bit of time to assemble and answer, and the Township worked very closely with legal counsel in that regard.

Essentially, since the ZBA appeal was dismissed, the parties have mostly been engaged in discovery, which ended on December 17, 2018 (the parties agreed to extend expert discovery until after case evaluation). In regard to the depositions which were part of the discovery process, Township officials were allowed to be present, but such events were not considered public meetings and were not open to public discussion.

The following depositions/document production occurred this past summer:

- Raymond LeDuc (Plaintiff) - August 14, 2018
- Donald Green (Township Supervisor) – September 17, 2018
- Nicholas Lomako (Township Planning Consultant, Wade Trim) – October 3, 2018

The depositions of Plaintiff's experts, along with defense experts, were arbitrarily noticed for Monday, December 17, 2018, and included the following people:

- Robert Walworth (forensic accountant)
- John Widmer (appraiser)
- Brad Strader (land use planner)
- Frank Petrello (engineer)
- Matthew Hill (traffic expert)
- Dana Knox (wetlands and trees)
- Scott Cairns (real estate broker/sales)
- Sharon Woods (commercial marketing)
- Rick Elkow (builder/developer)
- Mike Labadie (engineer)
- Craig Fuller (marketing)
- Paul Leblanc (land use planner)
- R. Donald Wortman (land use planner)
- Lori Beatty (realtor)

- Stephen Ferns (engineer)
- Michael Darga (engineer)
- George Hubbell (engineer)
- Jonathan Booth (engineer)
- Roland Alix (engineer)
- Paul Koppana (engineer)
- Derek Stratelak (engineer)

As stated previously, the Court scheduled this matter for case evaluation on January 3, 2019, a process in which the Court requires all parties to attend in order to determine the likelihood and merit of any potential settlement. Any award granted at case evaluation would be limited in scope to addressing only claims for monetary damage, so Plaintiffs were not willing to adjourn or remove the case from case evaluation, as suggested by the Township.

Plaintiffs have also recommended facilitation following case evaluation. Facilitation is a voluntary process whereby parties are encouraged to reach a compromise or settlement. The parties are currently considering potential facilitators and whether this approach is a viable option for moving forward. As case evaluation will not resolve, or attempt to resolve, any equitable claims, if facilitation is not pursued, the parties will need to schedule expert depositions.

Trial of this matter is not scheduled until mid-June 2019, and could possibly be adjourned beyond that date, which is common in most cases, depending upon many variables. Of course, the Court could insist that its currently scheduled dates be met by the parties, but full evolution of this matter is unknown at this time.

Thank you, Jennifer Elowsky