

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOEL Q. HACK, an individual, and
WREN BEAULIEU-HACK, an individual,

Plaintiffs,

v.

Hon. Marianne O. Battani
Case No. 2:18-cv-13330-MOB-EAS
Removed from Oakland County
Circuit Court
(Case No. 18-169268-CH)

THE CHARTER TOWNSHIP OF MILFORD,
a Michigan municipal corporation, TOWNSHIP
OF MILFORD BOARD, a public body,
DONALD D. GREEN, in his personal capacity and
in his official capacity as Supervisor of Milford
Township, and TIMOTHY C. BRANDT, in his
personal capacity and in his official capacity as
Building and Zoning Administrator of Milford Township,

Defendants.

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DEFENDANTS' ANSWER TO PLAINTIFFS' VERIFIED COMPLAINT

**NOW COME Defendants THE CHARTER TOWNSHIP OF MILFORD,
TOWNSHIP OF MILFORD BOARD, DONALD D. GREEN, and TIMOTHY**

C. BRANDT by and through their attorneys, **O’CONNOR, DeGRAZIA, TAMM & O’CONNOR, P.C.**, and for their Answer to Plaintiffs’ Verified Complaint, state as follows:

PARTIES, JURISDICTION AND VENUE

1. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

2. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

3. No contest.

4. No contest.

5. No contest.

6. No contest.

7. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

8. Denied.

COMMON ALLEGATIONS

9. Defendants repeat their answers to the corresponding paragraphs of Plaintiffs' Complaint as if set forth herein in their entirety.

10. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

11. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

12. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

13. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

14. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

15. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

16. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

17. Defendants admit that in November 2017, EBI submitted an application for a building permit to the Milford Township Building Department. The remaining allegations contained in this paragraph are denied in the form and manner pled and in fact, as untrue.

18. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

19. No contest.

20. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

21. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

22. No contest.

23. No contest.

24. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

25. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

26. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

27. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

28. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

29. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

30. Defendants admit that on June 13, 2018 Building and Zoning Administrator Timothy Brandt sent a letter to EBI regarding filling and grading

activity on Plaintiffs' property, the letter of which speaks for itself. The remaining allegations contained in this paragraph are denied in the form and manner plead and in fact, as untrue.

31. Defendants neither admit nor deny the allegations alleged in this paragraph as the June 13, 2018 letter speaks for itself.

32. Defendants neither admit nor deny the allegations alleged in this paragraph as the June 13, 2018 letter speaks for itself.

33. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

34. Defendants deny the allegations contained in this paragraph as untrue.

35. Defendants admit that the Milford Ordinance Sec. 32-586 speaks for itself. The remaining allegations contained in this paragraph are denied in the form and manner plead and in fact, as untrue.

36. Defendants admit that the Milford Ordinance Sec. 32-586 speaks for itself. The remaining allegations contained in this paragraph are denied in the form and manner plead and in fact, as untrue.

37. Defendants deny the allegations contained in this paragraph as untrue.

38. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

39. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

40. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

41. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

42. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

43. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

44. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

45. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

46. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

47. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

48. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

49. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

50. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

51. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

52. Defendants neither admit nor deny the allegations contained in this paragraph for the reason that the August 24, 2018 letter speaks for itself.

53. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

54. Defendants admit that on September 19, 2018 the Charter Township of Milford Township Board held a regular scheduled Board meeting and considered a request for fill and grade permit. The remaining allegations contained in this paragraph are denied in the form and manner plead and in fact, as untrue.

55. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

56. Defendants admit that the Charter Township of Milford Township Board voted to postpone the review of Plaintiffs' fill and grade permit application until additional information was received from the Township engineer.

57. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

58. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

59. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

60. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

61. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

62. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

63. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

64. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

65. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

66. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

67. Defendants admit that HRC authored a letter to Milford Township Building and Zoning official dated October 8, 2018.

68. Defendants neither admits nor denies the allegations alleged in this paragraph as the October 8, 2018 letter speaks for itself.

69. Defendants neither admits nor denies the allegations alleged in this paragraph as the October 8, 2018 letter speaks for itself.

70. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

71. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

72. Defendants deny the allegations contained in this paragraph as untrue.

73. Defendants neither admits nor denies the allegations alleged in this paragraph as the October 8, 2018 letter speaks for itself.

74. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

75. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

76. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

77. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

78. Defendants deny the allegations contained in this paragraph as untrue.

79. Defendants deny the allegations contained in this paragraph as untrue.

80. Defendants deny the allegations contained in this paragraph as untrue.

81. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

82. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

83. Defendants deny the allegations contained in this paragraph as untrue.

COUNT I
ACTION FOR DECLARATORY RELIEF AND JUDGMENT

84. Defendants repeat their answers to the corresponding paragraphs of Plaintiffs' Complaint as if set forth herein in their entirety.

85. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

86. Defendants deny the allegations contained in this paragraph as untrue.

87. Defendants admit that their actions are lawful and that Plaintiffs maintain they are authorized to build their driveway without complying with Township Ordinances.

88. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

- a. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.
- b. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.
- c. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.
- d. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.
- e. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

89. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

90. Defendants deny that MCR 2.605(D) applies to Plaintiffs' claims currently before the United States District Court for the Eastern District of Michigan Southern Division.

91. Defendants deny the allegations contained in this paragraph as untrue.

COUNT II
INJUNCTIVE RELIEF

92. Defendants repeat their answers to the corresponding paragraphs of Plaintiffs' Complaint as if set forth herein in their entirety.

93. Defendants deny the allegations contained in this paragraph as untrue.

94. Defendants deny the allegations contained in this paragraph as untrue.

95. Defendants deny the allegations contained in this paragraph as untrue.

96. Defendants deny the allegations contained in this paragraph as untrue.

COUNT III
INVERSE CONDEMNATION

97. Defendants repeat their answers to the corresponding paragraphs of Plaintiffs' Complaint as if set forth herein in their entirety.

98. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

99. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

100. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

101. Defendants deny the allegations contained in this paragraph as untrue.

102. Defendants deny the allegations contained in this paragraph as untrue.

103. Defendants deny the allegations contained in this paragraph as untrue.

a. Defendants deny the allegations contained in this paragraph as untrue.

b. Defendants deny the allegations contained in this paragraph as untrue.

104. Defendants deny the allegations contained in this paragraph as untrue.

105. Defendants deny the allegations contained in this paragraph as untrue.

106. Defendants deny the allegations contained in this paragraph as untrue.

107. Defendants deny the allegations contained in this paragraph as untrue.

108. Defendants deny the allegations contained in this paragraph as untrue.

COUNT IV
VIOLATION OF DUE PROCESS

109. Defendants repeat their answers to the corresponding paragraphs of Plaintiffs' Complaint as if set forth herein in their entirety.

110. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

111. Defendants deny the allegations contained in this paragraph as untrue.

112. The allegations contained in this paragraph are denied in the form, in the manner pled, and in fact, as untrue.

113. Defendants deny the allegations contained in this paragraph as untrue.

114. Defendants deny the allegations contained in this paragraph as untrue.

115. Defendants deny the allegations contained in this paragraph as untrue.

116. Defendants deny the allegations contained in this paragraph as untrue.

COUNT V
VIOLATION OF 42 USC §§ 1983 AND 1988

117. Defendants repeat their answers to the corresponding paragraphs of Plaintiffs' Complaint as if set forth herein in their entirety.

118. Defendants neither admit nor deny the same for lack of information sufficient to form a belief as to the truth of the allegations and Plaintiffs are left to their proofs at trial.

119. Defendants deny the allegations contained in this paragraph as untrue.

120. Defendants deny the allegations contained in this paragraph as untrue.

- a. Defendants deny the allegations contained in this paragraph as untrue.
- b. Defendants deny the allegations contained in this paragraph as untrue.
- c. Defendants deny the allegations contained in this paragraph as untrue.
- d. Defendants deny the allegations contained in this paragraph as untrue.
- e. Defendants deny the allegations contained in this paragraph as untrue.
- f. Defendants deny the allegations contained in this paragraph as untrue.

121. Defendants deny the allegations contained in this paragraph as untrue.

122. Defendants deny the allegations contained in this paragraph as untrue.

WHEREFORE, Defendants **THE CHARTER TOWNSHIP OF MILFORD, TOWNSHIP OF MILFORD BOARD, DONALD D. GREEN,** and **TIMOTHY C. BRANDT** request this Honorable Court to enter a judgment of no cause for action together with an award of costs and attorney's fees wrongfully incurred in defending this action.

Respectfully submitted,

O'CONNOR, DEGRAZIA, TAMM & O'CONNOR, P.C.

BY: /s/ Richard V. Stokan, Jr. _____

JAMES E. TAMM (P38154)

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Attorneys for Defendants

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Dated: October 26, 2018

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JOEL Q. HACK, an individual, and
WREN BEAULIEU-HACK, an individual,

Plaintiffs,

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Hon. Marianne O. Battani
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personal capacity and in his official capacity as
Building and Zoning Administrator of Milford Township,

Defendants.

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DEFENDANTS' AFFIRMATIVE DEFENSES

**NOW COME Defendants THE CHARTER TOWNSHIP OF MILFORD,
TOWNSHIP OF MILFORD BOARD, DONALD D. GREEN, and TIMOTHY**

C. BRANDT by and through their attorneys, **O’CONNOR, DeGRAZIA, TAMM & O’CONNOR, P.C.**, and for their Affirmative Defenses, state as follows:

1. Plaintiffs have failed to state a claim upon which relief may be granted.
2. Plaintiffs have yet to obtain a final decision with regard to the application of Township ordinances to the property at issue and therefore, have failed to exhaust their administrative remedies.
3. Plaintiffs’ state law claims are barred by the Michigan Governmental Tort Liability Act, MCL 691.1401 *et seq.*
4. Plaintiffs have failed to plead facts in avoidance of governmental immunity accorded to Defendants by law.
5. Plaintiffs have failed to state a viable claim for inverse condemnation.
6. Plaintiffs’ Verified Complaint fails to state a claim for an unconstitutional taking of property because Plaintiffs cannot establish that the denial of the fill and grading permit resulted in the complete destruction of the value of Plaintiffs’ property.
7. To the extent that Plaintiffs assert that the value of the property is diminished due to the conditions on Plaintiffs obtaining a fill and grading permit, such diminution in value does not rise to the level of an unconstitutional taking of property.

8. To the extent that Plaintiffs' claim seeks damages for negligent, intentional or tortious conduct as a result of actions of the Charter Township of Milford, its agents or employees, such actions are barred by the Michigan Governmental Tort Liability Act, MCL 691.1401, *et seq.*

9. Plaintiffs were at all times accorded notice and opportunity to be heard and the action taken by Defendants does not give rise to a claim for either procedural or substantive due process.

10. Plaintiffs cannot state a claim for a violation of their substantive due process rights under Michigan law because the conditions placed on obtaining the fill and grading permit were rationally related to a legitimate governmental interest.

11. Plaintiffs' state law claims against Donald D. Green and Timothy C. Brandt are barred by Michigan Governmental Tort Liability Act, MCL 691.1401 *et seq.*

12. Defendants Donald D. Green and Timothy C. Brandt are entitled to qualified immunity.

13. Any acts or omissions of Defendants were not the proximate cause of Plaintiffs' alleged damages.

14. Plaintiffs' Complaint is barred by the doctrine of laches, waiver, release, estoppel, res judicata, and unclean hands.

15. Plaintiff have failed to mitigate their damages.

16. The damages alleged by Plaintiffs were the sole and proximate result of someone else's negligence or willful acts or the negligence or willful acts of a third party other than these Defendants.

17. Plaintiffs' damages, if any, may have been caused in whole or in part by the comparative negligence, fault or want of care of the Plaintiffs or Plaintiffs' agents for failing to use reasonable care for Plaintiffs' own interests.

18. Plaintiffs have failed to establish irreparable harm necessary to establish injunctive relief.

19. The Defendants' actions at all times were rationally related to legitimate government interests.

20. The Charter Township of Milford at all times provided Plaintiffs with notice and opportunity to be heard at public hearings, therefore, Plaintiffs were not denied procedural due process.

21. Plaintiffs cannot establish that the actions of the Defendants "shocks the conscience," therefore, Plaintiffs cannot establish a claim for a violation of its substantive due process rights. *Mettler Walloon, LLC v Melrose Township*, 281 Mich App 184, 199 (2008).

22. Plaintiffs' claim for money damages for alleged violations of the Michigan Constitution's procedural and substantive due process guarantees do not state a claim as a matter of law because there is no damage remedy provided by the

Michigan Constitution. *Jones v Powell*, 462 Mich 329, 335 (2000); *Smith v Dept. of Public Health*, 428 Mich 540 (1987).

23. Defendants reserve the right to file additional Affirmative Defenses as they may become known during the course of discovery.

Respectfully submitted,

O'CONNOR, DEGRAZIA, TAMM & O'CONNOR, P.C.

BY: /s/ Richard V. Stokan, Jr.

JAMES E. TAMM (P38154)

RICHARD V. STOKAN, JR. (61997)

Attorneys for Defendants

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Dated: October 26, 2018

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RELIANCE ON JURY DEMAND

**NOW COME Defendants THE CHARTER TOWNSHIP OF MILFORD,
TOWNSHIP OF MILFORD BOARD, DONALD D. GREEN, and TIMOTHY**

C. BRANDT by and through their attorneys, **O'CONNOR, DeGRAZIA, TAMM & O'CONNOR, P.C.**, and hereby rely upon Plaintiffs' Jury Demand.

Respectfully submitted,

O'CONNOR, DEGRAZIA, TAMM & O'CONNOR, P.C.

BY: /s/ Richard V. Stokan, Jr.

JAMES E. TAMM (P38154)

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Dated: October 26, 2018

PROOF OF SERVICE

Cheryl A. Pinter states that on October 26, 2018, on behalf of Defendants, she served *Defendants' Answer to Plaintiffs' Verified Complaint, Defendants' Affirmative Defenses, Reliance on Jury Demand and this Proof of Service* upon counsel of record via e-filing with the United States District Court e-filing system which will serve parties at their respective e-mail addresses of record.

/s/ Cheryl A. Pinter

capinter@odtlegal.com