

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

MILFORD HILLS PROPERTIES, INC., a Michigan Corporation, 1042 North Milford Road, Ste. 103, Milford, MI 48381; and RPL of MICHIGAN, INC., a Michigan Corporation, 1042 North Milford Road, Ste. 103, Milford, MI 48381,

Plaintiffs,

vs.

Hon. D. Langford Morris
Case No.: 2017-162642-CZ

CHARTER TOWNSHIP OF MILFORD,
a Michigan charter township,

Defendant.

LAW OFFICE OF PAUL E. BURNS
Paul E. Burns (P31596)
Bradford L. Maynes (P68319)
Attorneys for Plaintiffs
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Bloomfield Hills, MI 48304
(248) 433-2000

NOTICE OF HEARING

PLEASE TAKE NOTICE that Defendant's Second Motion to Adjourn Scheduling Order Dates to Allow for Facilitation shall be brought on for hearing before the Hon. D. Langford Morris in her courtroom on Wednesday, March 6, 2019, at 8:30 a.m. or as soon thereafter as counsel may be heard.

FILED Received for Filing Oakland County Clerk 2/27/2019 4:22 PM

Respectfully submitted,

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

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

JAMES E. TAMM (P38154)

RICHARD V. STOKAN, JR. (P61997)

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DATED: February 27, 2019

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**DEFENDANT'S SECOND MOTION TO
ADJOURN SCHEDULING ORDER DATES TO ALLOW FOR FACILITATION**

NOW COMES the Defendant, **CHARTER TOWNSHIP OF MILFORD**, by and through its attorneys, **O'CONNOR, DeGRAZIA, TAMM & O'CONNOR, P.C.**, and for its Second Motion for Adjournment of Scheduling Order Dates to Allow for Facilitation, states as follows:

FEE

1. This case arises out of a denial of a zoning request which would allow the construction of a greater number of homes on the subject property than permitted by the current zoning designation.

2. Plaintiffs additionally claim that an agreement surrounding the use of excess capacity of a waste water treatment plant built for an earlier development was premised on Plaintiffs' ability to build on the subject property.

3. Plaintiffs' Complaint was filed on December 14, 2017.

4. In addition to the Complaint, Plaintiffs filed a Claim of Appeal seeking to challenge the Zoning Board of Appeals' denial of the rezoning request (Case No. 2018-163137-AA) before the Hon. Phyllis C. McMillan. The parties subsequently stipulated to the dismissal of the appeal to allow the parties to concentrate on the present Complaint.

5. Following the first motion to adjourn scheduling order dates, a Calendar Conference Order was issued on July 26, 2018 (**Exhibit A**), with the following dates:

- a. Dispositive Motions Filed By: 02/15/2019
- b. Final Pretrial Order Filed By: 06/03/2019
- c. Trial 06/17/2019

6. The parties have agreed to facilitation with facilitator Allan Greene, Esq. and have scheduled facilitation for April 18, 2019.

7. The parties believe that facilitation is the best opportunity for the parties to reach a resolution.

8. In order to comply with the Court's Scheduling Order, Defendant filed a Motion for Summary Disposition on the date of the filing deadline.

9. The Court has issued a summary disposition scheduling order dated February 22, 2019. Pursuant to the scheduling order, Plaintiffs' response to the motion for summary disposition is due April 24, 2019, with Defendant's optional reply due May 8, 2019. The motion is set for hearing on May 15, 2019.

10. Although the parties have completed fact discovery, in an effort to reach a resolution, the parties agreed to complete facilitation prior to taking the depositions of expert witnesses.

11. Defendant believes it is in the best interests of the parties to allow for facilitation before completing expert witness depositions and holding a hearing on Defendant's Motion for Summary Disposition.

12. Allowing the parties to complete facilitation before addressing Defendant's Motion for Summary Disposition will allow the parties to focus on reaching a mutual resolution at facilitation.

13. In the event that facilitation is unsuccessful, the parties will require additional time to complete expert witness depositions and to finalize expert reports to assist the Court in deciding Defendant's Motion for Summary Disposition.

14. In addition to expert witness depositions, trial counsel for the Defendant has a pre-paid, pre-planned vacation scheduled for May 28, 2019 to the week of June 3, 2019, and a trial in the matter of *Susan Silver, P/R/E of Alan Silver v William Beaumont Hospital, et al*, Case No. 2017-159518-NH, scheduled to begin on June 17, 2019, before the Hon. Jeffery S. Matis.

15. A 90-day adjournment of the trial date will permit the parties to complete facilitation and, if necessary, complete expert witness discovery.

16. MCR 2.503(D)(1) allows the Court, “in its discretion” to “grant an adjournment to promote the cause of justice.”

17. There has been one prior adjournment of the Scheduling Order in this matter.

18. Concurrence from Plaintiffs’ counsel has been sought in this Motion and concurrence has been denied.

WHEREFORE, Defendant, **CHARTER TOWNSHIP OF MILFORD**, respectfully requests this Honorable Court grant its Second Motion to Adjourn Scheduling Order Dates to Allow for Facilitation, and adjourn the dispositive motion cut-off, final pre-trial and trial dates for a period of 90 days.

Respectfully submitted,

O’CONNOR, DeGRAZIA, TAMM & O’CONNOR, P.C.

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

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DATED: February 27, 2019

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vs.

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BRIEF IN SUPPORT OF
DEFENDANT'S SECOND MOTION FOR ADJOURNMENT OF
SCHEDULING ORDER DATES TO ALLOW FOR FACILITATION

In support of Defendant's Second Motion for Adjournment of Scheduling Order Dates to Allow for Facilitation, Defendant relies upon the facts and authorities referenced therein, and in particular, MCR 2.503(D)(1) "in its discretion the Court may grant an adjournment to promote

the cause of justice,” as well as this Honorable Court’s ability and authority to control its docket in order to insure the fair administration of justice.

WHEREFORE, Defendant, **CHARTER TOWNSHIP OF MILFORD**, respectfully requests this Honorable Court grant its Second Motion to Adjourn Scheduling Order Dates to Allow for Facilitation, and adjourn the dispositive motion cut-off, final pre-trial and trial dates for a period of 90 days.

Respectfully submitted,

O’CONNOR, DeGRAZIA, TAMM & O’CONNOR, P.C.

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

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DATED: February 27, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2019, I electronically filed the foregoing paper(s) with the Clerk of the Court using the MiFile system which will send notification of such filing to the following: ***Bradford Maynes and Frederick Lucas*** and I hereby certify that I have mailed by United States Postal Service the Paper(s) to the following non-MiFile participants: None.

/s/ Cheryl A. Pinter (capinter@odtlegal.com)
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EXHIBIT A

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

Milford Hills Properties et al
Plaintiff

Case No 17-162642-CZ

vs
Charter Township of Milford
Defendant.

HON. DENISE LANGFORD MORRIS

CALENDAR CONFERENCE ORDER

This matter having come before the Court for a scheduling extension and the parties, through their respective counsel, having been present and heard, and the Court being fully advised in the premises:

IT IS HEREBY ORDERED that the within cause shall be set for case evaluation in the month of January 2019
Case Management will supply (Case Evaluation date 30 days prior to Case Evaluation)

IT IS FURTHER ORDERED that all pretrial motions and motions in limine, together with all supporting documents shall be filed and heard by 5/15/19 x
Otherwise, such motions will be deemed waived absent further order of the Court

IT IS FURTHER ORDERED that dispositive motions with all supporting documents shall be filed by 2-15-19
Otherwise, such motions will be deemed waived absent further order of the Court

IT IS FURTHER ORDERED that Plaintiff will identify lay and expert witnesses by 11-16-18

IT IS FURTHER ORDERED that Defendant will identify lay and expert witnesses by 11-16-18

IT IS FURTHER ORDERED that Discovery will be completed by 12-17-18
Any discovery issue regarding electronically stored information is governed by MCR 2.401(B)(2)(c) and must be brought to the Court's attention no later than 90 days before the close of discovery, otherwise those discovery issues will be deemed waived

IT IS FURTHER ORDERED that the Final Pretrial Order will be filed on 6/3/19, two weeks X prior to trial.

IT IS FURTHER ORDERED that the within cause of action shall be set for trial on 6/17/19 x

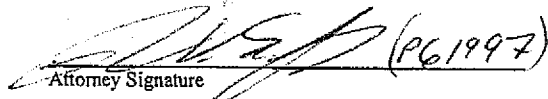
IT IS FURTHER ORDERED that all proposed voir dire questions, jury instructions and verdict form(s) must be submitted no later than 8:30 A.M., one week prior to trial and must be submitted in the following form:

- (a) Each page must be clearly numbered, (b) Each page must clearly set forth the element or evidentiary issue, to which the proposed instruction relates, (c) Only one instruction per page and, (d) Each instruction must be followed by a complete citation of authority. Parties must comply with MCR 2.513(A) and (N) when preparing jury instructions. Parties must supply 10 copies of jury instructions for all jurors and the Court

IT IS FURTHER ORDERED pursuant to MCR 2.506(A)(4)(f), the parties and the representative(s) of the insurance carriers for the parties with authority to settle must be present at trial

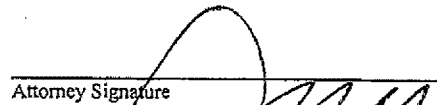
IT IS FURTHER ORDERED that the appearance of counsel upon a pleading shall be deemed to be the appearance of every other member of his/her law firm. Such appearance shall require the presence of either the attorney who files the pleadings or a member of his/her law firm at pretrial, case evaluation, or trial. **ADJOURNMENTS OF CASE EVALUATION OR TRIAL SHALL BE HEARD BY MOTION ONLY AND ONLY IF GOOD CAUSE IS SHOWN.**

THE FOREGOING CONSTITUTES A DULY ENTERED ORDER OF THE COURT AND FAILURE TO COMPLY STRICTLY WITH ALL OF ITS TERMS WILL RESULT IN DISMISSAL, DEFAULT JUDGMENT, OR OTHER ACTION, INCLUDING THE ASSESSMENT OF COSTS, EXPENSES, AND/OR ATTORNEY FEES.

 (P61997)
Attorney Signature

Attorney Signature

Attorney Signature


Attorney Signature

DENISE LANGFORD MORRIS
CIRCUIT COURT JUDGE

PK

FILED Received for Filing Oakland County Clerk 7/26/2018 10:30 AM