

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,

Defendants.

LAW OFFICE OF PAUL E. BURNS
Paul E. Burns (P31596)
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**DEFENDANT CHARTER TOWNSHIP OF MILFORD'S
ANSWER TO PLAINTIFFS' VERIFIED COMPLAINT FOR MONETARY DAMAGES**

Defendant, Charter Township of Milford, by and through its attorneys, O'Connor, DeGrazia, Tamm & O'Connor, P.C., in answer to Plaintiffs' Complaint, states as follows:

COMMON ALLEGATIONS

1. Defendant neither admits nor denies 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. Defendant neither admits nor denies 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. Defendant neither admits nor denies 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.

4. No contest.

5. Defendant neither admits nor denies 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.

6. Defendant neither admits nor denies 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.

7. Defendant neither admits nor denies 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. Defendant neither admits nor denies 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.

9. Defendant neither admits nor denies 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.

10. Defendant neither admits nor denies 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. Defendant neither admits nor denies 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. Defendant neither admits nor denies 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. Defendant neither admits nor denies 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. Defendant neither admits nor denies 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. Defendant neither admits nor denies 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. Defendant neither admits nor denies 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. Defendant neither admits nor denies 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.

18. Defendant neither admits nor denies 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. Defendant neither admits nor denies 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.

20. Defendant neither admits nor denies 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. Defendant neither admits nor denies 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. Defendant neither admits nor denies 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.

23. Defendant neither admits nor denies 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.

24. Defendant neither admits nor denies 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. Defendant neither admits nor denies 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. Defendant neither admits nor denies 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.

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

28. It is admitted that the property at issue is currently zoned RO-1, Restricted Office, and R-1-S, Suburban Residential. The remaining allegations contained in this paragraph are denied in the form, manner pled, and in fact as untrue.

29. Defendant denies the allegations contained in this paragraph as untrue.

30. No contest.

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

32. No contest.

33. No contest.

34. Admitted.

35. No contest.

36. Defendant neither admits nor denies 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.

37. Defendant neither admits nor denies 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.

38. Defendant neither admits nor denies 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.

39. Defendant neither admits nor denies 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 deny the allegations contained in this paragraph as untrue.

41. Defendant neither admits nor denies 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. Defendant neither admits nor denies 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.

43. No contest.

44. No contest.

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

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

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

48. Defendant admits that a meeting was held by the Milford Planning Commission on August 31, 2017, during which the request for conditional rezoning was considered. The remaining of the allegations contained in this paragraph are denied in the form, manner pled, and in fact as untrue.

- 49. Admitted.
- 50. Defendant denies the allegations contained in this paragraph as untrue.
- 51. No contest.
- 52. Admitted.
- 53. Defendant denies the allegations contained in this paragraph as untrue.
- 54. Defendant denies the allegations contained in this paragraph as untrue.
- 55. Defendant denies the allegations contained in this paragraph as untrue.
- 56. Defendant denies the allegations contained in this paragraph as untrue.

COUNT I
BREACH OF CONTRACT

57. Defendant Charter Township of Milford repeats its answers to the corresponding paragraphs of Plaintiffs' Complaint as if set forth herein in their entirety.

58. No contest.

59. Defendant neither admits nor denies 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. Defendant denies the allegations contained in this paragraph as untrue.

61. Defendant denies the allegations contained in this paragraph as untrue.

WHEREFORE, Defendant Charter Township of Milford requests 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.

COUNT II
PROMISSORY ESTOPPEL

62. Defendant Charter Township of Milford repeats its answers to the corresponding paragraphs of Plaintiffs' Complaint as if set forth herein in their entirety.

- 63. Defendant denies the allegations contained in this paragraph as untrue.
- 64. Defendant denies the allegations contained in this paragraph as untrue.
- 65. Defendant denies the allegations contained in this paragraph as untrue.
- 66. Defendant denies the allegations contained in this paragraph as untrue.
- 67. Defendant denies the allegations contained in this paragraph as untrue.
- 68. Defendant denies the allegations contained in this paragraph as untrue.
- 69. Defendant denies the allegations contained in this paragraph as untrue.

WHEREFORE, Defendant Charter Township of Milford requests 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.

COUNT III
TAKING WITHOUT JUST COMPENSATION – THE PLANT

70. Defendant Charter Township of Milford repeats its answers to the corresponding paragraphs of Plaintiffs’ Complaint as if set forth herein in their entirety.

- 71. Defendant denies the allegations contained in this paragraph as untrue.
- 72. Defendant denies the allegations contained in this paragraph as untrue.
- 73. Defendant denies the allegations contained in this paragraph as untrue.
- 74. Defendant denies the allegations contained in this paragraph as untrue.

WHEREFORE, Defendant Charter Township of Milford requests 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.

COUNT IV
DENIAL OF SUBSTANTIVE DUE PROCESS – THE PLANT

75. Defendant Charter Township of Milford repeats its answers to the corresponding paragraphs of Plaintiffs' Complaint as if set forth herein in their entirety.

76. Defendant denies the allegations contained in this paragraph as untrue.

77. Defendant denies the allegations contained in this paragraph as untrue.

78. Defendant denies the allegations contained in this paragraph as untrue.

79. Defendant denies the allegations contained in this paragraph as untrue.

80. Defendant denies the allegations contained in this paragraph as untrue.

81. Defendant denies the allegations contained in this paragraph as untrue.

82. Defendant denies the allegations contained in this paragraph as untrue.

83. Defendant denies the allegations contained in this paragraph as untrue.

WHEREFORE, Defendant Charter Township of Milford requests 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.

COUNT V
TAKING WITHOUT JUST COMPENSATION – THE PROPERTY

84. Defendant Charter Township of Milford repeats its answers to the corresponding paragraphs of Plaintiffs' Complaint as if set forth herein in their entirety.

85. Defendant denies the allegations contained in this paragraph as untrue.

86. Defendant denies the allegations contained in this paragraph as untrue.

87. Defendant denies the allegations contained in this paragraph as untrue.

88. Defendant denies the allegations contained in this paragraph as untrue.

WHEREFORE, Defendant Charter Township of Milford requests 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.

COUNT VI
DENIAL OF SUBSTANTIVE DUE PROCESS – THE PROPERTY

89. Defendant Charter Township of Milford repeats its answers to the corresponding paragraphs of Plaintiffs' Complaint as if set forth herein in their entirety.

90. Defendant denies the allegations contained in this paragraph as untrue.

91. Defendant denies the allegations contained in this paragraph as untrue.

92. Defendant denies the allegations contained in this paragraph as untrue.

93. Defendant denies the allegations contained in this paragraph as untrue.

94. Defendant denies the allegations contained in this paragraph as untrue.

95. Defendant denies the allegations contained in this paragraph as untrue.

96. Defendant denies the allegations contained in this paragraph as untrue.

97. Defendant denies the allegations contained in this paragraph as untrue.

WHEREFORE, Defendant Charter Township of Milford requests 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.

COUNT VII
TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGES

98. Defendant Charter Township of Milford repeats its answers to the corresponding paragraphs of Plaintiffs' Complaint as if set forth herein in their entirety.

99. Defendant neither admits nor denies 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. Defendant denies the allegations contained in this paragraph as untrue.
- 101. Defendant denies the allegations contained in this paragraph as untrue.
- 102. Defendant denies the allegations contained in this paragraph as untrue.
- 103. Defendant denies the allegations contained in this paragraph as untrue.
- 104. Defendant denies the allegations contained in this paragraph as untrue.
- 105. Defendant denies the allegations contained in this paragraph as untrue.

WHEREFORE, Defendant Charter Township of Milford requests 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.

COUNT VIII
FRAUDULENT MISREPRESENTATION

106. Defendant Charter Township of Milford repeats its answers to the corresponding paragraphs of Plaintiffs’ Complaint as if set forth herein in their entirety.

- 107. Defendant denies the allegations contained in this paragraph as untrue.
- 108. Defendant denies the allegations contained in this paragraph as untrue.
- 109. Defendant denies the allegations contained in this paragraph as untrue.
- 110. Defendant denies the allegations contained in this paragraph as untrue.

WHEREFORE, Defendant Charter Township of Milford requests 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.

COUNT IX
INNOCENT MISREPRESENTATION

111. Defendant Charter Township of Milford repeats its answers to the corresponding paragraphs of Plaintiffs’ Complaint as if set forth herein in their entirety.

112. Defendant denies the allegations contained in this paragraph as untrue.

113. Defendant denies the allegations contained in this paragraph as untrue.

114. Defendant denies the allegations contained in this paragraph as untrue.

115. Defendant denies the allegations contained in this paragraph as untrue.

WHEREFORE, Defendant Charter Township of Milford requests 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.

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

By: /S/ James E. Tamm

JAMES E. TAMM (P38154)
Attorney for Defendant Milford Township
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DATED: February 7, 2018

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DEFENDANT CHARTER TOWNSHIP OF MILFORD'S AFFIRMATIVE DEFENSES

Defendant, Charter Township of Milford, by and through its attorneys, O'Connor, DeGrazia, Tamm & O'Connor, P.C., for its Affirmative Defenses, states 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 the Milford Township Zoning Ordinance to the property at issue; therefore, they have failed to exhaust their administrative remedies.

3. Plaintiffs have yet to obtain a final decision regarding the application of the Zoning Ordinance to the property; therefore, this claim is not ripe for judicial review.

4. Plaintiff RPL of Michigan, Inc., lacks standing to assert any claims regarding the denial of a rezoning request because Defendant is informed and believes that RPL of Michigan, Inc. has no interest in the property at issue.

5. To the extent that Plaintiff Milford Hills Properties, Inc., acquired development rights over portions of the nine parcels over which its sought conditional rezoning, Plaintiffs lack standing to assert claims for a taking of property in violation of the Michigan Constitution.

6. Plaintiff Milford Hills Properties, Inc. lacks an ownership interest in property sufficient to assert a property interest for the purpose of a substantive due process or unconstitutional taking of property.

7. Plaintiffs' Complaint is defective because all parties necessary to render relief have not been added as parties as required by MCR 2.205(A).

8. Plaintiff RPL of Michigan, Inc., lacks a sufficient property interest to state a claim for an unconstitutional taking of property under Michigan law.

9. Plaintiff Milford Hills Properties, Inc., lacks a sufficient ownership interest in the property at issue to assert a claim for an unconstitutional taking of land under Michigan law.

10. Plaintiff RPL of Michigan, Inc., has waived and relinquished any claim for damages against the Charter Township of Milford pursuant to the Agreement to Assume Responsibility for Operation of Community Sewer System executed by Plaintiff RPL of

Michigan, Inc., Bridge Valley of Milford Master Association, and Charter Township of Milford dated June 5, 2003.

11. Plaintiffs' claims for fraudulent misrepresentation and innocent misrepresentation are barred by the Michigan Governmental Tort Liability Act, MCL 691.1401 *et seq.*

12. Plaintiffs have failed to plead facts in avoidance of governmental immunity accorded to Defendant by law.

13. Plaintiff Milford Hills Properties, Inc., cannot state a viable claim for an unconstitutional taking of property because the land at issue has significant value as presently zoned.

14. Plaintiffs' Complaint for tortious interference with perspective economic advantages is barred by the Michigan Governmental Tort Liability Act, MCL 691.1401 *et seq.*

15. Plaintiffs' Complaint fails to state a claim for an unconstitutional taking of property because Plaintiffs cannot establish that the denial of the rezoning request resulted in a complete destruction of the value of Plaintiffs' property.

16. To the extent that Plaintiffs assert that the value of property is diminished due to the denial of the rezoning request, such diminution in value does not rise to the level of an unconstitutional taking of property.

17. 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.*

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

19. Plaintiff RPL of Michigan, Inc., lacks standing to assert a claim for substantive due process.

20. Plaintiff RPL of Michigan, Inc., cannot state a claim for taking without just compensation of the sewer treatment plant because the plant continues to have value and serve other property owners to the benefit of RPL of Michigan, Inc.

21. Any and all claims by Plaintiff RPL of Michigan, Inc., asserting either a taking of property or a denial of substantive due process are barred by the applicable statute of limitations and/or the doctrine of laches.

22. Plaintiffs cannot state a claim for a violation of their right to substantive due process under Michigan law because the denial of Plaintiff Milford Hills Properties, Inc.'s request for conditional rezoning was rationally related to a legitimate governmental interest.

23. Defendant Charter Township of Milford reserves the right to file additional Affirmative Defenses as they may become known during the course of discovery.

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

By: /S/ James E. Tamm
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DATED: February 7, 2018

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**DEFENDANT CHARTER TOWNSHIP OF MILFORD'S
RELiance ON JURY DEMAND**

Defendant, Charter Township of Milford, by and through its attorneys, O'Connor, DeGrazia, Tamm & O'Connor, P.C., relies on Plaintiffs' Jury Demand.

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

By: /S/ James E. Tamm

JAMES E. TAMM (P38154)
Attorney for Defendant Milford Township
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jetamm@odtlegal.com

DATED: February 7, 2018

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 2018, I electronically filed the foregoing paper(s) with the Clerk of the Court using the TrueFiling 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-TrueFiling participants: None.

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