**UNITED STATES DISTRICT COURT**
**EASTERN DISTRICT OF MICHIGAN**
**SOUTHERN DIVISION**

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

Plaintiffs,

v

Case No.: 2:18-cv-13330
Hon. Marianne O. Battani

**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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## JOINT REPORT OF PARTIES' RULE 26(F) CONFERENCE

Pursuant to Fed. R. Civ. P. 26(f), a telephonic conference was held on November 19, 2018, and was participated in by:

R.J. Cronkhite for Plaintiffs
James Tamm and Richard Stokan, for Defendants

The parties submit this Joint Report as required pursuant to Fed. R. Civ. P. 26(f).

(1) Parties' views of the dispute.

a. Plaintiffs' view of the dispute.

Plaintiffs Joel Q. Hack and Wren Beaulieu-Hack are a Jewish couple who purchased a vacant lot in the Charter Township of Milford ("Milford"), built a

home there, and recently moved in. Plaintiffs want to build a driveway on their land so that their home is connected to the abutting County road and so that Plaintiffs can traverse the 380 feet of mud and water separating their home from the roads. Plaintiffs principally ask this Court to declare Plaintiffs within their right to construct the driveway pursuant to their validly issued building permit, and enjoin Defendants' further interference.

On November 13, 2017, Milford's Building Department approved Plaintiffs' building plans, which included construction of a driveway, and issued a building permit. Plaintiffs built the home at great cost and then proceeded to build the driveway consistent with the building plans and building permit.

Plaintiffs' neighbor—a long-time resident who is friends with Milford's Supervisor, Defendant Donald Green—contacted Milford and complained about Plaintiffs' construction, inaccurately claiming it caused flooding. Supervisor Green became personally involved in the driveway project and, seven months after issuance of the building permit, Milford's Building Administrator suddenly informed Plaintiffs that they would need to obtain an acceptable topographical survey and grading plan, as well as approval from the Milford Board (on which Supervisor Green sits) to construct a driveway.

Milford contradicted its own building permit and had no authority to impose these extra requirements, but Plaintiffs nonetheless cooperated and obtained the

requested survey and plan. The survey and plan confirmed that the neighbor's land sat higher than Plaintiffs' land, rendering neighbor's claims about alleged flooding impossible; water does not travel uphill. Accordingly, on August 24, 2018, Milford's own engineer and Building Department approved the plan. But Milford's Board refused to vote on the plan; instead, Milford's Board "postponed" a decision, and Supervisor Green privately directed Milford's engineer to "re-review" the engineer's previous recommendation, which led to yet more unauthorized requirements, including obtaining engineering plans, a survey of the area's entire tributary system, detailed water flow and volume calculations, and installation of an unspecified drainage system.

Milford's ordinances clearly set forth the building permit process, which Plaintiffs followed and which resulted in a building permit authorizing a driveway. Milford's ordinances do not authorize Milford's Board or Supervisor to later intervene and impose extrajudicial permits, surveys, and the like. Presently, Plaintiffs and vehicles, including emergency vehicles, do not have effective egress and ingress from their property based on mud and water that separates Plaintiffs' home from the road.

Milford's unlawful actions are not only depriving Plaintiffs effective egress and ingress to their home, they are also imposing safety risks—without authority and under the false, disproven pretext of flooding. Defendants' stated motivations

are unsupported by law or fact, are pretextual and arbitrary in nature, and bear the hallmarks of discriminatory animus.

b. Defendants' view of the dispute.

Plaintiffs purchased a vacant 3.15-acre parcel of land located in Milford Township and submitted an application for a building permit to install a 2,116-foot premanufactured home on a new basement with a new garage. The application did not include plans to bring fill material onto the property or identify elevation of the property. A permit was issued on November 13, 2017 which noted that it was for only the work described and "does not grant permission for additional or related work which requires separate permits". After the structure was moved onto the property the Township received notice that Plaintiffs were bringing fill material on site in order to construct the driveway which is located in a low-lying area that Plaintiffs conceded is covered by water approximately 90% of the year. On June 13, 2018, Township Building Administrator Timothy Brandt issued a cease and desist letter to Plaintiffs' builder indicating that a permit was required to place any additional fill on the property pursuant to Section 32-583 of the Township's Zoning Ordinance. The letter included a standard Township form for an application for permit to dredge and/or fill which requires a property owner to submit an application along with plans showing the proposed area where fill was to

be placed, the existing and proposed final elevations, location of existing drainage course and the boundaries of wetlands.

A topographical/grading survey was submitted by Plaintiffs' engineering consultant on August 14, 2018. The Township's engineering consultant, Hubbell, Roth & Clark (HRC), reviewed the proposed grading plan and issued a letter on August 24, 2018 indicating that it did not object to the grading plan based on the assumption that the existing contours on the plan were from the predevelopment of the property and accurately reflected the predevelopment conditions. The fill permit was discussed at the September 19, 2018 Township Board meeting at which time the neighboring property owner made a presentation regarding how the addition of fill dirt on Plaintiffs' land would detrimentally impact his property. As a result the decision on the permit was postponed to allow the Township's engineers to review the concerns raised by the neighboring property owner.

On October 8, 2018, the Township's engineers at HRC issued a letter regarding the re-review of the fill and grade plans noting that the grading plans submitted with Plaintiffs' initial application appeared to have presented different pre-development conditions than the original elevation of the property. HRC engineers thus recommended approving the fill and grade permit with conditions that: (1) the applicants submit a drainage area map showing the entire tributary area to 2610 Pearson Road, determine the retention volume created a 10-year

storm, and calculate the pre-construction area of the low spot that contained this volume; (2) the applicant improve the proposed swales, according to Township standards, to divert water from behind the home to the low area; and (3) the plans include calculations to verify that any proposed culvert is properly sized to facilitate drainage to the low point west of the driveway. On October 17, 2018, Plaintiff filed the present action prior to the Township Board's regularly scheduled meeting that evening. At the meeting the Township Board approved the fill and grading permit with the conditions listed in the October 8, 2018 letter from HRC.

It is the Defendants' position that Township officials were at all times following lawfully enacted ordinances and acting within the scope of their authority without animus toward the Plaintiffs. It is also the Defendants' position that this action is premature as the Plaintiffs' have not exhausted their administrative remedies and that the lawsuit was filed the day of the Township Board meeting in an attempt to influence the Board's decision.

(2) Initial Disclosures required by Fed. R. Civ. P. 26(a)(1).

The parties have stipulated that they will exchange their initial disclosures no later than **December 3, 2018**. The parties are required to supplement their initial disclosures consistent with the Federal Rules of Civil Procedure.

(3) Discovery Plan. The parties jointly propose to the Court the following discovery plan in conformance with Fed. R. Civ. P. 26(f)(3):

(a) Discovery will be needed on the following subjects:

All matters relating to the allegations contained in Plaintiffs' Complaint as, well as the Defendant's answer and affirmative defenses, including, without limitation, the determinations made by HRC and Defendants regarding review and approval of Plaintiffs' building site plan; Defendants review and approval of other building site plans; communications between Defendants regarding Plaintiffs' proposed, driveway, building site plan, other proposed plans; communications between Defendants and third parties regarding Plaintiffs' proposed driveway, building site plan, other proposed plans; Plaintiffs' damages, including emotional distress and mental suffering.

(b) The Federal Rules of Civil Procedure shall govern the parties' interrogatories, requests for admission by each party to any other party, requests for production of documents, and depositions, including amount, service, and time to respond.

(c) The parties agree to abide by Fed. R. Civ. P. 26(b)(5)(B), Fed. R. Evid. 502, and/or the terms of any agreed-upon protective order with respect to the production of privileged material. A qualified protective order is necessary in this matter due to discovery of Plaintiffs' confidential information, including, but not limited to, information regarding or concerning Plaintiffs' medical records. The parties agree to confer to attempt to draft a mutually-acceptable stipulated qualified protective order. In the event that the parties are unable to agree as to the need for or scope of such protective order, the party seeking a qualified protective order will file an appropriate motion with the Court.

(4) Other Agreed Upon Items.

(a) This matter will be tried by jury. The trial is expected to take approximately 3–4 days.

(b) The parties agree to file witness lists on or before **February 1, 2019**.

(c) The parties will cooperate to admit appropriate facts and stipulate to the authenticity of documents.

(d) Based on information known at the time of this Report, the parties anticipate at minimum the following depositions: Donald Green, William Mazzara, Timothy Brandt, David Mamo, Valerie Mamo, Michael Darga, and Roland of HRC. Neither anticipates deposing more than ten (10) witnesses, nor any deposition to last longer than seven (7) hours. The parties reserve the right to depose additional witnesses as discovery continues.

(e) The parties anticipate retaining experts and preparing expert reports on the issue of non-economic damages. The parties shall identify experts and exchange reports pursuant to this Court's orders and the Federal Rules of Civil Procedure.

(f) The parties agree to take steps to preserve all relevant or potentially relevant information, including emails and text messages.

(5) Matters not agreed upon or insufficiently addressed by the foregoing.

(a) Plaintiffs propose that all discovery be completed by **April 1, 2019**. Defendants propose **June 1, 2019**.

(b) Plaintiffs propose that all potentially dispositive motions must be filed by **May 1, 2019**. Defendants proposed **July 1, 2019**.

(c) Defendants have requested a qualified protective order to allow ex-parte meetings with Plaintiffs' treating physicians based on claims of emotional distress and mental suffering. Defendants claim that Defendants' proposed Qualified Protective Order contains standard language routinely approved by state and federal courts in the state of Michigan and would provide Defense counsel the same rights to meet with witnesses as Plaintiffs' counsel. Plaintiffs have proposed a Stipulated Protective Order in the form recommend by the Hon. Robert H. Cleland, available on the Court's website and agreed to provide medical releases as part of discovery. It is Plaintiffs' position that discovery is intended to share information, not to ihide it, and that defense counsel should not be permitted to conduct ex-parte meetings with medical witnesses when all parties may

attend depositions of the medical providers and review documents produced by the medical providers. Defendants intend to file a motion to obtain a qualified protective order to allow for ex-parte meetings with treating physicians.

(d) Plaintiffs have filed an Emergency Motion to Remand Counts I, II, III and IV. Defendants oppose the motion and will file a response within the time permitted by the Court.

Respectfully submitted,

FOR PLAINTIFFS

/s/ R.J. Cronkhite
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Dated: December 11, 2018

FOR DEFENDANTS

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Dated: December 11, 2018

**CERTIFICATE OF SERVICE**

I hereby certify that on **December 11, 2018**, I electronically filed the above document(s) with the Clerk of the Court using the electronic filing system, which will automatically send notice of such filing to counsel of record.

/s/ R.J. Cronkhite
R.J. Cronkhite (P78374)