UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF MICHIGAN

BAGGS PARTNERS, LLC a Michigan domestic corporation

Plaintiff,

V

Case No: 26-1432-CV
Honorable:

WHITEWATER TOWNSHIP,

Defendant.

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COMPLAINT

NOW COMES the Plaintiff, Baggs Partners, LLC, by and through their attorney, Michael Herring, Herring Law, PLLC and for their Complaint against Defendant, WHITEWATER TOWNSHIP, state as follows:

On May 3rd, 2023, the Whitewater Township Board made an administrative decision to deem the Plaintiffs property unbuildable. Defendant's action violated Plaintiffs Constitutional Rights.

INTRODUCTION

1. The Property at issue was previously part of a 125-acre parcel owned by Morrison Orchards, LLC. In 2020, the Whitewater Township Treasurer, Zoning Administrator and Assessor approved[1] a land division splitting the parent parcel under their Ordinance to create the Property. The property is approximately 30 acres in size.
2. The subject parcel was the first parcel created from the original Land Division. The land division was approved by the Township on May 5, 2020. The split was approved under the Township Ordinance[2] and the Michigan Land Division Act.
3. Under the Michigan Land Division Act, MCL 560.109(b)(5), "the depth to width ratio (4:1) requirements of this subdivision do not apply to a parcel larger than 10 acres."
4. Under the Michigan Land Division Act, MCL 560.109(1), The assessor or other municipally designated official, or the county official, having authority to approve or disapprove a proposed division.
5. As for the Township Ordinance, "the Governing Body or other board or person designated by the Governing Body may approve the land division that creates a resulting parcel with a depth to width ratio greater than four to one if applicant demonstrates that there are exceptional

[1] Exhibit A (Morrison Orchard, LLC Land Division Application- approved)
[2] Exhibit B (Township of Whitewater, County of Grand Traverse – State of Michigan Ordinance 26)

topographic or physical conditions with respect to the parcel and the greater ratio would be reasonably compatible with the surrounding lands.[3]"

6. The Zoning Administrator's May 2020 report explicitly justified the land division, and the parcel (Parcel #28-13-136-001-02) was created due to exceptional topographic or physical conditions, intentionally separating the forested, less suitable southwestern portion from the agriculturally viable northern property. Supporting evidence includes EGLE reports, soil reports, and County Road Commission reports. The greater ratio preserved access to the forested rear area of the parcel, preventing creation of a small landlocked parcel.
7. Once the Split was approved, the Township Ordinance allows, "any person or entity aggrieved by the decision of the Assessor and Zoning Administrator or designee(s) may within 30 days of said decision appeal the decision to the Governing Body or person designated by the Governing Body which shall consider and resolve such appeal by a majority vote of said board or by the designee at its next regular meeting or session affording sufficient time for a 20 day written notice to the applicant (and appellant where other than the applicant) of the time and date of said meeting appellant hearing.[4]"
8. While defending a ZBA Variance on the property in the Circuit Cout of Michigan, Circuit Court Judge Charles M. Hamlyn[5], asked, "The Court: The only one (question) I had was so the Township does contend that the split in 2020 was proper then?"
9. The Defendant's Attorney Matthew Kuschel Responded, "Kuschel: So I believe it was proper when made, and I don't contest that that changed, but if I'm in 2021 and I say, hey, this is a valid parcel, well, I look at the decision form and the Zoning Administrator signed off on it,

[3] Exhibit B (page 4)
[4] Exhibit B (page 3-4)
[5] Exhibit C (Transcript, Keep White Water Township Rural, INC., A Michigan Domestic Corporation and Vickie Beam, an individual. V. Whitewater Township, Case No. 2023-036775-AS, Page 15, Line 4-15)

and he believed there was authority for him to do that, ultimately that was determined—he was determined to be incorrect. But at the time, the only evidence we have is a signed division. So, yes."

10. The reason for the question by Judge Hamlyn comes just prior, when talking about the split, Kuschel said, "Kuschel: Now, I don't dispute that that's the ultimate finding of the Township Board and that the Township Board did make the ruling, but at the time the decision was made from 2020 up through and until that decision by the Township Board, (refereeing to the May 3, 2023 decision) there is nothing in the record, nothing for the property or the Township itself to say, oh, that's wrong and was void from the very beginning. There is no indication of that. Instead, we have an approved Land Division application which is relied upon by the parties, and the Township, again which is why we see the property on the tax rolls for two years because that division was brought forward and it was approved.[6]"
11. After the property was split, the new parcel was sold in May of 2020 to John and Janice Debono. They lived in a travel trailer for months with well, septic, and power. A building permit was issued on October 1, 2020 to the Debonos to build a single-family home. An onsite waste and water inspection report was completed on October 30, 2020. For unknown reasons the Debono's chose to sell the property instead of building their home.
12. No complaints were received from the Defendant or neighbors in the two years of said property's existence.
13. The Debono's sold the property in January 2022 to the Plaintiff individually. The property was quitclaimed on or about February 2, 2022, to Baggs Partners, LLC.
14. The formation of Baggs Partners, LLC was to develop the land.

[6] Exhibit C (page 12 Line 20-25, and Page 13 Line 1-8)

PLAINTIFF'S ACTIONS PREPARING FOR LAND DEVELOPMENT

15. On February 4, 2022, Plaintiff' builder, Gary Van Solkema (father of one of the Plaintiffs) and plan engineer Doug Mansfield, attended the Planning Commission meeting to present a preliminary Site Condominium plan.
16. The Zoning Administrator, attending via Zoom due to illness and without notes, raised a potential depth-to-width ratio issue but suggested it was not significant. The following day, after reviewing the file, the Zoning Administrator confirmed the parcel's proper creation and issued a correction to the Township Board and Planning Commission.
17. In March of 2022, a Preliminary Site Plan Review was submitted to the Zoning Administrator along with consultation fees. The consulting fee is paid to the Township to help cover costs for reviewing the site plan and help resolve any issues that may arise. A portion of the fee goes to the Township Attorneys for their help in the review.
18. In the March 2, 2022 Planning Commission, the Zoning Administrator noted that site condominiums are permitted in all zoning districts as basic property rights.
19. The Michigan Condominium Act explicitly states that a condominium project "shall not be prohibited nor treated differently by any law, regulation, or local ordinance" due to its form of ownership (MCL 559.141(2)).
20. The Site Plan Review Standards (MCL 125.3501) govern site plan reviews, which apply to condominium projects when required by local ordinance. Section 125.3501(5) mandates that if a site plan (including for a site condominium) complies with the zoning ordinance and other applicable laws, the planning commission or designated body shall approve it.

21. On January 12, 2023, Plaintiff attended a special meeting addressing the August 29, 2022 Hymore Compliant[7]. The only information given to Plaintiff about the complaint was published on the Township Website.
22. From January to February 23, 2023, Plaintiff collaborated with the Zoning Administrator to address all deficiencies in the site plan review. The Zoning Administrator sent the proposed Site Condominium Master Deed to the Township Attorney for review in early March 2023. The attorney identified deficiencies, which were forwarded to Plaintiff, who promptly corrected them and resubmitted the revised Master Deed. The Township Attorney confirmed no further concerns with the Master Deed.
23. Plaintiff then waited for the Final Site Plan to be submitted to the Planning Committee.
24. Plaintiff was never allowed to submit the Final Site Plan; the Property was deemed unbuildable by the Whitewater Township Board on May 3, 2023.

DEFENDANT'S ACTIONS TO STOP THE LAND DEVELOPMENT

25. Plaintiff only received any information included as exhibits through a FOIA request in August 2023, after the decision.
26. In March of 2022, days after the proposed site plan was submitted to Whitewater Township, the NIMBY Neighbors became active.
27. Township Supervisor Ron Popp was communicating with the neighbors about the property. A March 3, 2022 email[8] talks about "Pigs on Baggs Road" and how the project will likely be allowed.

[7] Exhibit D (Hymore Complaint)
[8] Exhibit E (Ron Pop Email)

28. March 9, 2022, Ron Popp emails Vickie Beam[9], (Beam is the owner of property to the north) the Township Zoning Administrator, Bob Hall, and the Township Assessor, Dawn Kuhns about the property. The email is Popp explaining to Beam that the Condo Project will be allowed.
29. By April 11, 2022, Popp again emails Beam about the project, this time there is talk about placing a site-plan moratorium and "avoiding what appears to be pending litigation on the matter."
30. In July of 2022, the Defendant placed a 6-month Moratorium on all Site Plan Reviews, the purpose was to review the ordinance and the nature of the division.
31. Michigan case law indicates, for condominiums, local governments cannot impose moratoriums, revoke approvals, or apply standards in a way that singles out condominium projects without a legitimate, documented zoning purpose (e.g., public health, safety, or welfare). *Raab v. City of East Lansing, 104 Mich. App. 593 (1981)*
32. On August 29, 2022, the Defendant received a complaint from two members of the public alleging that the land division resulting in the Property was improper (the "Hymore Complaint").
33. The Hymore Complaint alleged that the split was unlawful for failure to conform to the depth-to-width ratio requirement under the Ordinance, and that the Property was unbuildable because of the violation.
34. It should be noted, August 29, 2022 is well past the 30 allowed for an appeal of the land division from May of 2020.

[9] Exhibit F (Ron Popp Email)

35. Per the Whitewater Township, Code Enforcement Policy and Procedures Manual[10], an investigation should be made into a possible code violation under section IX. If no violation occurred, the case should be closed. If a complaint is valid;

    If possible, contact and discuss with the property owner, occupant or other responsible person:

    a. The nature of the violation(s);
    b. Methods for complying;
    c. Timelines for compliance;
    d. Enforcement procedures; and
    e. Potential consequences for failure to comply.[11]

36. The Defendant made no effort to work with Plaintiff to resolve the complaint prior to the decision.

37. In the November 7, 2022 Investigation and Report on Written Complaint of General Ordinance No. 26 Violation[12] performed by Ron Popp ("Popp Report" hereinafter). On page 4, Popp interviewed Bob Hall, the Zoning Administrator. When Hall approved the original split for Morrison Orchards, Hall noted "practical difficulty was based on the soil map he created and provided in Exhibit 11 Page 23."

38. It should be noted; Plaintiff has not received Exhibit 11 through the FOIA request.

39. The Popp Report then goes on to say, "Based on location of the wet area depicted by the soils map of the proposed parcel "A" and parcel "B" the split needed to be granted as proposed. I see no support for this claim."

40. On page 5 of the Popp Report, Popp questions "is it legal to take development rights."

[10] Exhibit G (Whitewater Township, Code Enforcement Policy and Procedures Manual)
[11] Exhibit G (Whitewater Township, Code Enforcement Policy and Procedures Manual, Section IX Investigation(2)(c))
[12] Exhibit H (Investigation and Report on Written Complaint of General Ordinance No. 26 Violation)

41. In November 2022, most likely after the Popp Report, Bob Hall submitted his Whitewater Township November 2022 Report. In the report, Hall indicates to the board the investigation of the Hymore Compliant should not be handled by the board. Stating, "Zoning Ordinances have clearly enumerated appeal procedures. Zoning Ordinance appeals cannot be decided by the legislative body of a municipality[13]."

42. The Board did not stop. On Dec 15, 2022, an email between Ron Popp and Heidi Vollmuth[14], is redacted so it is unclear what was discussed. But the same day an email with the forward (Attorney-Client Privileged) was set with the same redactions[15]. No attorneys were included in the emails.

43. On January 12, 2023 a special meeting was held on the Hymore Complaint. In the meeting, Ron Popp and Township Clerk, Cheryl Goss, acknowledged that General Ordinance 26 permits deviations from the 4:1 depth-to-width ratio. Goss strongly opposed declaring the parcel unbuildable. She noted the Hymore's had received a survey of all divisions/parcels before purchasing their parcel and raised no issues until Plaintiff proposed a Site Condominium. The Board recognized potential significant damages to Plaintiff if the parcel were deemed unbuildable. Board Member Heidi Vollmuth sought attorney guidance on whether to declare the parcel unbuildable.

44. In an email on January 13, 2023, Township Supervisor, Ron Popp asked the Township Attorney, Chris Patterson, to "Please supply court cases where a Township has deemed property unbuildable.[16]"

[13] Exhibit I (Whitewater Township November 2022 Report)
[14] Exhibit J (Email Ron Popp and Heidi Vollmuth, redacted)
[15] Exhibit H (Email, FWD: Hymore)
[16] Exhibit I (Ron Popp email to board including Attorney)

45. More redacted emails followed, on February 16, 2023 and May 2, 2023. No attorneys were included on those emails.[17]

46. On March 14, 2023, the Township Board went into closed a "Closed Session" to review legal opinion regarding Hymore Complaint.

47. In March 2023, the Zoning Administrator sought attorney guidance on proceeding with the site plan review and public hearing, given an unresolved opinion on the land division that created the subject parcel and pending Township Board action, as well as clarification on the Board's required process (legislative vs. administrative). The Zoning Administrator was advised not to proceed with the site plan review or public hearing until the Township Board resolved the land division issue[18].

48. In an April 3, 2023 email[19], Heidi Vollmuth speaking to another Board member, Don Glenn, questions the attorney's opinion and the Zoning Administrator, stating, "I don't see a solution or an answer coming from our attorneys…"

49. On April 8, 2023 Township Treasurer, Ardella Benak, sent an email to all the Board members.[20]

50. The email was redacted when delivered to the Plaintiff through a FOIA request. The email notes, "all you have to do is look at Skegemog Point Road North to see over a hundred splits that are nowhere near the 4 -1 ratio requirements." She then questions, "Legal Non-Conforming properties?"

[17] Exhibit J (redacted emails)
[18] Exhibit K (Staff Report by Bob Hall, Page 2)
[19] Exhibit L (Email Vollmuth to Glenn)
[20] Exhibit M (Ardella Benek email, redacted)

51. In the same email, Ardella Benak says, "I agree with Matthew Kuschel's (Township Attorney) recommendation…(redactions)… the right option is to uphold the decision made by our Zoning Administrator and Assessor Dawn Kuhns."

52. On May 1, 2023, notice of the special meeting was published.[21]

53. The topic of the meeting was the Hymore Complaint.

54. On May 2, 2023, Plaintiff emailed Whitewater Township Clerk, Cheryl Goss[22], to inquire whether the Township Board, at its May 3, 2023, Special Meeting, would determine if their development could advance to the Planning Commission for review.

55. At the May 3, 2023, meeting[23], Heidi Vollmuth, Don Glenn, and Ron Popp, a majority of the board voted to deem the property unbuildable. Together, the Township Board made the following findings of fact:

    1. Request for variance is nonexistent.
    2. Parcel B could have been divided in a manner to make it comply with the ordinance, moving the north line.
    3. No record of topographical or environmental adverse circumstances.
    4. The ordinance is a local law, flawed or unflawed.
    5. Following township ordinance is important to the greater good.

56. With the 3-1 decision, the Defendant voted to find the Property non-compliant with Section 7(d) of the Land Division Ordinance and found that it "is not eligible for any building permits or zoning approvals such as special land use approval or site plan approval."

WHITEWATER TOWNSHIP ORDINACNE

57. The Whitewater Township ordinance was adopted on May 20, 1997 and amended in February 2011[24].

[21] Exhibit N (Revised May 1, 2023 Agenda for Special Meeting)
[22] Exhibit O (Plaintiff Email to Goss)
[23] Exhibit P (May 3 Meeting Minutes)
[24] Exhibit B

58. Section 7(d) of the Land Division Ordinance is as follows: "The ratio of depth to width of any parcel created by the division does not exceed a four to one ratio exclusive of access roads, easements, or non-buildable parcels created under Section IX of this Ordinance and parcels added to contiguous parcels that result in all involved parcels complying with said ratio. The Governing Body or other board or person designated by the Governing Body may approve a land division that creates a resulting parcel with a depth to width ratio greater than four to one if the applicant demonstrates that there are exceptional topographic or physical conditions with respect to the parcel and that the greater ratio would be reasonably compatible with the surrounding lands. The permissible depth of a parcel created by a land division shall be measured within the boundaries of each parcel from the abutting road right of way to the most remote boundary line point of the parcel from the point of commencement of the measurement. The permissible minimum lot (parcel) width shall be defined in the Whitewater Township Zoning Ordinance"

59. Section X of the Land Division Ordinance is as follows: "Any parcel created in non-compliance with this Ordinance shall not be eligible for any building permits, or zoning approvals, such as special land use approval or site plan approval, and shall not be recognized as a separate parcel on the assessment roll."

PLAINTIFF'S ATTEMPT TO FIX THE DEFENDANT'S DECISION.

60. On June 19, 2023, with no direct avenue to appeal the Defendant's May 3, 2023 unbuildable decision, Plaintiff filed a variance request with the Defendant seeking a variance from the 4:1 ratio requirement in Section 7(d). The variance request states:

> We are appealing the May 3, 2023 administrative decision of the Whitewater Township Board that declared parcel 28-13-136-001-02 was non-compliant with the Whitewater Township general ordinance #26 Amendment 3, effective

> 3/19/2011, specifically; section 7(d) and is not eligible for any building permits or zoning approvals such as special land use approvals or site plan approvals and reconsider, reinstate and uphold the original land division approval of zoning administrator #2 seek a variance from the 4:1 depth to width ratio stated in section 7.D of the Ordinance No. 26 [Land Division Ordinance].

61. At its June 20, 2023, meeting, the Defendant further considered the variance request and next steps available under the Ordinance. The Township passed a motion to "accept the applicant's request to pursue a variance before the ZBA and direct the ZA [Zoning Administrator] to accept the application and send all relevant information to the ZBA for hearing the application."
62. On June 29, 2023, Zoning Administrator, Robert Hall and Township Attorneys emailed Plaintiff, stating that the ZBA "will not entertain an appeal of the Board's decision as requested on the application." This explicitly gives this case Ripeness with no avenue to appeal the Board's decision.
63. Plaintiff was granted a variance from the ZBA in August of 2025. The ZBA decision was remanded back to the ZBA by the Appellate Court for clarification.
64. The Variance request was removed. The parcel is compliant and conforms to "the strict letter" of the Ordinance and has no need under Section VIII to "vary or modify" the parcel configuration.

RIPENESS OF CLAIM

65. The Court held that the taking of property without just compensation creates an actionable takings claim, and thus a property owner may proceed directly to Federal Court under 42 U.S.C. § 1983 action. *Knick v. Township of Scott*, 139 S. Ct. 2162 (2019) d. at 2167–68. Further in *Williamson County Regional Planning Comm'n v. Hamilton Bank (473 U.S. 172 (1985))* as modified by Knick, ripeness is met because the Defendant's decision was final.
66. As stated above, the Board's decision is final.

67. The Defendant's decision was based on the Hymore Complaint. No plans were submitted by Plaintiff to the Board for review.

JURISDICTION AND VENUE

68. This action arises under the United States Constitution and 42 U.S.C. § 1983.

69. The Court has subject-matter jurisdiction under 28 U.S.C. §§ 1331 and 1343.

70. This Court has supplemental jurisdiction over the state law claims under 28 U.S.C. § 1367.

71. This Court has the authority to grant declaratory relief under 28 U.S.C. §§ 2201 and 2202.

72. Venue is proper in this Court under 28 U.S.C. § 1391(b) because (i) Whitewater Township is located in Grand Traverse County which is in this judicial district, and (ii) the events or omissions giving rise to Plaintiffs' claims occurred in this judicial district.

73. Plaintiffs' claim for attorneys' fees and costs is authorized by 42 U.S.C. § 1988.

SOME OF THE HARM EXPERIENCED BY PLAINTIFF

74. Defendant's conduct beginning in February 2022 interrupted and ultimately halted Plaintiff's planned 20-unit condominium development at an advanced stage of the Township's review process. Prior to Defendant's determination that the Property was "unbuildable," Plaintiff had submitted its Preliminary Site Plan and was proceeding through the Township's established approval framework. Plaintiff had completed engineering work, incurred substantial reliance costs, and was advancing toward Planning Commission review under the governing ordinance. As a direct and proximate result of Defendant's actions, the project was stalled and rendered unviable by October 2025 due to substantially higher interest rates, borrowing costs, construction costs, subcontractor costs, and adverse market conditions in Whitewater Township. These changing conditions compounded the harm caused by Defendant's initial interference and eliminated Plaintiff's ability to proceed with the development as planned.

75. Defendant's action was immediate and dispositive. By declaring the Property unbuildable, Defendant foreclosed Plaintiff's ability to proceed with site plan review and prevented consideration by the Planning Commission. No intervening change in law, fact, or site conditions justified this reversal. Instead, Defendant's decision terminated an active and ongoing development process based on findings that are internally inconsistent, contradicted by the administrative record, and irreconcilable with Defendant's own prior representations. The Defendant's decision to make the property unbuildable precludes it from any economically viable use permitted under the Zoning Ordinance, effectively depriving the Property of its practical value and preventing Plaintiff from realizing its highest and best use as a 20-unit residential development. Having property declared unbuildable essentially removes all value from the Property.
76. In reasonable reliance on the Property's lawful status and its progression through the Township's approval process, Plaintiff incurred substantial, unrecoverable expenditures including property taxes paid by Plaintiff leading up to the taking in the amount of $13,608.48; engineering costs and preliminary site plan expenses totaling $21,901.25; and the Defendant's $2,500 fee for preliminary site plan review.
77. Infrastructure cost, purchase price, survey and site work totaled $712,540 or $35,627 per lot. Based on contemporaneous market data and comparable properties, individual lots were reasonably projected to list at $150,000 per lot reflecting the Property's value as a buildable residential development in Plaintiff pro forma. The expected profit of $2,287,460 on land in the development or $114,373 per lot.
78. At the time Defendant halted the project, Plaintiff's development was not conceptual but actively progressing through the Township's approval process in conformity with applicable

standards. Plaintiff would build homes as the general contractor. Based on then-existing market conditions, comparable developments, and Plaintiff's construction model, homes were reasonably projected to list at $2,100,000 per home with anticipated margins of 30 percent. The Plaintiff's expected profit of $12,600,000 from the home builds in this development or $630,000 per home.

79. The economic benefits associated with the development including both land value and vertical construction returns were not speculative in concept but were contingent on Plaintiff's continued ability to proceed through the Township's approval process. Defendant's actions directly interrupted that process and prevented Plaintiff from realizing those benefits. As a direct and proximate result of Defendant's unconstitutional actions, Plaintiff has suffered substantial economic harm, including unrecoverable expenditures, the loss of the Property's economically viable use, and the loss of reasonably anticipated development returns.

80. The total harm from the Defendant's unconstitutional action totals $14,887,460.

COUNT I

FIFTH AMENDMENT (42 U.S.C. § 1983)

81. Plaintiff incorporates and realleges the preceding paragraphs as if fully restated herein.

82. Fifth Amendment to the U.S. Constitution, ratified in 1791 as part of the Bill of Rights protects individuals from government overreach in legal proceedings. It guarantees rights to a grand jury for capital crimes, protects against double jeopardy and self-incrimination, ensures due process, and requires just compensation for taken property.

83. Whitewater Township is acting under color of law to deprive Plaintiffs of their constitutional rights, in violation of 42 U.S.C. § 1983.

84. Defendant abused its power in an affirmative action aimed at the property. Determining that the prior approved split was no longer valid, Defendant abused its authority deeming the property unbuildable.

85. The parcel was created in compliance in 2020. Any issue with the property split should have been addressed at the time of the split.

86. There is a process for appealing an error under the Land Division Ordinance; however, it has a very specific timeline and framework.

87. The plaintiff relied on the split properly granted by Whitewater Township.

88. The Defendant through its action, took Plaintiff property.

89. The Defendant's actions caused the decline in the value of the property of approximately 80 percent or more.

90. The only cause of the diminished property value is the Defendant's actions.

91. Plaintiffs have suffered damages due to the Defendant's unconstitutional decision.

92. WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

(a) Enter a judgment declaring that, on its face and as applied, the Whitewater Township Ordinances violate the United States Constitution;

(c) Award Plaintiffs monetary damages in an amount to be proven at trial;

(d) Award Plaintiffs their reasonable costs, including attorneys' fees, incurred in bringing this action pursuant to 42 U.S.C. § 1988; and

(e) Grant such other and further relief as this Court deems just and proper.

COUNT II

FOURTEETH AMENDMENT
(Regulatory Taking)

93. Plaintiff incorporates and realleges the preceding paragraphs as if fully restated herein.

94. Defendant's regulation has gone too far. Based on *Penn Central Transp Co. v. New York City, 438, US (1978)* and the three factors balancing test, the Defendants have stated no reason or justification for the strict regulation.

95. The strict application of the 4:1 depth to width ratio the Defendant is mandating is without reason.

96. The regulation does not attempt to achieve an important and widely applicable public good. The Defendant, in its finding of fact stated, "Following township ordinance is important to the greater good." But did not attempt to articulate what the greater good was.

97. The strict application of the regulation has not been enacted in good faith. Through a number of emails, reports, and cobbled together information, it is clear the goal of the strict application of the Ordinance is only to prevent the Plaintiff from developing the land.

98. The result of the strict application of the 4:1 depth to width ratio in the ordinance materially diminished the value of the property.

99. The regulation is targeted to only Plaintiff's property.

100. The Plaintiff's investment backed expectation have been destroyed with the property unbuildable.

101. A clear reading of the ordinance does not indicate any authority granted to the Defendant allowing a properly spilt parcel to be deemed unbuildable.

102. WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

(a) Enter a judgment declaring that, on its face and as applied, the Whitewater Township Ordinances violate the United States Constitution;

(c) Award Plaintiffs monetary damages in an amount to be proven at trial;

(d) Award Plaintiffs their reasonable costs, including attorneys' fees, incurred in bringing this action pursuant to 42 U.S.C. § 1988; and

(e) Grant such other and further relief as this Court deems just and proper.

COUNT III

FOURTEETH AMENDMENT
(Procedural Due Process)

103. Plaintiff incorporates and realleges the preceding paragraphs as if fully restated herein.

104. Plaintiff has a property interest in the approved split. Plaintiff relied on the split as does every other property owner in the state.

105. The Defendant failed to give adequate notice to the Plaintiffs before taking official action. The notice on May 1, 2023[25] is the only notice given. Two days' notice is not sufficient notice according to the Ordinance which allow for 20 days, written notice.

106. Given the nature of Defendant's anticipated actions against the Plaintiffs property, a general notice is not sufficient notice. The Defendant had been delaying the Plaintiff's project from moving forward for almost a year. In that time, no attempt was made by Defendant to fix the issue.

107. Adhering to Ordinance guidelines or the Township Policy and Procedure Manual could have prevented Defendant from trampling on the Plaintiff's constitutional rights.

108. Plaintiff's name or the property in question were not even the topic of the meeting. The agenda was dealing with the Hymore Complaint, a complaint 10 months old.

109. Defendant had contact with Plaintiff on May 2, 2023.

110. The Defendant failed to disclose to Plaintiff that the result of the meeting could be deeming the parcel unbuildable.

[25] Exhibit N (Revised May 1, 2023 Agenda for Special Meeting)

111. Plaintiff's only opportunity to speak was at two public comment times. The times were allotted, one time before the decision and one time after.

112. Even more egregious, the meeting and the decision are based largely on confidential Memos from the Defendant's attorneys. The hearing was adversarial to the Plaintiff as the Defendant was engaging attorneys to accomplish the goal of deeming the property unbuildable. Plaintiff was never told to seek counsel.

113. The Plaintiff is forced to defend itself against a fictious problem without all of the information. The nature and gravity of the meeting was never conveyed to Plaintiff.

114. As this case involves a condemnation of property, there was a high need for due process. The risk of erroneous deprivation is far too high.

115. WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

(a) Enter a judgment declaring that, on its face and as applied, the Whitewater Township Ordinances violate the United States Constitution;

(c) Award Plaintiffs monetary damages in an amount to be proven at trial;

(d) Award Plaintiffs their reasonable costs, including attorneys' fees, incurred in bringing this action pursuant to 42 U.S.C. § 1988; and

(e) Grant such other and further relief as this Court deems just and proper.

COUNT IV

FOURTEETH AMENDMENT
(Substantive Due Process)

116. Plaintiff incorporates and realleges the preceding paragraphs as if fully restated herein.

117. Plaintiff has a constitutionally protected property interest. Under *Andreano v City of Westlake, 136 Fed Appx 865, 875 (6th Cir June 23, 2005) (unpublished)*, Plaintiff had a

justifiable expectation in avoiding a condemnation action. The split was approved by the Township and relied upon by multiple purchasers.

118. Plaintiff's property interest was deprived through the township board's administrative decision. According to *Pearson v. Grand Blanc, 961 F2d 1211 (6th Cir 1992)* Defendant's decision is arbitrary and capricious.

119. "Arbitrary" is defined as decisions, actions, or rules based on personal whim, random choice, or impulse rather than reason, logic, or a set system.

120. "Capricious" is defined a person or thing that is impulsive, unpredictable, and subject to sudden, unaccountable changes in mood or behavior.

121. As set out above, a mountain of evidence indicates that the property was split correctly and in accordance with the Ordinance. The are a number of communications between the members of the board showing they knew deeming the property unbuildable was the wrong decision to make. Piecing together the messaging from the attorneys, the board was advised, "the right option is to uphold the decision made by our Zoning Administrator and Assessor Dawn Kuhns."[26]

122. The only real way to explain the decision, the goal was to stop the proposed Site Condominium project.

123. Each one of Defendant's findings of fact demands scrutiny and they are directly contradicted by Defendant's own representation in separate Circuit Court litigation, revealing a material and outcome-driven inconsistency in position:

[26] Exhibit M (Ardella Benek email, redacted)
28 Exhibit Q (Defendant Circuit Court Brief Keep Whitewater Township Rural, Inc., and Vicki Beam v Whitewater Township

a. "Request for variance is nonexistent." This assertion cannot be reconciled with Defendant's prior statements to the Circuit Court. In that proceeding, Defendant expressly acknowledged that the subject parcel was lawfully created in 2020, has remained on the assessment roll since its creation and was purchased by Plaintiff in 2022 as a valid, buildable parcel. Defendant further represented that Plaintiff was a good-faith purchaser who reasonably relied on the parcel's legal status and the expectation of development, emphasizing that the parcel "existed without incident for two years" and that a subsequent purchaser "cannot reasonably be expected to anticipate [it] cannot apply for zoning approval or building permits." Defendant also affirmatively state that a compliant parcel "has no need to vary or modify the parcel configuration," and described the parcel as harmonious and consistent with surrounding properties in both shape and configuration. These admissions are incompatible with Defendant's present claim that a variance request was "nonexistent." If the parcel was, as Defendant previously argued, lawful, compliant, and required no modification, then no variance was necessary at the time of Plaintiff's application. The only plausible basis for a variance arises from Defendant's subsequent and contradictory position. Not from any change in the property itself. This unexplained reversal is not a minor inconsistency. It reflects a post hoc justification imposed only after Plaintiff sought to exercise established property rights.

b. "Parcel B could have been divided in a manner to make it comply with the ordinance, moving the north line." This finding improperly relies on hypothetical actions that were neither available to Plaintiff nor relevant at the time of its application. While the

original parent parcel, previously owned by Morrison Orchards may have been capable of being configured differently at the time of its division, that circumstance has no bearing on Plaintiff's rights as a subsequent purchaser. Plaintiff did not create the land division at issue and has no legal or practical ability to retroactively alter historical boundary decisions. The subject parcel has since been conveyed multiple times and its boundaries are fixed as a matter of record. Any suggestion that Plaintiff could "move the north line" ignores the legal reality that such a change would require the acquisition of additional property interests from neighboring landowners. An action entirely outside Plaintiff's control and not required by the ordinance. Defendant's reliance on a hypothetical, pre-division alternative amounts to an impermissible retroactive standard, effectively conditioning the Plaintiff's property rights on the actions that could only have been taken by a prior owner years earlier. This is not a valid factual finding, but a post hoc rationalization that imposes an impossible condition on Plaintiff's use of its property.

c. "No record of topographical or environmental adverse circumstances." This is false. The Zoning Administrator's report clearly states that there are topographical or environmental adverse circumstances in his report. The Defendant had the report. The Whitewater Township November 2022 Report references the topographical issues. The Defendant, in its Circuit Court Brief admits the record contains evidence of topographical and physical conditions which completely contradicts the Defendant's own Findings of Fact.

d. "The ordinance is a local law, flawed or unflawed." This finding of fact is not a finding at all. It is a vague and conclusory statement that provides no discernible

factual determination, legal standard, or analytical basis for Defendant's decision. The statement does not identify what provision of the ordinance is at issue, whether the ordinance was applied, misapplied, or disregarded, or how it relates to Plaintiff's application. As such, it is incapable of meaningful review and offers no explanation for the outcome reached by Defendant. A municipal body must articulate a rational connection between the facts found and the decision made. Here, Defendant's use of an indeterminate and self-canceling phrase "flawed or unflawed" fails to establish any finding upon which its determination could reasonably rest. This absence of reasoned decision-making further demonstrates that Defendant's action was not grounded in objective standards or the evidentiary record but instead reflects arbitrary and capricious conduct. When a governmental body deprives a property owner of established rights without articulating any coherent basis for its decision, it acts without a legitimate governmental purpose.

e. "Following township ordinance is important to the greater good." This statement is not a factual finding, but a generalized and conclusory assertion that fails to identify any specific governmental interest or explain how Defendant's decision advances that interest. Simply invoking the "greater good" does not relieve Defendant of its obligation to articulate a legitimate, concrete public purpose supported by the record. Defendant does not identify what aspect of the ordinance is implicated, how it applies to Plaintiff's property, or why denial of Plaintiff's application serves any defined public health, safety or welfare objective. Absent such an explanation, this statement provides no rational basis for the decision rendered.

124. There is no rational basis for the Defendant's decision. As demonstrated above, the Defendant's findings of fact are internally inconsistent, contradicted by the administrative record, and irreconcilable with Defendant's own representations in related litigation. Rather than applying the ordinance to the facts in a consistent and reasoned manner, Defendant relied on unsupported assertions, post hoc justifications, and standards that are either undefined or impossible for Plaintiff to satisfy. The result is a decision untethered to any legitimate governmental purpose and unsupported by competent, material, and substantial evidence. Defendant's actions reflect a selective and outcome-driven characterization of the evidence. Defendant's actions effectively deprive Plaintiff of the reasonable use of a lawfully created parcel, despite Plaintiff's status as a good-faith purchaser who relied on the parcel's established legal status, particularly where, as here, the deprivation arises without notice and from a reversal of the government's own prior position. Defendant acknowledged that the subject parcel was lawfully created and existed without issue, their decision renders the parcel unbuildable without explanation.

125. Moreover, Defendant's position undermines the fundamental reliance interests that underlie land use regulation. If such reversals are permitted without notice or articulated standards, property owners and subsequent purchasers cannot reasonably rely on duly approved land divisions or the consistent application of zoning ordinances. The failure to identify a legitimate governmental purpose, combined with the Defendant's contradictory and unsupported findings, demonstrates that the decision was not the product of reasoned judgement, but of arbitrary and capricious action. When a governmental entity imposes shifting and irreconcilable standards, disregards the record, and deprives a property owner the established rights without a rational basis or fair notice, it exceeds the bounds of lawful regulation and rises to the level of conduct that shocks the conscience.

126. WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

(a) Enter a judgment declaring that, on its face and as applied, the Whitewater Township Ordinances violate the United States Constitution;

(c) Award Plaintiffs monetary damages in an amount to be proven at trial;

(d) Award Plaintiffs their reasonable costs, including attorneys' fees, incurred in bringing this action pursuant to 42 U.S.C. § 1988; and

(e) Grant such other and further relief as this Court deems just and proper.

COUNT V

EQUAL PROTECTION FOURTEENTH AMENDMENT

127. Plaintiff incorporates and realleges the preceding paragraphs as if fully restated herein.

128. The Equal Protection Clause of the 14th Amendment, ratified in 1868, prohibits states from denying any person within their jurisdiction the "equal protection of the laws". It mandates that state governments treat similarly situated individuals equally and prevents discriminatory laws.

129. As stated before, there is no rational basis for the Defendants decision is given. By stating "Following township ordinance is important to the greater good." in no way explains what "greater good" is being protected.

130. Plaintiff has been treated differently from other similarly situated property owners. Plaintiff has done research and found no other parcel owners with approved splits having their property deemed unbuildable.

131. Based on an email from the Township Treasurer, Ardella Benak, the Township knew there were "over a hundred splits that are nowhere near 4-1 ratio[27]."

[27] Exhibit M (Ardella Benak email, redacted)

132. Plaintiff has found no other property with an approved split deemed unbuildable after the May 3, 2023 decision.

133. Further, over a 12-month period, the Defendant engaged legal counsel, special meetings, closed meetings, and placed a moratorium on development.

134. In October 2022, Whitewater Township Board lifted the moratorium only for site plan review and special use permits. It kept the moratorium in place on Site Condominium.

135. When the Defendant couldn't accomplish the goal of stopping the Site Condominium in any other way, the Defendant made the decision to deem the property unbuildable.

136. WHEREFORE, Plaintiffs respectfully request that this Honorable Court:

(a) Enter a judgment declaring that, on its face and as applied, the Whitewater Township Ordinances violate the United States Constitution;

(c) Award Plaintiffs monetary damages in an amount to be proven at trial;

(d) Award Plaintiffs their reasonable costs, including attorneys' fees, incurred in bringing this action pursuant to 42 U.S.C. § 1988; and

(e) Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

HERRING LAW, PLLC

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