

STATE OF MICHIGAN  
IN THE COURT OF APPEALS

SCIO TOWNSHIP CLERK,

Plaintiff-Appellant,

vs.

SCIO TOWNSHIP BOARD,

Defendant-Appellee.

Case No. 363414

Washtenaw County Cir Ct No 22-  
000414-CZ (Hon Timothy P Connors)

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**APPELLANT'S REPLY BRIEF ON APPEAL**

**ORAL ARGUMENT REQUESTED**

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## ARGUMENT

### **I. This Appeal is Not “Moot.”**

The Board’s<sup>1</sup> argument that it was able to “moot” the Clerk’s appeal “during [its] pendency” is wrong.<sup>2</sup> (See Board’s Br pp4, 9.) The Board partially “restored” the Clerk’s “administrator access” to the financial modules in the BS&A software on Friday, February 3<sup>rd</sup> (the Clerk’s Appellant’s Brief was due Monday, February 6<sup>th</sup>), but still on a “concurrent” basis with the Township Administrator, who remains the Enterprise Administrator (since May 2022) with custody over the Township’s papers, books and records, in violation of MCL 41.65.

The Clerk had *more* custody over the Township’s papers, books and records, as the Enterprise Administrator of the financial modules in BS&A, *when she filed this lawsuit in April 2022* seeking to vacate the Resolutions than she does today. Those Resolutions are still intact and they still should be vacated. Under those Resolutions, the Township Administrator (whomever that may be from time to time)<sup>3</sup> still holds “ultimate authority” over the journals and ledgers of the Township, and is still the “Enterprise Administrator” with the authority that previously belonged to the Clerk until May 13, 2022. This access still allows the administrator to control the Township’s financial modules. The Township Administrator or anyone

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<sup>1</sup> Terms defined in the Clerk’s Brief have the same meaning in this Reply.

<sup>2</sup> The Board has not filed a motion to expand the record or to dismiss this appeal due to “mootness.” MCR 7.216(A)(4); MCR 7.211(C)(2)(c).

<sup>3</sup> The Board has appointed three different administrators since filling that vacant position in December 2021.

he authorizes can still undo anything the Clerk does, the Clerk's permissions can be again changed at any time, and the Administrator can grant any level of access to the Township's books and records to any other person. Indeed, the Treasurer and her staff still make journal entries and post to the general ledger of the Township.

As it stands, the Treasurer receives and has custody of Township monies (pursuant to her duties under MCL 41.76) while also making journal entries and posting to the Township's general ledger. Yet, pursuant to MCL 41.65, it is the Clerk who "shall charge the treasurer with all funds that come into the treasurer's hands by virtue of his or her office, and shall credit [the Treasurer] with all money paid out by the treasurer on the order of the proper authorities of the township, and shall enter the date and amount of all vouchers in a book kept by the township clerk in the office." It is legally and financially improper to entrust one officer with handling the cash and the accounting of that cash, which is why the statute separates those duties between the Treasurer and the Clerk, and why Plante Moran found material weaknesses in the Township's internal controls.

The fact alone that the Township has existing Resolutions that give "concurrent" custody and control over the Township's papers, journals and ledgers to someone other than the Clerk is an ongoing violation of the Clerk's duties under MCL 41.65. *See Wenners v Chisholm*, unpublished per curiam opinion of the Court of Appeals decided July 20, 2017 (Docket No 332654) (**Exhibit E**)<sup>4</sup> ("This case does not involve a pretended controversy, and does not involve only 'abstract questions of

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<sup>4</sup> The *Wenners* decision is cited regarding the mootness issue the Board asserted. *See* MCR 7.215(C)(1).

law which do not rest upon existing facts or rights.”), citing *People v Richmond*, 486 Mich 29, 35 (2010).

The cases cited by the Board for general mootness principles do not apply. (Board’s Br p8.) It is not “impossible for [this Court] to fashion a remedy.” (*See id.*) The relief the Clerk sought in the first five paragraphs of the Proposed Order submitted to the Circuit Court still applies, including vacating the Resolutions and ordering that “[t]he Clerk shall have exclusive Enterprise Administrator access and authority over the BS&A modules” relating to Finance.<sup>5</sup> (AA057.)

## II. The Clerk’s Custody Is “Exclusive.”

In *McKim*, this Court held that MCL 41.65 “bestows a township clerk with the responsibility *to exercise control* over all township papers,” including the books and records, “unless otherwise provided for by law.” *McKim*, 158 Mich App at 205 (emphasis added). “[N]o other statutory provision [ ] authorizes a person *other than the clerk* to have control of the township’s papers.” *Id.* (emphasis added). “[T]his result is consistent with MCL 41.69,” which “requires the clerk [ ] to file a bond ‘especially for the safekeeping of the records, books, and papers of the township in the manner required by law[.]’” *Id.* “A clerk without custody or control of township papers can hardly fulfill her duty of safekeeping those records.” *Id.*

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<sup>5</sup> In any event, the Board may not moot this appeal because its refusal to recognize the Clerk’s exclusive custody of the Township’s papers, books and records under MCL 41.65 and *McKim* is a significant public issue which requires a decision from this Court. *See Thomas M Cooley Law School v Doe*, 300 Mich App 245, 254 (2013) (even where an issue is moot, “this Court may consider a legal issue that ‘is one of public significance that is likely to recur, yet evade judicial review.’”) (cite omitted).

Ignoring *McKim*,<sup>6</sup> the Board says that the Clerk’s statutory custody under MCL 41.65 is actually not “exclusive,” and the Clerk’s appeal is “trivial.” (Board’s Br pp9, 15.) The Board fails to contend with *McKim*’s holdings directly defeating its assertion of non-exclusivity, and even makes the same argument that this Court expressly **rejected** in *McKim*. The *McKim* court noted that, “[a]though, as the board points out, the township supervisor and treasurer are statutorily authorized to maintain the books or papers of those offices [citing MCL 41.62 and MCL 41.78], we have found no other statutory provision which authorizes a person other than the clerk to have control of the township’s papers.” *Id.* (emphasis in original). The Board cited some of these same other statutory provisions, including MCL 41.78 (Board’s Br p11), which are red herrings because custody of records of those offices is “otherwise provided for by law” and therefore not subject to MCL 41.65.<sup>7</sup>

Contrary to the Board’s mischaracterizations, the Clerk has never asserted entitlement to “unfettered access to and control over all Township” records or control over every aspect of “the Township’s BS&A software.” (Board’s Br pp1, 10.)

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<sup>6</sup> The Board adhered to the unpublished decision of this Court in *Charter Twp of Royal Oak v Brinkley*, (Board’s Br pp11-12), without addressing the many distinguishing aspects of *Brinkley* making it inapplicable. (Clerk’s Br pp38-40.) The Board essentially copied its incorrect analysis of *Brinkley* as it presented below. *Brinkley* does nothing to diminish *McKim*. (*Id.*)

<sup>7</sup> The Board also failed to respond to its own attorney’s advice that: (1) “as the responsible party, [the Clerk] must be able to limit the ability of others to ENTER or REMOVE financial data;” (2) the Clerk is “responsible for Finance in a Township,” and it “is clearly and soundly [ ] the responsibility of the Clerk who is responsible for the general ledger and the books and records;” and (3) any interpretation of MCL 41.65 that does not provide the Clerk with exclusive authority over the Township’s general ledger is an “interpretation [that] would be incorrect.” (AA060; AA070; AA071.)

For example, the “Township’s Tax Rolls are the responsibility of the Treasurer which are contained within the modules of Tax and Delinquent Personal Property,” and the “Township’s Assessment Rolls are the responsibility of the Supervisor and are contained within modules of Assessing and Special Assessments.” (AA031.)

But the Clerk’s office “is responsible for the Township’s eight financial management modules, including the General Ledger module[.]” (*Id.*) Consistent with *McKim*’s correct interpretation of MCL 41.65, these are the books, records, journals and ledgers of Township whose custody and control is not “otherwise provided for by law,” and over which “no other statutory provision [ ] authorizes a person other than the clerk to have control[.]” *McKim*, 158 Mich App at 205. Under *McKim*, “concurrent” custody of the papers, books and records with the Township Administrator or anyone else does not comply with MCL 41.65.

The Board’s assertion that the Clerk has not been “prevented from performing any of her statutory duties,” (Board’s Br pp13-14), is incorrect and sorely misses the point. ***It is a duty*** of the Clerk to have exclusive custody and control over the Township’s papers, *See McKim*, 158 Mich App at 205 (the clerk has “the responsibility [i.e., duty] to exercise control over all township papers”). ***It is a duty*** of the Clerk under MCL 41.69 to safeguard the Township’s books and records, which, as *McKim* held, she cannot do without having custody and control over them. *Id.* It is also the Clerk’s duty under MCL 41.65 to “***prepare and maintain*** the journals and ledgers necessary to reflect the assets, liabilities, fund equities, revenues, and expenditures for each fund of the township.” (*See also* AA117.) The



Clerk cannot “prepare and maintain” journals and ledgers when *others* are “concurrently” granted access to do, and are doing, the same. That is why both the Board’s attorney and the auditor from Plante Moran recommended that any person wishing to modify such journals must “*pass on*” the requested changes to the Clerk who is solely responsible for the General Ledger, (AA117; Clerk’s Br p29), but that is not what is happening in Scio Township.

The Board’s the-sky-is-falling concerns are based upon meritless generalizations. The Board says that vacating the Resolutions and restoring the Clerk’s Enterprise Administrator access would “make it impossible for local government to function.” (Board’s Br p11.) Yet, until May 13, 2022, the Clerk *was* the “exclusive” Enterprise Administrator for the Township’s BS&A Software with respect to the eight financial modules, including the General Ledger, as required under MCL 41.65. (AA009; AA034; AA112.)

The same attorney who authored the Board’s Brief on this appeal earlier supplied advice at the Clerk’s request on May 18, 2022 recommending an eminently workable solution. He said that employees with read-only access can “still document journal and ledger entries that should be added or corrected and *pass those on to the Clerk who has the statutory obligation to ‘prepare and maintain the journals and ledgers necessary to reflect the assets, liabilities, fund*

*equities, revenues, and expenditures for each fund of the township. MCL 41.65.*”<sup>8</sup> (AA117, emphasis added.)

Thus, it is ironic that the Board accuses the Clerk of asserting only a “political dispute” designed to “wrest control of the Township’s finances,” (Board Br pp1-2), as this is exactly what the Board did with its Resolutions. The Resolutions effected a change from the long-standing status quo of the Clerk being the Enterprise Administrator with exclusive custody of the Township’s papers, books and records, as required under MCL 41.65, until the Board “wrested control” of the Clerk’s duties with its Resolutions. (See AA044 (“that’s a change or else [the Board] wouldn’t have had to do this resolution”).) The Board cannot articulate why it was not “impossible” for the Township to “function” prior to its Resolutions because the Board’s speculative sensationalism lacks merit. By interfering with the Clerk’s statutory duties, the Board perpetuates Scio Township’s lack of internal controls over the public’s funds, creating a manifestly *dysfunctional* state of affairs.

### **III. Mr. Merte’s Denigrating Statements Do Not Alter The Material Facts.**

The Board agrees with all of the material facts warranting reversal. The Board agrees that it adopted Resolutions 2021-31 and 2022-05, including the “related financial reports” and “ultimate authority” language. (Board’s Br pp2-3.) The Board agrees that the Township Administrator *was granted enterprise administrator access pursuant to Resolution 2022-05* and, contrary to legal

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<sup>8</sup> The Board says that Plante Moran’s Audit Report is “irrelevant,” (Board’s Br p15), but Plante Moran gave the Board this *exact same advice* to cure the material weakness it found in the Township’s internal controls by allowing employees other than the Clerk to modify the general ledger. (Clerk’s Br p29.)

advice, he used that “ultimate authority” to grant deputy treasurer “Ms. Egeler temporary ‘read/write’ access to the necessary BS&A modules,” including the General Ledger. (Board’s Br pp3-4.) The Board agrees that Mr. Merte “revoked [the Clerk’s] ability to change other users’ access permissions.” (Board’s Br p4.)

Case closed. These admissions demand reversal because they constitute violations of MCL 41.65 in interfering with the Clerk’s statutory duties to have custody and control of and to safeguard the Township’s papers, books and records, and to prepare and maintain the Township’s journals and ledgers.

Yet, for its “Statement of Facts,” the Board relies on the statements of its former interim Township Administrator, Mr. Merte. His statements consist of irrelevant, self-help justifications for committing statutory violations that resulted in material weaknesses in the Township’s internal controls, rooted in denigrating the Clerk’s performance without evidence. Mr. Merte says that the Clerk is to blame for the Township being “late in filing its audit with the State every year since [the Clerk] took office” and the Board ostensibly wanted to “avoid another delay in the audit.” (Board’s Br p3.) Even if these baseless attacks on the Clerk were accepted, the Board fails to explain under what authority it may undertake such measures to interfere with the statutory duties of the duly elected Clerk.<sup>9</sup> There is no such authority.

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<sup>9</sup> This is another irony in the Board’s position. The Board incorrectly says that the Clerk’s lawsuit is just a “policy dispute,” (Board’s Br p16), but it is the Board that usurped the Clerk’s duties based upon an asserted dissatisfaction with her performance, which would be an issue for the ballot box, but the Board may not interfere with the Clerk’s statutory duties. (Clerk’s Br p36.)

In any event, Mr. Merte's aspersions are farcical. (See AA025-AA034; AA046.) The Board has systematically decimated the finance staff and resources necessary to support the Clerk's office. A private consultant, the Woodhill Group, recommended, and former Administrator Mr. Rowley thrice recommended, increased finance staff with proper qualifications based upon the size and affluency of the Township, (**Exhibits A, B, C, and D**),<sup>10</sup> but the Board refused over the Clerk's objections.

Mr. Merte's aspersions are a distraction technique which are not a legal justification for the Board's self-help measures and which do nothing to diminish the Board's admissions of all material facts warranting reversal.

#### **IV. This Court Should Disregard Unsupported, Irrelevant Assertions.**

Like the Merte Affidavit, the majority of the Board's Brief deflects to and mischaracterizes irrelevant matters. None of it has *any* bearing on this appeal. Because it has no defense to its statutory violations, the Board seeks to unfoundedly sully the Clerk and her counsel, including:

- The Board selectively cites the original complaint, but then concedes it was superseded by the FAC. (Board's Br p4.)
- The Board references "13 declarations" sought by the Clerk, (Board's Br 5), without disclosing that they regarded the *specific portions* of the Resolutions that the Clerk seeks to have vacated. Due to the Board's criticism in this regard, the Clerk narrowed the relief to simply have the entirety of the Resolutions vacated. (AA057.)
- The Board *misrepresents* that "Plaintiff's original complaint did not relate to BS&A software or control over Township records." (Board's Br p4.) Count II of

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<sup>10</sup> These Exhibits were exhibits 8 through 11 to the Clerk's Affidavit in support of the Clerk's MSD. (AA06-AA07.)

Plaintiff's original complaint, like Count I of the FAC, *sought to vacate* the Resolutions *because* they granted the Administrator "ultimate authority" over "BS&A." (Original Complaint ¶¶ 111, 114, 115; p 29, Relief subparts (h) and (i).)

- The Board mischaracterizes the irrelevant TRO proceedings in April 2022. (Board's Br pp4-5.) By its nature, that claim was always going to be resolved one way or another through the TRO and is not at issue here.

The Clerk and the Treasurer jointly signed, under their emergency powers of a Township procurement policy, a short-term contract with Rehmann Robson to provide desperately needed payroll and accounts payable services. The Board resolved to cancel that contract over the Clerk's, the Treasurer's, and then-Administrator Rowley's objections. (*See Ex. C.*)

The Clerk sought to enforce the emergency powers under which the Clerk and the Treasurer executed the contract to engage Rehmann's services through a request for a TRO, which the Circuit Court denied on the basis that it lacked jurisdiction. (But the Board wonders why it has delayed audits.) Once the Board canceled the contract and the Circuit Court denied relief there was no need to include it in the FAC.

- Relatedly, the Board says the Clerk did not provide the transcript of the April 22 TRO hearing as an excuse to improperly cite to an MLive article, (Board's Br p5, n6), but the Board admits that the TRO is not on appeal, fails itself to provide this transcript (despite providing the August 25 transcript), *see* MCR 7.212(J)(1), and never mentions it again.
- Count II of the FAC sought to require the Board to provide adequate finance staffing for the Clerk to be able to carry out her duties under the authority of *Wayne County Prosecutor v Wayne County Bd of Commissioners*, 93 Mich App 114, 121 (1979). Contrary to the Board's claim of "abandonment" of Count II, the Clerk focused this appeal on the immediately pressing issue of her custody of the books, records, journals and ledgers under MCL 41.65 and *McKim*, and noted that "[t]he issue of deficient finance staff could be raised in a new action if the Board continues after this case to deprive the Clerk of the necessary finance staff to perform her statutory duties[.]" (Clerk's Br p15, n5.)
- The Board provides the irrelevant transcript of the August 25 hearing via Zoom, and says the Clerk's counsel was "speaking over" the Circuit Court. (Board's Br p6.) The Board concedes that this hearing was "primarily about" the irrelevant Count II of the FAC that is not at issue here. (*Id.*) The Circuit Court acknowledged that "*we were having difficulty with Zoom, that's why* I asked that you come in live[.]" (AA039, emphasis added.) There were no issues at the

in-person hearing. The transcript of the September 21 hearing is the only transcript necessary for resolution of this appeal.

**V. The Clerk Should Be Awarded Attorneys Fees.**

The Clerk is a “public official [who] incur[red] attorney fees in connection with asserting or defending the performance of his or her legal duties,” and is therefore eligible for an award of attorney fees. *McKim*, 158 Mich App at 207. The Clerk requested that either this Court remand with directions for a fee award or, alternatively, remand to the Circuit Court to consider fees. (Clerk’s Br p46.)

The Board says that this Court could not award fees even if it wanted to, (Board’s Br p15-16), which is incorrect because “this Court may consider a legal question not determined by the lower court if the facts necessary for its resolution have been presented.” *Michigan Twp Participating Plan v Federal Ins Co*, 233 Mich App 422, 435-436 (1999). Awarding fees is a legal issue, and all facts of the Clerk’s defense of her duties under MCL 41.65 and MCL 41.69 are before this Court.

**CONCLUSION AND RELIEF REQUESTED**

The Clerk incorporates the relief requested in the Clerk’s Brief on Appeal.

Dated: March 27, 2023

DYKEMA GOSSETT PLLC

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WORD COUNT: This Appellant’s Reply Brief contains 3,188 countable words.

# EXHIBIT A

May 12, 2022

Jessica Flintoff, Clerk  
Scio Township  
827 North Zeeb Road  
Ann Arbor, MI 48103

Re: Staffing Inquiry

Dear Jessica,

WoodHill recently completed several accounting and finance related projects for the Township, and you wondered if we had any suggestions on staffing structure based on that recent experience.

Since Townships separate the cash management, accounting, and budget responsibilities among the three officers; the staffing structure depends on the internal coordination of the Supervisor, Clerk and Treasurer offices. A single finance 'team' can report to all the officers or, alternately, each officer may have their own staff.

Your inquiry is related to only the Clerk's office and therefore the account recordkeeping, audit and financial reporting component; our suggestion will be limited to that area.

A suggested staffing model for the Clerk's office:

- 1.0 Full time equivalent controller
  - o Audit coordination, Accounting oversight, General Journal Entry approvals, Monthly financial reporting
- 1.5 full time equivalent support staff
  - o Accounts Payable/Payroll/Miscellaneous Receivables

Please note that each entity's staffing needs change with the skill set of the employees and responsibilities assigned and this is a suggested structure.

Regards,

Colleen M. Coogan, CPA, CPFO



# EXHIBIT B

Will Hathaway, Supervisor  
Jessica Flintoft, Clerk  
Donna E. Palmer, Treasurer

# Township of Scio

Trustees: Jacqueline Courteau  
Alec Jerome  
Kathleen Knol  
Patrick McLaughlin

Sunday May 15, 2022

Scio Township Board of Trustees  
By Email

As my resignation letter of April 12, 2022, will become effective this evening at midnight, the following remarks will constitute my final report to the Board of Trustees on the issues and topics presented. These remarks will provide current recommendations to the Township for moving forward on the various points discussed and will close out any and all requests for additional information or outstanding questions from township officials. All township property in my possession has been personally returned and is now in the possession of the Township Clerk pursuant to the custodial nature of the Clerk's office.

I wish all of you personally and collectively, including Interim Administrator Merte as he officially takes office tomorrow, May 16, 2022, the best of luck in the days and weeks ahead.

Sincerely,

*David S. Rowley*

David S. Rowley  
Scio Township Administrator

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## **Part 1 – Topic / Task List Update**

Each of the following issues have been considered, researched, implemented or are in the process of implementation. As they are all ongoing, the list is presented in no particular order.

### **Transition Conversation**

Interim Administrator Merte and I had an approximate hour and a half conversation during the evening of Friday May 13, 2022. Several of the enclosed topics were discussed in detail with him.

### **Township Staffing / New Positions**

Please refer to Part 2 of this report for a full discussion of the staffing issue.

### **Township Budget and Finance**

Please refer to Part 3 of this report for a full discussion of township budget and finance issues.

### **Township Employee Handbook Update.**

The Management Team was asked to each complete a comprehensive review of the current edition of the employee handbook. Each team member was asked to read the entire document with an eye toward what items are clear, unclear, missing, or incomplete. The expectation was that the Management Team would be the "policy review committee" and recommend corrections/updates to the BOT for the improvement of the handbook. While the team has completed the preliminary review, no formal discussion has been held with the team due to recent management team meetings being required for more immediate township issues. This discussion process should begin with the June 2022 Management Team meetings with a targeted goal of a recommendation to the BOT by October 1, 2022.

### **Employee Health Care**

Due to the nature of rise health care costs and benefits, research should be completed into alternative health care provides as a possible alternative to our current program. For the current year of 2022, information was not received until January 2022 with a March 1, 2022, new year implementation date. Such a timeline did not allow any opportunity to research alternatives due to rising costs. A possible alternative provider or status quo provider option should be presented to the BOT by November 1, 2022.

### **Employee Retirement Options**

The current provider of such benefits is MERS. While an excellent organization and the provider to many local units of governments across the state, the Township has not looked at other options for an extended period of time if at all. Other investment providers should be considered with recommendation to the BOT by November 1, 2022, for a continuation with MERS or a possible change to Nationwide, Fidelity, etc.

### **Employee Bi-Weekly Pay Period**

Most general law townships pay their employees monthly. However, due to the size of Scio Township, the decision was made some years ago to move to a twice a month pay specially being the 15<sup>th</sup> and 30<sup>th</sup> of each month. While this appears to be a logical extension, a twice a month pay schedule does present its own set of challenges. I have been advised while some issues do exist for township staff, even greater implementation issues for fire department personal due to the nature of work schedules, overtime, etc. Conversations with departments head and various employees lead to support a payroll change from the 15<sup>th</sup> and 30<sup>th</sup> to every two (2) weeks throughout the calendar year. This every two-week pay is completely in line with good governance principles and is widely used throughout Michigan's local units of government. Therefore, the recommendation is to develop a timetable for implementing a change to a Bi-Weekly pay schedule at an appropriate date in July as July 1 begins the second half of the year.

### **Liberty Road Project Funding**

Information provided from OHM notes that Phase I of the project is being completed. Phase II has not been formalized in terms of a funding source. Due to the ongoing issues of financial staffing and reporting, there is inadequate information to determine the internal funding capacity. The Supervisor did coordinate a meeting with the bonding attorney some months ago but I have not been provided with any additional information on a possible bond funding source or any other internal funding mechanisms since that time.

### **DDA Annual Audit**

A review of DDA Scio Township records from the Local Government Document Search Site of the Michigan Department of Treasury, Community Engagement and Finance Division did not locate any filings since 2017. Recommendation is to review all DDA materials for compliance with annual filing requirements. The Local Government Document Search Site may be located at:

<https://treas-secure.state.mi.us/DocumentSearch>

### **BS&A Software Programs**

Based upon data provided by the Finance Manager, the following are the current in place BS&A software programs and their original year of implementation.

Utility Billing	2001
Cash Receipts	2002
Payroll	2003
Miscellaneous Receivables	2009
Assessing	2009
Tax Program	2009
General Ledger	2009
Accounts Payable	2009
Special Assessments	2010
Delinquent Personal Property	2010
Fixed Assets	2021
Purchase Orders	2021

Discussions with existing staff clearly reveal the fact that not all programs are being utilized to their full capacity even though over 80% of the programs have been in place for anywhere from 12 to 21 years. Additionally, cross training of staff for numerous backup/support opportunities is limited or nonexistent. Recommendation is to schedule an onsite review with township staff and BS&A representatives to develop a comprehensive training/update program for each program as may be needed as well as documentation of cross training opportunities. Once completed, an implementation plan for improvements should be accomplished by December 31, 2022.

### **Computer Server Issues**

The Township has been experiencing program delays and actual periods of being offline. Ongoing discussions have been held with NETSMART our contract IT coordinator for possible solutions. Recent discussions have included representatives from BS&A software. Recommendation is to consolidate and remove as many of the existing nine (9) township servers as possible to increase server capacity and performance and to move as many BS&A programs as possible to their cloud based back up system for data storage and retrieval. Such cloud-based systems should be implemented within the next sixty days.

### **Water / Sewer Agreement with the City of Ann Arbor**

The Utilities Director and I have worked to resolve long standing payment issues with the city of Ann Arbor for tap in fees. Recommendation is to continue to review the process made from changing the payment schedule from annual to monthly and to continue to improve the process for payments. Also, continue to work with the City of Ann Arbor to resolve an outstanding financial issue of Scio Township's improper calculation of rates which does result in an additional payment to the City of Ann Arbor for services rendered.

### **Industrial Facilities Tax Abatements and Industrial Development Districts**

The recent Optiflow applications to the BOT for an IDD district and then an IFT application clearly demonstrate the need for the BOT to development a comprehensive criterion for evaluating both district and IFT applications in terms of investment, job growth and retention, and longevity of the proposed project for applying the number of years from 1 to 12 for any abatements. Recommendation is to develop such development guidelines by July 1, 2022.

### **Fire Department Labor Union Contract**

The current union contract expired on April 20, 2022. Due to Scio Township's method of accounting, the fire department deficit / funding issues / questions, several economic issues for the contract could not be addressed. As I understand, the Fire Chief and Fire Union have reached an interim agreement to continue the current contract as it presently exists until such time a new contract may be finalized. Recommendation is to resolve the fire department funding issue within the next 30 days. The funding issue has developed from what appears to be an incorrect implementation of Public Act 33 of 1951 and an incorrect implementation of the accounting standards as provided for the Michigan Department of Treasury. Public Act 33 creates a township wide special assessment district with specific procedures. The implementation of the special assessment suggests that fire funding has instead been treated as an extra voted millage which

it is not. I have held on going discussions with the Township Attorney (Homier) and the Fire Chief to address this issue.

**Capital Improvement Plan (CIP)**

The Township did not adopt a capital improvement plan as part of its FY 2022-2023 budget discussions. Instead, several capital improvement projects / items were listed on various budget documents and have led to confusion from Department Heads as to whether such items were approved during the budget process. As part of the annual budget cycle, a five-year capital improvement plan is expected. Recommendation is to develop a timeline and process for the annual creation / review of the five-year capital improvement plan. The CIP should be developed in conjunction with the annual FY budget cycle. Also, the timely implementation of the Uniform Chart of Accounts as required by the Michigan Department of Treasury would be a huge first step.

## **Part 2 – Township Staffing / New Positions**

The issue of staffing positions has been a matter of concern. I have held individual discussions with each employee of the township and fire department. I have obtained questions, information, and input from various members of the BOT, unions, Department Heads, and township committees. Each have offered opinion as to what is important in their specific point of view and suggested how the analysis should be conducted. After much consideration of the materials gathered and in keeping with good governance practices as well as my own personal experience and education, I would offer the following recommendations as to potential staffing levels. One caveat, however, all staffing levels are subject to the implementation of qualified accounting staff, with appropriate CPA oversight, in order to determine the actual level of funding available for the various positions.

The list of FTE positions dated March 17, 2022, has been reviewed and should be considered as a base for consideration of township staff for the next fiscal year. It should be amended with the following positions as appropriate.

### **High Priority Staff**

Due to the nature of the duties, these positions should be filled within the next three (3) months.

#### **Finance Director**

This position is currently open and being recruited for by Amy Cell LLC. Objective is for a person with proper government accounting expertise and a CPA, MBA, or CPFO certification.

#### **Human Resources Generalist (1/2 time)**

This position is needed to develop/revise existing job descriptions and conduct internal township job recruitments. While the more advanced/technical positions may require the services of a firm, many of the township positions could be handled in house with proper HR staff.

#### **Township Manager**

Scio Township needs to reevaluate its position on an "Administrator Model". A full time Township Manager is needed with the authority to be the Chief Administrative Officer as defined in the statutes for overall budget preparation. The manager should also be given full hiring/firing authority and be held accountable for those actions. A part time Interim Administrator model will not resolve township issues in the long term. A full time Township Manager must be hired with all the duties, responsibilities, and authority of same.

### **Medium Priority Staff**

These positions should be filled within the next three to six months.

As part of the overall redesign of the finance team, the Finance Director is the first step. In addition to the high level of analytics and professionalism this person will provide, support and

direction to the Finance Manager as well as the following two positions. Each of these two new positions will report to the Finance Manager (Rebecca) and complete the 3.5 FTE for finance.

**Finance Accounting Specialist**

This position would assist the Finance Manager and Finance Director with the implementation and ongoing work of the following tasks:

Accounts Receivable	Detailed records for asset
Purchasing	management
Accounts Payable	Budget Process
Payroll and Benefits	Capital Improvement Plan
Audit and Year-End Reporting	Grants Management
Investments and Cash Management	Special Assessments
Debt Management	Payment in Lieu of Taxes (PILOT)
Uniform Chart of Accounts	Utility Billing (Back Up)
Assist/Review deposits/payments for errors	

**Utility Billing Clerk (1/2 time – Laurie Carey)**

**NEW – Accounting Finance Specialist (1/2 time)**

Restore the Utility Billing Clerk position to full time status. Due to the BOT's rejection of the Temporary Finance Officer proposal earlier this year, a reorganization of the Finance Department was not possible. Therefore, due to retirement of the Utility Billing Clerk, the position was only able to be filled on a part time contractual basis. The contract, unless renewed, will expire on June 30, 2022. Adding accounting / finance duties to this position in terms of accounts payable and payroll will provide back up support to the Finance Manager as well as potential other financial tasks that may need additional support. This new hybrid position will be moved from the utilities department to the finance department with a change in reporting from the Utilities Director to the Finance Manager.

**Fire Department Administrative Assistant (1/2 time – Terry Soave)**

**NEW – Expand to Full Time**

Discussions with both Terry and the Fire Chief have noted the need for an expansion of this position. In addition to assistance with the inspection program and current BOT zoom meeting coordinator, new duties will include additional administrative tasks as follows:

- Payroll processing
- Scan and organize all paper files (about 5 filing cabinets full)
- Develop and maintain maintenance schedules for building, equipment, and apparatus
- EMS licensing
- EMS supply ordering



### **Utility Department Technician**

The utility technician will expand the department's capacity to respond to various tasks assignments that are currently either on a very long-term schedule or are not scheduled at all. This new position will report to the Utilities Director and work with existing staff on additional projects as follows:

Annual issues regarding water and sewer lines	Hydrant Flushing
Preventative maintenance issues	Winter snow removal
Value Turning	EAGLE inspection assistance
	Support for Township park maintenance

### **Associate Assessor (Michigan Advanced Assessing Officer MAAO-3)**

The assessing department is in need of additional field staff and analytical capacity. Current department staff is at two (2) persons. This is inadequate for a jurisdiction of this size and taxable value. The Michigan State Tax Commission (STC) requires a physical inspection of at least 20% of a unit's parcels on an annual basis. Current staffing levels are inadequate to meet this state standard.

### **Firefighters – Township Fire Department – Two (2) Positions**

Standard certified fire fighter positions. The Fire Chief has indicated that current staffing levels are inadequate to meet all possible circumstances without the need for overtime or other additional support.

### **Low Priority Staff**

These positions are considered low priority due to the limited nature of the task, the inadequacy or inconsistency of the support material or the simple fact that much of this work may be accomplished by existing or other newly acquired staff.

### **Parks Manager (1/2 Time)**

Trustee Jerome mentioned at the May 10<sup>th</sup> BOT that maintenance would be a major concern for a parks manager. Considering this and after extension review of all submitted parks materials, the Utilities Director has been instructed to confer with the parks committee and develop a summer / winter maintenance schedule. With existing Utilities staff and the addition of the new Utilities Technician, the opinion was expressed that current internal capacity exists to support the parks without the need to consider the hiring of full-time park specific staff. When township parks expand from pathways and nature preserves, a full-time parks staff may be appropriate. However, as of today, a part time position is appropriate to assist the overall existing utility staff.

### **Project Manager**

Here again submitted materials were not persuasive that this position is needed at this time. Additionally, without professional financial staff, it has been impossible to determine the exact nature of the 15% administrative costs of the park's millage. There are a variety of topics that may or may not be applicable to be included in the calculation of the 15%. Moreover, a simple

calculation did determine that the 15% cap was approximately \$127,000. Early 2022 budget requests were in the \$200,000 range. Without more detailed analysis of how the costs could be allocated to various township "projects", a project manager position simply cannot be funded within current administrative cost restrictions of 15%.

### **Grant Manager**

During conversations earlier this year regarding grant opportunities, the Supervisor took the lead on developing these tasks. With the appointment of the Interim Administrator, the Supervisor should continue to have ample time to lead the grant effort. With current limited grants, a specific grant manager position is unnecessary.

### **Part 3 – Budget and Finance**

We have been having an ongoing conversation about budget and finance since January. This has also been a major point of disagreement with the BOT regarding sound financial policy and adequate financial staff. As I have presented multiple times on good governance procedures and the development of sound fiscal decision making, I will not restate them now. I will, however, attach a copy of the PowerPoint presentation from a May 10, 2022, Michigan Department of Treasury webinar entitled, "Chart Chat". While the entire PowerPoint is excellent, I would specially call your attention to the section on "Budgeting" presented by Roxanne Foster, Senior Auditor, Community Engagement and Finance, Department of Treasury. I will summarize some of her key budget points below. You may recall many of the same points that I have presented at both BOT and Budget and Finance Committee meetings.

#### **Developing a Budget Document**

- Have a budget calendar
- Have a document to explain the budget
- Involve staff in draft developments
- Have workshops with elected officials
- Develop a balanced budget

#### **Preparing for your Budget**

- Timeline – create a checklist
- Include the public – Citizen engagement is critical
- Get Feedback – surveys, workshops, newsletters, summaries, social media, etc
- Plan for future needs
- Tie to Capital Improvement Plan (CIP)

#### **Adopting a Budget**

- Provide enough time for review
- Provide workshops with staff and the governing body
- Public Hearing
- Formal Presentation with proper resolutions

#### **Communicating the Purpose of the Budget**

- Ask for public comment
- Take Surveys
- Interactive sessions for public engagement

#### **Designing your Budget**

- Follow budget policy and state law
- Minimum requirements of state law or going above and beyond
- Know which funds require a budget – governmental funds – General Fund – Special Revenue Funds

### Preparing to Amend your Budget

Review your revenue and expenditure report monthly  
Amend your budget not less than quarterly

### Common Budgeting Pitfalls

No goals or strategy of what to accomplish  
Failing to forecast revenue  
Failing to include information from other sources such as CIP  
Not updating your fee schedule annually  
Rushing or having no timeline  
Poor or no data to show past performance  
Not including elected officials in the budget process  
Not involving staff in the development phase  
Not providing a draft copy for public inspection  
Budgeting alone without any consideration of neighboring communities

The Budget and Finance Committee needs to take heed to the discussion on budget development that I offered at the April 21, 2022, meeting and begin the budget process for the April 2023-March 2024 fiscal year in June of this year. The argument is simple.

Budgeting is a long-term sustainable process that addresses capital improvements, legacy costs, and all operating. It works at a strategic level (3-5 projections) and has well defined performance measures to implement the goals and objectives of the board itself. All departments must be included in the budget development process as well as the public. Several work sessions well in advance of established timeline deadlines must be held.

Before anything else, this BOT needs to develop short- and long-term goals and objectives for township staff to implement when determining budget requests. As the current Scio Township budget process now stands, the BOT does not have any goals or objectives but instead relies on its various specific issue committees to provide guidance as to policy direction. The Scio model is clearly one of the tail wagging the dog. To correct this unsupportable situation going forward, the BOT should adopt the following budget timeline before the end of May 2022:

May 2022	Adopt short- and long-term goals in a work session
June	Revise goals and adopt budget calendar
June	Departments and Committees begin to assemble data in keeping with BOT goals
July	Work session(s) held with Departments and Committees to review data requests
August	Departments and Committees submit final budget requests. Informal reviews are held
September	Public Hearings for public comment
October	Changes and updates are needed based on public comment
November	Revised budget requests from Departments and Committees are submitted for review

January 2023 Current Fiscal Year year end projections are made  
February Final work session and draft budget presented for public review  
March BOT holds final public hearing and adopts budget for next fiscal year

BOT needs to take steps to address all financial reporting to guarantee accuracy and compliance with applicable statutes and procedures including:

Monthly Budget Progress Reports  
Year to Date Expenditures and Revenues  
Timely Investment Reports  
Monthly Reports on Status of all Accounts

Full use capacity of all BS&A software programs must be implemented. Extensive reliance on excel spreadsheets leads to confusion as to which "version" is final and correct.

The Michigan Department of Treasury's website of Community Engagement and Finance should be reviewed frequently for updates and ongoing municipal financial information.

# EXHIBIT C

This proposal will only include a discussion of Accounts Payable and Payroll in the absence of the Finance Manager due to a family medical emergency. It should **not** be confused with the prior submission of the "Temporary Township Finance Officer" staff contract proposals submitted by Plante Moran and Rehmann. Any data analysis or detailed review requested of the entire finance department is not part of this current proposal but will be considered at a later date when all township staff positions are scrutinized.

### Background

Please refer to Attachment A.

While a typical sized jurisdiction will generally have four (4) to five (5) full time employees in the finance department of varying skills, abilities and certifications, the Township of Scio has one (1). The Finance Director position was vacated by the Township Board in November 2021. This staff reduction left only the Finance Manager as the entire Finance team. Scio's Utility Billing Clerk is not part of Finance but is in the Utilities Department.

The Finance Manager experienced a family medical emergency in March 2022 which required her to begin using personal leave time for an unknown length of time. As in mid-March, the length of the possible leave time was undeterminable, Scio Township was without **any** staff to process the March 30<sup>th</sup> payroll and accounts payable invoices. In addition to the payroll and accounts payable issues, there are also lapses in the workload of the general ledger, year end closing for the fiscal year that ended on March 31, 2022, and the preparation for the annual audit which is tentatively scheduled to begin in early June.

Referencing the Scio Township Purchasing Policy and Procedures (November 2019), paragraph 2d provides for Emergency Purchases as follows:

*"Whenever there is an imminent threat to the public health, safety or welfare of the Township or its residents, the Township Supervisor or a member of the Board of Trustees may authorize the purchase of supplies, materials, equipment, services or construction, utilizing competition as may be practical and reasonable under the circumstances."*

The opinion was expressed that the welfare of the township and its residents were about to suffer an imminent threat as without the Finance Manager the township would be incapable of paying its bills, contracts, and also its employees. As the word "welfare" is generally defined, this lack of the ability to meet payroll and accounts payable would clearly cause a "calamity" and impact the "prosperity" and "happiness" as well as impacting the "well-being in any respect" of the township's employees and its creditors.

In response to this emergency, a meeting was called by the Township Administrator with the three (3) elected board members in township hall, Supervisor, Clerk, and Treasurer. A discussion was held. The Township Clerk and Township Treasurer agreed that this situation met the definition of "Emergency Purchases" authorized the engagement of Rehmann Robson to provide temporary accounts payable and payroll services. The Township Supervisor did not agree.

Rehmann Robson prepared the March 30<sup>th</sup> payroll and accounts payable. They are currently in the process of preparing the same for the April 15<sup>th</sup> distribution.

The Board of Trustee's Motion from March 22, 2022, states:

*"The Township hereby terminates the "emergency" engagement of Rehmann Robson for payroll and accounts payable services effective April 12, 2022, if either the Finance Manager is able to carry out those duties at that time, or the Township Administrator is able to create an alternative plan for accomplishing these tasks using the Township's full and part time employees, including the Deputy Treasurer, with the understanding that the Administrator's plan may include outside resources."*

In response to this motion, the Township Administrator reviewed all of the current human resource files on the township's "full and part time employees" in order to determine the in-house knowledge skills and abilities to serve an interim role in finance. The records were incomplete and offered limited guidance.

An employee survey was prepared to obtain the information that the personnel files lacked. See ATTACHMENT B. The survey was sent to the seven (7) current employees who were most likely to have at least some of the skill set needed. The cover memo clearly stated that, "The intent of this data gathering is to supplement the development of the finance task work plan. ... I am attempting to document the various skill sets of our current staff to determine the internal township staff support capacity as opposed to solely relying on anecdotal statements. Any consideration for the option of current township employees modifying their existing roles would be based on documented skills sets and the individual employee's expressed interest in the new opportunity."

Analysis of the survey provided the following details. Of the seven (7) employees surveyed, three (3) have skill sets in the payroll and accounts payable BS&A systems that the township currently utilizes. These individuals are Rebecca Maute, Laurie Carey, and Sandy Egeler.

As presently assigned, Laurie is the part time Utilities Billing Clerk. Sandy is the appointed Deputy Treasurer and serves at the pleasure of the Treasurer. As you may recall, Sandy requested this appointment and to be removed from finance. This Deputy Treasurer appointment was approved by the Board of Trustees to this position in November 2021. Rebecca is the Finance Manager who has payroll and accounts payable assigned as part of her normal job duties.

In consultation with Rebecca and in keeping with past township practice, a Memorandum of Understanding (MOU) was entered into on April 5, 2022. This MOU permits her to work a flexible hybrid schedule. She has remote login capacity from her home and will also be in the office on a periodic basis. The MOU is in effect until June 30, 2022, and Rebecca has agreed to provide the Township Administrator with a regular report of her working schedule and tasks.

#### Alternate Plan

Based upon the review of Scio human resource files and my analysis of the results of my April 5, 2022, survey, any alternate plan for payroll and accounts payable would be based upon the following model:

Primary Task Person: Rebecca Maute

Rebecca is the current Finance Manager and has stated regarding payroll that "I am the only employee that knows how to access and upload MERS monthly payroll reports, upload the State of Michigan SUW monthly and annual returns, and the only employee that has uploaded the 941 to the Department of Treasury."



As to accounts payable she states, "I am currently the only employee at Scio Township that knows the new process for inputting Accounts Payable invoices into the system using our new Purchase Order module."

Secondary Task Person: Laurie Carey

While Laurie is a part time employee in Scio Utility Billing, she is also employed part time in another local jurisdiction and is a current user of the various BS&A programs needed to serve as support to Rebecca. She has agreed to do so.

Back up Task Person: Sandy Egeler

While Sandy has had past experience in Scio Township BS&A programs, she stated in a planning meeting with the Supervisor and Treasurer words to the effect that she would need some training as the programs are different than they were in the past. She is familiar with the utility billing program as she stated on her survey form that she "set up the Scio program" and that the utility program is used "every day for LASA". Sandy provides utility billing services for LASA which is an independent authority from Scio Township.

Option 1.

Maintain the agreement with Rehmann Robson as it was negotiated with them in good faith. Rehmann has fully performed on each aspect of the agreement. The agreement will remain in place until June 30, 2022. During the time until then, a complete comprehensive permanent finance department staffing plan can be formulated and implemented. The Rehmann agreement also allows Rebecca the needed worktime flexibility.

Option 2.

Should the Board of Trustees decide to terminate the agreement with Rehmann on April 12, 2022, then the internal staffing plan is as follows:

- Primary - Accounts Payable and Payroll – Rebecca Maute
- Secondary – Accounts Payable and Payroll – Laurie Cary
- Back up to Utility Billing/payroll/accounts payable – Sandy Egeler

(Sandy as back up rather than primary or secondary also preserves the separation of duties and checks and balances across departments due to her role as Deputy Treasurer. Also, this backup role would not impact the Treasurer's office as the entire staff is composed of the Treasurer and Deputy Treasurer.)

Recommendation:

The Township Administrator's recommendation is for Option 1 – maintain the agreement with Rehmann until June 30, 2022.

**ATTACHMENT A.  
SCIO TOWNSHIP FINANCE STAFF VS TYPICAL STAFF OF  
SIMILAR SIZED JURISDICTIONS with \$2 - \$3 MILLION PROPERTY TAX REVENUE**

**SCIO TOWNSHIP**

**TYPICAL JURISDICTION**

**Finance Director**  
(Vacant Since November 2021)

**Finance Director**

**Finance Manager**  
Rebecca Maute  
(Out on MOU until June 30, 2022)

Actual title of position  
depends upon the specific  
unit but the duties are similar.

**Assistant Finance Director**  
**Finance Manager**  
**Budget Director / Analyst**

**Utility Billing Clerk** (Part time 20-25 hours)  
Laurie Carey (Replaced Shawn Slane – Retired)  
Currently part of Utility Dept not Finance  
Started in position – March 29, 2022

**Finance Clerk**  
**Accounting Specialist**  
**Billing Clerk/Cashier**  
**Cashier/Billing Clerk**

**<1.0 FTE Current Capacity Finance**  
**0.50 FTE Utility Billing**

**4.0 to 5.0 FTE Capacity**  
**Finance and Utility Billing**

Emergency procurement services were needed for accounts payable and payroll until June 30, 2022, due to understaffed Finance Department and no backup in workload capacity.

MEMORANDUM

To: Scio Township (Full and Part Time Employees) as follows:

*Kristy Aiken  
Laurie Carey  
Sandy Egeler  
Andrea Garrett*

*Rebecca Maute  
Terry Soave  
Frances Szuma*

From: David S. Rowley, Township Administrator

Date: April 5, 2022

Subject: Information Request

The Township Board of Trustees has requested the development of a plan for the accomplishment of various township finance tasks which “may include outside resources” and the use of “the Township’s full and part-time employees”.

Pursuant to this request I have completed my review of outside resources as well as a review of township human resource records pertaining to the full and part time employees listed above. However, the historical data contained in the township human resource records is incomplete in terms of the documentation needed to accurately verify the commonly held view of the knowledge, skills, and abilities of each of the various employees.

Therefore, I have developed the attached questionnaire. ***Please complete this form with the requested information and return the completed form to me by 12:00 pm (Noon) on Friday April 8, 2022.*** The intent of this data gathering is to supplement the development of the finance task work plan. In other words, I am attempting to document the various skill sets of our current staff to determine the internal township staff support capacity as opposed to solely relying on anecdotal statements. Any consideration for the option of current township employees modifying their existing roles would be based on documented skills sets and the individual employee’s expressed interest in the new opportunity.

Please let me know of any questions.

SCIO TOWNSHIP  
(Full and Part Time Employee Review – Two Pages)

Instructions:

Please complete this form with as much detail as possible. This form is provided as a word document so that you may compose answers on the original form. Attach additional pages as needed. Upon completion, please sign, date, and return to the Township Administrator by 12:00 pm (Noon) on Friday April 8, 2022. If you have a current resume, please attach a copy.

Name of Employee

Current Position

Title and Length of Time Served

Professional Experience

Please list employment for the last ten (10) years including position title, length of time in position, and type of job duties

Computer Skills

Describe your computer skills for the following programs and identify the last time frame when you used the program

Word

Excel

BS&A Software

Accounts Payable

Payroll

General Ledger

Purchase Orders

Utility Billing

Education

Please list your highest degree earned (i.e., High School, Associates Degree / Certificates, Bachelor's Degree, etc.) Please list any applicable coursework to your present position in Scio Township. Please attach appropriate transcripts.

Certifications and Awards

Please list any professional certifications or organizational awards that you have received with the applicable date(s)

Organizations

Please list any applicable local, regional, or statewide organizations to which you belong and your role in each

I attest that the above information is a true and accurate description of my credentials in terms of the topics listed and that I understand that this form will be added to my Scio human resource files.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

# EXHIBIT D

MEMORANDUM

To: Scio Township Board of Trustees  
From: David S. Rowley, Township Administrator  
Date: April 12, 2022  
Subject: Termination of Employee Agreement

After long conversations with family and friends, it is with great regret that I do provide Scio Township notice that I elect to terminate my Employment Agreement with the Township as of May 15, 2022, pursuant to Section 9 of the current employment agreement for the Township Administrator. Today's notice is greater than the thirty (30) day minimum required.

I am sorry both personally and professionally that this action is necessary. My original intension though was to remain in Scio until my final retirement. However, there is no incentive to remain here. Ongoing township events have clearly demonstrated that there will never be agreement between myself, and Scio Township elected officials as to the principals of good governance regarding local government fiscal management and certified oversight. As a professional local government manager, administrator, and educator with now over thirty (30) years of day-to-day actual experience, I am in a greater position to opine on what is needed for local government and I am greatly saddened by the Scio's political approach to millions of dollars of taxpayer's money. My reputation in local government, as well as my integrity and professionalism are well known across the state and respected by my colleagues. As a state and national education award winner in government education excellence, I choose to no longer be a part of the Scio Township model of local government. I do call on the Board of Trustees to fill the vacant Finance Director position with an experienced individual who holds a Master of Business Administration degree or who is a Certified Public Account and to conduct a three (3) to five (5) year internal audit to fully understand the status of township finances.

To the staff and employees of Scio Township, I thank you for your dedication and professionalism. Stay strong. You are the very best of Scio Township. To the township residents and taxpayers, I thank you for your many statements of support and the kind words that I have received. Continue to watch, observe, and hold your elected township officials accountable for every one of their actions. It has been my greatest pleasure to have been your public servant even for this short period of time.

# EXHIBIT E



**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MICHAEL WENNERS, DAVID CROSS and  
SALLY CROSS,

UNPUBLISHED  
July 20, 2017

Plaintiffs-Appellants,

v

No. 332654  
Washtenaw Circuit Court  
LC No. 12-001197-CH

MATTHEW D. CHISHOLM, AMY C.  
CHISHOLM, also known as AMY C. VOGEL,  
CLAUDIA M. WEBB and MARY J. POIRER,

Defendants,

and

MICHELLE SHAUGHNESSY,

Defendant-Appellee.

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Before: SERVITTO, P.J., and MURRAY and BORRELLO, JJ.

PER CURIAM.

In this declaratory judgment action, plaintiffs appeal as of right the trial court's order granting summary disposition in favor of defendant, Michelle Shaughnessy. We reverse and remand for further proceedings.

Plaintiffs are adjacent riparian property owners, on Portage Lake in Washtenaw County, whose properties are separated by a foot pathway that runs to the lake. They are involved in a long-running legal dispute regarding use of the pathway with defendants, who are owners of neighboring parcels that are non-riparian back lots, and used the pathway to access the lake and a seasonal dock they place in the water to moor boats. Defendants Matthew and Amy Chisholm moved for summary disposition pursuant to MCR 2.116(C)(5) and (C)(8), which the trial court denied, and additionally filed a separate lawsuit against the unknown owners of the pathway, asserting a prescriptive easement (Washtenaw Circuit Court case 14-107-CH). The Chisolm defendants sought interlocutory appeal of the trial court's denial of their motion for summary disposition. In the meantime, however, they obtained a default judgment in the separate matter against the unknown owner of the footpath. This Court thus ultimately dismissed their appeal as

moot.<sup>1</sup> Plaintiffs and the Chisolm defendants thereafter signed a consent judgment dismissing the Chisolm defendants from the case.

Thereafter, defendant Michele Shaughnessy (hereafter, defendant) sought dismissal of plaintiffs' claims against her. Defendant relied upon this Court's March 24, 2015 opinion finding the Chisolm defendants appeal moot. According to defendant, because the Chisolm defendants obtained a default judgment against the unknown owners of the footpath and this Court found their appeal regarding summary disposition in the instant matter moot given the default judgment, plaintiffs have no rights or interest in the footpath and thus have no standing to pursue any claims regarding the same against her. Citing MCR 2.116(C)(10) (no genuine issue of material fact), and stating that it found that plaintiffs "lacked standing to pursue the relief requested" the trial court granted defendant's motion. Plaintiffs now appeal as of right from that decision.

This Court reviews a trial court's decision on a motion for summary disposition de novo as a question of law. *Ardt v Titan Ins Co*, 233 Mich App 685, 688; 593 NW2d 215 (1999). "In reviewing a motion under MCR 2.116(C)(10), this Court considers the pleadings, admissions, affidavits, and other relevant documentary evidence of record in the light most favorable to the nonmoving party to determine whether any genuine issue of material fact exists to warrant a trial." *Walsh v Taylor*, 263 Mich App 618, 621; 689 NW2d 506 (2004).

Plaintiffs first contend that the trial court erred in granting summary disposition in favor of defendant because the trial court relied solely on this Court's mootness ruling in the co-defendants' earlier appeal. We agree.

This Court's decision in the earlier appeal addressed only the issue of mootness, and did not address the issue of standing. The trial court erroneously conflated the separate and distinct legal doctrines of mootness and standing. Plaintiffs' claims against defendant are not moot, and this Court's mootness ruling in the co-defendants' earlier appeal does not require a ruling that plaintiffs lack standing to pursue their claims for declaratory relief against defendant.

Our Supreme Court has comprehensively summarized the mootness doctrine as follows:

It is well established that a court will not decide moot issues. This is because it is the principal duty of this Court . . . to decide actual cases and controversies. That is, the judicial power . . . is the right to determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction. As a result, this Court does not reach moot questions or declare principles or rules of law that have no practical legal effect in the case before it. . . . It is universally understood . . . that a moot case is one which seeks to get a judgment on a pretended controversy, when in reality there is none, . . . or a judgment upon some matter which, when rendered, for any reason, cannot have any practical legal effect upon a then existing controversy. Accordingly, a case is

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<sup>1</sup> *Wenners v Chisholm*, unpublished opinion per curiam of the Court of Appeals, issued March 24, 2015 (Docket No. 314938).

moot when it presents nothing but abstract questions of law which do not rest upon existing facts or rights.

In general, because reviewing a moot question would be a “purposeless proceeding,” appellate courts will sua sponte refuse to hear cases that they do not have the power to decide, including cases that are moot. Whether a case is moot is a threshold issue that a court addresses before it reaches the substantive issues of the case itself. [*People v Richmond*, 486 Mich 29, 34-35; 782 NW2d 187 (2010) (internal quotations and citations omitted).]

Accordingly, an issue is moot when an event occurs that renders it impossible for the reviewing court to grant relief. *C D Barnes Assoc, Inc v Star Heaven, LLC*, 300 Mich App 389, 406; 834 NW2d 878 (2013); *People v Billings*, 283 Mich App 538, 548; 770 NW2d 893 (2009).

This Court’s earlier decision regarding mootness of the claims between plaintiffs and the Chisholm defendants does not require a ruling that the claims between plaintiffs and defendant are moot. Defendant was not a party to the “Unknown Owners” case, and the record on appeal does not contain any documentation indicating that defendant has obtained a court ruling declaring that she possesses a prescriptive easement to riparian and water-access rights with regard to the subject real property, as the Chisholm defendants did. Based on the record before this Court, it remains possible to award plaintiffs the relief they seek against defendant. This case does not involve a pretended controversy, and does not involve only “abstract questions of law which do not rest upon existing facts or rights.” *Richmond*, 486 Mich at 35. Therefore, the instant appeal is not moot.

The trial court clearly stated that it awarded summary disposition to defendant based solely on this Court’s decision in the Chisholm defendants’ appeal. Yet, this Court’s decision did not mention standing and was not based on a finding that plaintiffs lacked standing to pursue their claims against the Chisholm defendants. The trial court erred in relying solely on this Court’s mootness opinion to reach the conclusion that plaintiffs lacked standing to pursue their claims against defendant.

Plaintiffs also contend that they have proper standing to pursue their claim for a declaratory judgment against defendant. We agree.

“Whether a party has standing is a question of law subject to review de novo.” *Groves v Dep’t of Corrections*, 295 Mich App 1, 4; 811 NW2d 563 (2011). Our Supreme Court recently altered its view of standing to a more “limited, prudential approach,” overruling *Lee v Macomb Co Bd of Comm’rs*, 464 Mich 726, 739; 629 NW2d 900 (2001), and directing that plaintiffs need not meet the federal case or controversy standing requirement, i.e., the establishment of a concrete and particularized injury caused directly by the challenged conduct. *Lansing Schs Ed Ass’n v Lansing Bd of Ed*, 487 Mich 349, 363-366, 372; 792 NW2d 686 (2010). In doing so, the Court reiterated that

[t]he purpose of the standing doctrine is to assess whether a litigant’s interest in the issue is sufficient to “ensure sincere and vigorous advocacy.” Thus, the standing inquiry focuses on whether a litigant “is a proper party to request

adjudication of a particular issue and not whether the issue itself is justiciable.”  
[*Id.* at 355 (internal citations omitted).

The purpose of a declaratory action is “to enable the parties to obtain adjudication of rights before an actual injury occurs, to settle a matter before it ripens into a violation of the law or a breach of contract . . . .” *UAW v Central Mich Univ Trustees*, 295 Mich App 486, 496; 815 NW2d 132 (2012). A complaint for a declaratory judgment is brought pursuant to MCR 2.605. Whenever a litigant meets the requirements of MCR 2.605, it is sufficient to establish standing to seek a declaratory judgment. *Id.* at 495.

MCR 2.605(A)(1) provides that, “[i]n a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.” Therefore, the proper question is whether an actual controversy exists between plaintiffs and defendant, within the meaning of MCR 2.605(A)(1). As this Court explained in *UAW*, 295 Mich App at 495:

An “actual controversy” under MCR 2.605(A)(1) exists when a declaratory judgment is necessary to guide a plaintiff’s future conduct in order to preserve legal rights. The requirement prevents a court from deciding hypothetical issues. However, by granting declaratory relief in order to guide or direct future conduct, courts are not precluded from reaching issues before actual injuries or losses have occurred. The essential requirement of an “actual controversy” under the rule is that the plaintiff pleads and proves facts that demonstrate an “adverse interest necessitating the sharpening of the issues raised.”

Generally, where the injury sought to be prevented is hypothetical, a case of actual controversy does not exist. *Citizens for Common Sense in Gov’t v Attorney General*, 243 Mich App 43, 55; 620 NW2d 546 (2000), citing *Recall Blanchard Comm v Secretary of State*, 146 Mich App 117, 121; 380 NW2d 71 (1985).

In this lawsuit, plaintiffs are riparian property owners with a strip of land running between their properties to Portage Lake. The parties agreed that defendants possessed an ingress and access easement over the southerly portion of this strip of land, ending approximately 90 feet from the lake, but contested defendant’s rights concerning the 18-foot wide strip of land within the last 90 feet from the end of the easement to the lake (referred to by the parties as the “Northern Way”). Plaintiffs’ properties lie immediately adjacent to the dock erected at the end of the Northern Way, which defendant seeks to access and utilize. Plaintiffs’ First Amended Complaint sought a declaratory judgment that defendant did not have riparian rights in Portage Lake, that she did not have the right to access Portage Lake by passing over the strip of land between plaintiffs’ real properties, and that she did not have the right to place a dock or moor a boat unattended in the waters of Portage Lake. Plaintiffs argue that the 100-foot long dock moors multiple boats and that its use has negatively impacted access to one of plaintiffs’ docks. Plaintiffs argue that they have to contend with the increased traffic and noise created by the neighbors’ use of the Northern Way and the dock located at its waterfront terminus, and that

they are differently affected by defendants' use of the dock than other riparian owners on Portage Lake, or the public at large.

We conclude that plaintiffs' interest in the issues presented in this lawsuit is sufficient to ensure sincere and vigorous advocacy, and that a declaratory judgment is necessary to guide the parties' future conduct in order to preserve legal rights. The parties' dispute has been ongoing for multiple years, and presents more than a merely hypothetical question. These parties have demonstrated an adverse interest necessitating the sharpening of the issues raised. Plaintiffs raise significant questions regarding what riparian rights defendant may exercise, and whether defendant's exercise of such riparian rights interfere with plaintiffs' own riparian rights. Because plaintiffs have a sufficient personal stake in the outcome of this litigation that differs from that of the general public, plaintiffs have standing to maintain this suit for declaratory judgment against defendant. The trial court erred in granting the motion for summary disposition based on a perceived lack of standing.

Finally, plaintiffs argue that the trial court should have granted summary disposition in their favor and against defendant, pursuant to MCR 2.116(I), which permits a trial court to render judgment if it appears that the opposing party, rather than the moving party, is entitled to judgment. We disagree.

Plaintiffs rely on affidavits executed by the three named plaintiffs, which were attached as exhibits to plaintiffs' March 15, 2016 brief opposing defendant's renewed motion to dismiss. Those affidavits address whether, in plaintiffs' view, defendant met the elements of adverse possession as to the Northern Way. At oral argument below, plaintiff's counsel made only brief mention of a request that the trial court grant summary disposition in favor of his clients rather than granting summary disposition in favor of defendant. This issue was not sufficiently explored below. Defendant's motion was premised on standing based on the ruling regarding the Chisholm defendants in this Court and on the doctrine of estoppel. Defendant was not on notice before the motion hearing that plaintiffs were pursuing a disposition of the prescriptive easement claim. Defendant was never incentivized or provided the opportunity to cross-examine the plaintiffs, authors of the affidavits, regarding the facts averred in those documents. Plaintiffs never asked the trial court to hold an evidentiary hearing, and a trial has not yet occurred below. The trial court noted that it issued its ruling based only on standing considerations and not based on the affidavits filed by the parties. Furthermore, the trial court never fully explored defendants' estoppel arguments. We conclude that the relevant issues were not sufficiently developed in the trial court to permit this Court to hold that summary disposition should have been granted in plaintiffs' favor pursuant to MCR 2.116(I).

We reverse and remand for proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Deborah A. Servitto  
/s/ Christopher M. Murray  
/s/ Stephen L. Borrello

**STATE OF MICHIGAN**

MI Court of Appeals

**Proof of Service**

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