

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

DANIEL ZIMMER,

Case No: 24-_____-CZ,

Plaintiff,

Hon. _____

v.

OTTAWA COUNTY and
OTTAWA COUNTY BOARD OF COMMISSIONERS,

Defendants.

COMPLAINT AND JURY DEMAND

There is no other civil action between these parties arising out of the same transaction or occurrence as alleged in this Complaint pending in this court, nor has any such action been previously filed and dismissed after having been assigned to a judge.

COMPLAINT

Plaintiff Daniel Zimmer, by and through his attorneys, Pinsky Smith, PC, states as follows:

JURISDICTION, VENUE, AND PARTIES

1. This is an action seeking to remedy violations of the Open Meetings Act, MCL 15.263 *et seq.* (“OMA”), as well as seeking to obtain declaratory and injunctive relief to prohibit enforcement of unlawful contracts passed on December 10, 2024.
2. Plaintiff Daniel Zimmer is an individual who resides in Ottawa County.

3. Defendant Ottawa County Board of Commissioners (“the Commission”) is the governing county commission for Ottawa County, organized under state law.

4. Defendant Ottawa County (“the County”) is a local unit of government organized pursuant to the State of Michigan. It is the seventh largest county within the State of Michigan and is located in the Western District of Michigan.

5. The acts that are the subject of this action occurred in Ottawa County, Michigan.

6. This matter is within the jurisdiction of this Court.

FACTUAL ALLEGATIONS

7. The OMA requires that “[a]ll decisions of a public body must be made at a meeting open to the public.” MCL 15.263(2). The statute further requires that, with limited exceptions, “[a]ll deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public.” MCL 15.263(3).

8. The OMA specifically enumerates the circumstances under which a public body may deliberate outside a public meeting. MCL 15.268. One example is that a public body may go into closed session to “consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, if the named individual requests a closed hearing.” MCL 15.268(1)(a).

9. The Commission met for its regular December meeting on December 10, 2024. The Commission released the agenda for that meeting on the evening of

December 9, 2024.

10. The agenda included a motion “[t]o go into closed session pursuant to MCL 15.268(1)(a) to consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, as requested by Senior Executive Aide Jordan Epperson (requires 2/3 vote).”

11. The agenda further included a motion “[t]o go into closed session pursuant to MCL 15.268(1)(a) to consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, as requested by Interim Administrator Benjamin R. Wetmore (requires 2/3 vote).”

12. The agenda also included a suggested motion “[t]o approve and authorize the Board Chair and Clerk/Register to sign the Agreement for the Care, Management, and Maintenance of Land Located at Crockery Lake, and to appropriate \$563,404.00 from the General Fund balance, Monsanto reserve for the purpose of funding this Agreement.”

13. The packet included with the agenda contained the proposed contract for the Crockery Lake Agreement (“the Contract”). (Ex. A.) Included as an exhibit to the Contract was a two-page document that purported to summarize the costs of the proposed lake restoration program. The packet did not include the contract between Chester Township and Restorative Lake Sciences.

Motions on Epperson and Wetmore

14. In August 2023, former County Administrator John Gibbs hired Epperson to serve as a senior executive aide. The position was created earlier that year by upgrading an existing role and significantly increasing the pay. The County's hiring committee chose a different candidate who the committee determined was better qualified for the job, but Gibbs overruled the committee and hired Epperson. The other candidate selected by the hiring committee who did not receive the position filed an age discrimination lawsuit against the County, which the County later settled for \$225,000.

15. In November 2023, Gibbs hired Wetmore to serve as the County's Deputy Administrator. Wetmore, a lawyer, former partisan legislative aide, and political activist, had no prior experience in public administration. Wetmore was named the Interim Administrator in October 2024 when that role became vacant.

16. Both Epperson and Wetmore were supported by Commissioners affiliated with Ottawa Impact ("OI"), a far-right Political Action Committee that Commission Chairperson, Joe Moss, founded and continues to lead. Candidates who ran for the Commission under the OI label won a majority of seats in the November 2022 election and currently hold a 6-vote majority on the 11-member Commission (the "OI-affiliated Commissioners").

17. However, OI-affiliated Commissioners lost a majority of seats on the next Commission as of the primary election in August 2024. As of the general election in November 2024, only four OI-affiliated Commissioners were re-elected to

the Commission terms beginning in January 2025, which will put them in a minority voting bloc.

18. Upon information and belief, on December 10, 2024, the Commission was not considering the dismissal, suspension, or discipline of either Epperson or Wetmore, and there were no pending complaints or charges against either of them. Furthermore, it was not the time for their periodic personnel evaluations, nor had such an evaluation been completed for any reason.

19. Upon information and belief, both Epperson and Wetmore and the current OI-affiliated Commissioner majority anticipated it was a possibility that the new Commission in January 2025 might terminate Epperson and/or Wetmore's employment. Further, upon information and belief, Epperson and Wetmore had threatened to sue the County if they did not receive severance agreements, and the Commission Chair intended to champion the County offering Epperson and Wetmore lucrative severance agreements in closed session.

20. There is no legal or factual basis for either Epperson or Wetmore to sue the County.

21. Moreover, the OMA does not allow a public body to go into closed session to discuss threatened litigation, but only pending litigation.

22. Despite having no lawful basis to go into closed session under OMA, the Commission voted to go into closed session to discuss Epperson. After meeting in closed session, the Commission returned to open session and voted for "the [County] Clerk and [Commission] Chair to sign and authorize a separation and

release agreement” for Epperson. There was no public discussion about the agreement prior to the vote, and the Commission did not disclose any details about the terms of the agreement.

23. Thereafter, the Commission voted to go into closed session to discuss Wetmore, despite having no lawful basis to go into closed session under OMA. Upon return to open session, the Commission voted for “the [County] Clerk and [Commission] Chair to sign and authorize a separation and release agreement” for Wetmore. There was no public discussion about the agreement prior to the vote, and the Commission did not disclose any details about the terms of the agreement.

24. Defendants did not make the terms of the two severance agreements public.

25. A local news reporter, Sarah Leach, made a Freedom of Information Act request for the severance agreements, and she published them on December 16, 2024. The Epperson and Wetmore severance agreements, as signed by Chair Moss and published by Ms. Leach, are attached as Exhibit B and C. The County will make total payments under both agreements of more than \$280,000, not including the cost of providing health insurance to Epperson under the agreements. Per the agreements, the County must pay those amounts in a lump sum by December 17, 2024, even though Epperson and Wetmore are to work until January 1, 2025. Being paid the value of a severance agreement prior to ending work is an extremely unusual feature of such an agreement.

26. Moss made a public statement after the Commission meeting that the

Commission approved the severance agreements “[t]o help facilitate a smooth transition,” and that “[i]f anyone—including the press, tries to malign [Epperson and Wetmore] or say they were fired, that is completely false.” Moss went on to state that Epperson and Wetmore “are valued employees who will continue to serve the county through the end of the year.”

27. Moss’s statements confirm that the purpose of the closed session was not to discuss dismissal or discipline of Epperson and Wetmore, nor for any other permitted purposes under the OMA.

The Crockery Lake Contract

28. At the December 10, 2024 meeting, the Board also took up a motion to approve a contract between the County and Chester Township (“the Contract”). Under the Contract, the Board would provide \$563,404 to Chester Township to improve the waters of Crockery Lake. The money would then be paid by the Township to Restorative Lake Sciences and its owner Dr. Jennifer Jermalowicz-Jones to do work on the lake.

29. Upon information and belief, Dr. Jermalowicz-Jones is a supporter and political ally of the OI-affiliated Commissioners.

30. Crockery Lake is an inland lake in Chester Township in Ottawa County. It has a voluntary lake association, the Crockery Lake Association, which purports to be aimed at ensuring the health of Crockery Lake. The Crockery Lake Association is also focused on recreation activities at the lake, including annual fireworks displays and boat parades. Crockery Lake does not have a lake

improvement board, which is a type of body provided for under state law to engage in lake improvement projects.

31. In September 2024, the Crockery Lake Association presented information about Crockery Lake to the Finance and Administration Committee of the Commission. Dr. Jermalowicz-Jones also presented to the Committee.

32. Following that meeting, the Crockery Lake Association issued a statement to its members that county officials had been positive and “very promising” that they would support the lake improvement project.

33. On December 3, 2024, the Finance and Administration Committee approved a contract with Chester Township. The Committee did not have the contract between Chester Township and Restorative Lake Sciences or even a summary of the proposed project from Restorative Lakes Sciences.

34. The Contract as presented to the Commission on December 10, 2024 contained several substantive changes from the contract that was detailed in the discussion and passed by the Finance and Administration Committee just a week earlier. For instance, the contract that was passed by the committee directly authorized Restorative Lake Sciences, i.e. Dr. Jermalowicz-Jones, to conduct the project, whereas the contract presented to the Commission authorized the Township to conduct the project and provided the Township with the entirety of the anticipated cost of the project.

35. The Contract is different from other County contracts in important respects.

36. Upon information and belief, the County has not previously entered into contracts with townships and has never funded a lake improvement contract for an inland lake. There are more than 100 inland lakes in Ottawa County, and historically, improvement projects on those lakes have been funded without County money.

37. The Contract provides for the County to pay the entire \$563,404 of the contract to Chester Township immediately, even before there are permits for any aspect of the project. This is not standard practice for improvement projects with public entities. The Contract did not provide for any funding milestones, as is common with County contracts, nor for any other specific means of accountability for progress and standards of workmanship.

38. Commissioner Jacob Bonnema, who is not affiliated with OI, raised multiple concerns with the Contract. Bonnema expressed concerns that the entire amount of the contract was being paid up front, and that there were no funding milestones.

39. Commissioner Gretchen Cosby, who is an OI-affiliated commissioner who lost her bid for re-election, stated in response: “You . . . are asking about whether you can retract dollars. Maybe that might be why we want to fund it in full.” It was understood that she meant that the Contract obligated the County to pay the entirety of the cost of the project up front and prior to the end of 2024 so the new Commissioners could not reverse course, or have the opportunity to revisit any inadvisable aspect of the Contract, when they take office in about three weeks.

40. The Contract provides for the County to indemnify Chester Township for any claims, damages, or lawsuits arising from the project, thus leaving the County bearing the entirety of the legal risk for the project. As the County is the funder of the project in this Contract, and not the recipient of the funds, this is also extremely unusual.

41. Environmental projects like that contemplated in the Contract can create substantial, long-term, and costly legal liability, and so the County agreeing in the Contract to act as the indemnitor of the Township is a significant concession for which the County receives no apparent benefit.

42. Upon information and belief, there was not a process to solicit bids for the work on Crockery Lake; instead, the project was awarded to Restoration Lake Sciences for Dr. Jermalowicz-Jones to do the work without any bids from other potential providers, and without a public hearing of any sort on the feasibility of the project. The County's Board policy requires a competitive bid process for service contracts greater than \$35,000.

43. At the December 10, 2024 meeting, Wetmore stated that the County has been working with Chester Township on the contract for months. Nonetheless, the contract – which differed from that passed by the Finance and Administration Committee the previous week – was not provided to the entire Commission until the evening before the meeting – roughly twelve hours in advance.

44. Upon information and belief, the Contract was provided to only some members of the commission, i.e., OI-affiliated commissioners who supported the

concept of the project, prior to the time the agenda and packet were released.

45. Upon information and belief, a quorum of Commissioners engaged in discussions about the contract prior to the December 10, 2024 meeting.

46. On December 9, 2024 – the day prior to the County Commission meeting – the Chester Township Board unanimously voted to approve a contract to do the work. Upon information and belief, Chester Township approved the contract despite having no plan how to pay Dr. Jermalowicz-Jones and/or Restorative Lake Sciences which did not involve County money, but Township officials had reason to believe that it was a *fait accompli*, or predetermined, that Defendants would vote to give the Township the necessary funds, no strings attached, at the County Commission vote the following evening. Indeed, the Township Board’s meeting minutes reflect that Ottawa County had committed “to front the funds for a 5-year period.”

47. On December 10, 2024, the Commission narrowly approved and ratified the Contract with Chester Township, in a 6-5 vote, to appropriate \$563,404 of funds from the County’s General Fund, even though the Contract had not been provided to the entire Commission until the previous evening.

Statutory Framework for Lake Improvement Projects

48. Michigan law has two statutes that provide for the financing of lake improvement projects: The Natural Resources and Environmental Protection Act, MCL 324.30901 *et seq.*, and the Township Special Assessment Act, MCL 41.721 *et seq.* Both statutes provide for special assessment districts to fund the cost of lake

improvement projects.

49. Section 309 of the Natural Resources and Environmental Protection Act provides for local governments to set up lake improvement boards to manage inland lakes. A lake improvement board may be established by a local government upon its own resolution or when it receives a petition from two-thirds of lake property owners. The board is composed of local government officials and representatives of the lake property owners.

50. Under state law, a lake board must follow specific procedures before embarking on any lake improvement project, including holding public hearings and engaging in a competitive bidding process.

51. A lake board may establish a special assessment district to fund lake improvement projects. That district may only include those properties that benefit directly from the proposed improvement.

52. The Township Special Assessment Act provides a funding mechanism for townships to finance lake improvement projects through special assessment districts. The statute also requires certain procedures, such as public hearings.

53. County Boards of Commissioners do not have state law authority to conduct lake improvement projects and could not contract directly with a service provider to conduct a lake improvement project.

54. Commissioner Doug Zylstra, who is not affiliated with OI, repeatedly questioned during the December 10, 2024 Commission meeting why the County would be contracting with Chester Township, rather than directly with Restorative

Lake Sciences. Corporation Counsel and Wetmore evaded Zylstra’s questions, and neither Wetmore nor Corporation Counsel ever mentioned that the Commission lacked the power to enter into a contract for a lake improvement project. In fact, Corporation Counsel stated during the meeting that the County had authority under MCL 46.11(l) to undergo the lake restoration project on its own, and without engaging Chester Township.

55. MCL 46.11(l) provides that a County Board of Commissioners may “[r]epresent the county and have the care and management of the property and business of the county if other provisions are not made.” It does not provide authority for the Commission to undertake a lake improvement project.

56. Commissioner Zylstra moved to return the contract to Corporation Counsel to have the County contract directly with Restorative Lake Sciences, which was voted down by the Commission. During the entire discussion of Commissioner Zylstra’s motion, no one familiar with the contract negotiations – Wetmore, Corporation Counsel, or the OI-affiliated commissioners – ever mentioned that the County did not have authority to enter into a direct contract for a lake improvement project.

57. Although none of the Commissioners raised the question of the whether the Commission had authority to enter into a contract for a lake improvement project, Chairman Moss stressed his position that the Commission was lawfully entitled to enter into the contract, citing MCL 46.11 and MCL 123.51. MCL 46.11, which enumerates the actions that a County Board of Commissioner

may take at a lawfully held meeting, does not entitle the Commission to undertake a lake improvement project. MCL 123.51, which authorizes local governments to operate a system of public recreation and playgrounds, also does not authorize a county to undertake a lake improvement contract.

58. Chairman Moss's statements indicate that he received advice from legal counsel about the limits of the Commission's authority to undertake a lake improvement project. Chairman Moss appeared careful to avoid describing this project as a lake improvement project. At one point, Chairman Moss appeared to be poised to say that he would like the Commission to pursue cleaning of lakes, but stopped mid-way through that sentence to correct himself and instead advocated for "doing the work that is needed."

59. Neither Chairman Moss nor legal counsel shared that information with the other commissioners, even when faced with direct questions about why the County contracted with Chester Township rather than Restorative Lake Sciences.

60. Commissioner Miedema, whose district includes Chester Township, stated that Crockery Lake Association had chosen Dr. Jermalowicz-Jones after "doing their research." However, the Crockery Lake Association is not a lake board and is not subject to the statutory requirements for lake boards, who must hold public hearings on the feasibility of a lake improvement project and conduct a competitive bidding process.

61. Moreover, there is no statutory authority for a county board of commissioners to fund the entirety of a lake improvement project. Rather, a county

board of commissioners may only provide up to 25 percent of the cost of a lake improvement project on any public inland lake. MCL 324.30911.

COUNT I – VIOLATION OF THE OPEN MEETINGS ACT, MCL 15.261 et seq.
(WETMORE AND EPPERSON AGREEMENTS)

62. Plaintiff relies on the allegations of all prior paragraphs, as if they were restated herein.

63. The Open Meetings Act applies to county boards of commissioners. MCL 46.1(2).

64. The OMA requires that all deliberations and decisions of a public body must take place at a public meeting in an accessible place open to the general public at which a person can address the meeting. MCL 15.263(1).

65. The OMA requires that all deliberations of a public body constituting a quorum of its members must generally take place at a meeting open to the public. MCL 15.263(3).

66. The OMA does not allow a public body to go into closed session to discuss a severance contract unless other circumstances exist, such as pending litigation or complaints or charges against an employee.

67. Defendants did not have a valid, lawful reason to go into closed session to discuss severance agreements with Epperson and Wetmore.

68. The OMA required any deliberation about severance agreements for Epperson and Wetmore to occur in a public meeting.

69. Defendants' decision to discuss the severance agreements for Epperson and Wetmore in closed session violated the OMA.

70. After Defendants left their closed session meeting, they disclosed to the public only that they agreed to provide a “separation and release agreement” for Epperson and Wetmore. They did not provide the public with any details about the severance agreements or the decision that was being made.

71. In failing to disclose any details about the agreements with Epperson and Wetmore, Defendants also violated OMA’s requirement that all decisions of a public body take place in a public meeting.

72. Defendants’ violation of the OMA was intentional.

73. The Commission failed to lawfully approve any enforceable agreement with Epperson or Wetmore since their votes violated OMA by failing to provide any details about the agreements or the decisions being made.

74. Accordingly, Plaintiff is entitled to relief under Section 10, 11 and 13 of Open Meetings Act, MCL 15.271.

RELIEF SOUGHT

WHEREFORE, Plaintiff requests that the Court grant the following relief:

75. Compel Defendants to produce the minutes of the closed session on December 10, 2024 for the Court’s *in camera* inspection, necessary to show that Defendants did not comply with Open Meetings Act;

76. Order the disclosure of the minutes of the closed session on December 10, 2024 to the parties and the public;

77. Declare that Defendants have violated the Open Meetings Act;

78. Compel Defendants to comply with the Open Meetings Act;

79. Enjoin further non-compliance with the Open Meetings Act;

80. Invalidate the decision of the Commission to approve agreements with Epperson and Wetmore, and enjoin any and all performance under those purported agreements;

81. Award Plaintiff actual and exemplary damages;

82. Award Plaintiff costs and reasonable attorney fees; and

83. Award Plaintiff such other relief as may be just and equitable.

COUNT II – VIOLATION OF THE OPEN MEETINGS ACT, MCL 15.261 et seq.
(CROCKERY LAKE CONTRACT)

84. Plaintiff relies on the allegations of all prior paragraphs, as if they were restated herein.

85. Upon information and belief, a quorum of the Commission met secretly and out of public view either collectively and/or round-robin-style; sent representatives to meet and negotiate with Chester Township officials on behalf of the County without transparency to the entire Commission; and purported to agree to commit County funds for the Crockery Lake project, which eventually became the subject of the Contract. The vote to approve the Contract on December 10, 2024 was a *fait accompli*, or predetermined by the OI-affiliated majority Commissioners, before the meeting began.

86. The contract that the Finance and Administration Committee voted to approve was significantly different than that presented to the Commission.

87. The Board Chairperson, Joe Moss, released an agenda for the December 10, 2024 meeting on the evening of December 9, 2024 which contained the proposed contract for Chester Township to do work on Crockery Lake. This was the first time that any commissioner not affiliated with OI saw the proposed contract in the form in which it was to be considered at the December 10, 2024 meeting, a mere 12 hours later.

88. Upon information and belief, during their meetings outside of public view, a quorum of the Board either deliberated and agreed to support the Crockery Lake Contract, or deliberated in a de facto quorum by using a round-robin style of communication between subquorum groups to attempt to evade the requirements of the Open Meetings Act.

89. The Board majority who voted to approve the Crockery Lake Contract gave Chester Township officials assurance that the vote on December 10, 2024 was a *fait accompli* and that they would appropriate the money to the Township in the favorable, one-sided terms to the Township in the Contract.

90. Defendants' actions violated the Open Meetings Act's requirement that all deliberations constituting a quorum take place at an open meeting.

91. Defendants' violation of the Open Meetings Act was intentional. MCL 15.273.

WHEREFORE, Plaintiff requests that the Court grant the following relief:

- A. Declare that Defendants violated the Open Meetings Act;
- B. Compel Defendants to comply with the Open Meetings Act;

- C. Enjoin further non-compliance with the Open Meetings Act;
- D. Invalidate the decision of the Commission to approve the contract with Chester Township, and enjoin any and all performance under the purported contract;
- E. Award Plaintiff actual and exemplary damages;
- F. Award Plaintiff costs and reasonable attorney fees; and
- G. Award Plaintiff such other relief as may be just and equitable.

COUNT III – ACTION FOR DECLARATORY RELIEF THAT THE CROCKERY LAKE CONTRACT PASSED ON DECEMBER 10, 2024 IS UNENFORCEABLE

92. Plaintiff relies on the allegations of all prior paragraphs, as if they were restated herein.

93. State law provides for lake improvement projects to be carried out and funded in a specific manner.

94. A county board of commissioners does not have jurisdiction to conduct a lake improvement contract.

95. A county board of commissioners cannot evade its jurisdictional limitations by funneling the entirety of the funds for a lake improvement project through a township.

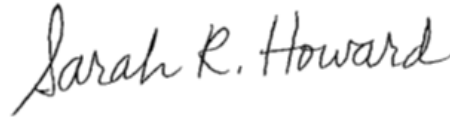
96. State law limits the amount that a county can contribute to a lake improvement project.

97. The contract for Crockery Lake is an illegal exercise of the Commission's authority and is void.

WHEREFORE, Plaintiff requests that the Court grant the following relief:

- A. Declare that the Commission exceeded its authority in approving the contract with Chester Township on December 10, 2024;
- B. Declare that the contract with Chester Township approved by the Commission on December 10, 2024 is null and void;
- C. Enjoin Defendants from dispensing any funds to Chester Township pursuant to the contract approved on December 10, 2024; and
- D. Award Plaintiff such other relief as may be just and equitable.

PINSKY SMITH, PC
Attorneys for Plaintiff



Dated: December 16, 2024

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