

KENT COUNTY APPORTIONMENT COMMISSION

Wednesday, October 6, 2021

Room 310 - County Administration Building

The meeting of the Kent County Apportionment Commission was held on Wednesday, October 6, at 10:00 a.m. in Room 310, County Administration Building.

Members Present: Chris Becker, Kent County Prosecutor
Lisa Posthumus Lyons, Kent County Clerk
Peter MacGregor, Kent County Treasurer (*Attended virtually, under medical exemption pursuant to the Open Meetings Act*)
Bill Saxton, Chair, Kent County Democratic Party
Rob VerHeulen, Chair, Kent County Republican Party

Also Present: Troy Cumings, Warner Norcross + Judd; Outside Legal Counsel
Robert Macomber, Chief Deputy County Clerk

Handouts: 1) Meeting agenda; 2) Minutes of October 4, 2021 Meeting

The meeting was called to order by Chairman Becker at 10:00 a.m.

Motion by Mr. VerHeulen, supported by Mr. Saxton to adopt the minutes of the October 4, 2021 Meeting. Motion carried unanimously.

Ms. Lyons: Explained that Mr. MacGregor would be attending the meeting virtually pursuant to a medical exemption in compliance with the Open Meetings Act; such exemption grants him the ability to participate and vote on any motions as if he were attending in person.

Chair Becker: Explained that this is the meeting to present any map amendments and ask any questions of the drafter. He asked both Mr. VerHeulen the reasoning why his submission splits Plainfield Township.

Mr. VerHeulen: Explained that MCL 46.404 provides guidelines for the commission, and first and foremost is that districts adhere to the population limits. Both his and Mr. Saxton's maps split a large township: his splits Plainfield, Mr. Saxton's splits Gaines Township. He chose to split Plainfield to adhere to one of the additional guidelines that states drafters should avoid combining city and townships, thereby avoided splitting Gaines Township. Mr. Saxton's plan does not adhere to that guide set forth.

Mr. Becker: Thanked Mr. VerHeulen for that explanation, and questioned Mr. Saxton's creation of two super-districts which are over the target population. He stated that the Plainfield district was over the population target by around 7% and asked him to justify that deviation.

Mr. Saxton: Explained that his plan is within the threshold that the courts have accepted for population deviance, and as far as the Plainfield district he proposed, it made sense to not split up

the township since it fits as one district, and that the township has historically been its own district.

Mr. Becker: Asked Mr. Saxton to explain his proposed district # 10 encompassing the city of Kentwood, and splits Gaines Township.

Mr. Saxton: Acknowledge the deviation in population and stated that it is within the range that is required to be met, and that is acceptable in that it meets all the requirements of the statute.

Mr. Becker: Asked Mr. VerHeulen and Mr. Saxton both about the public comment related to the City of Wyoming.

Mr. Saxton: Stated that the size of Wyoming requires that it have three districts, with two being able to be wholly contained with the third being put into a third district. He explained that his plan accomplishes what the public comment from Mr. Fitzgerald pointed out, that as the county's second largest city, it makes sense to have two Wyoming districts.

Mr. VerHeulen: His combination of Wyoming and Grand Rapids is what created the Hispanic majority district.

Mr. Becker: Asked Mr. Saxton and counsel whether there was any legal issue with the corners of Mr. Saxton map's District 4.

Mr. Saxton: Explained that there is no cornering involved with this proposed district, those are clear jurisdiction boundaries that connect the cities and townships.

Mr. Cumings: Concurred that this proposed district would not present a cornering issue – past cases had literal corners, and nothing else, touching.

Ms. Lyons: Understands the public's concerns relating to split townships and appreciates the explanation of the splits in both map submissions, it is inevitable for splits to occur. She was very receptive to former commissioner Jim Talen's comments relating to keeping Grand Rapids city neighborhoods together, and that she would encourage those communities being held together if possible.

Mr. Becker: Asked if there any formal amendments at this time. None were offered. He asked Ms. Lyons to discuss an issue brought to his attention with the current schedule for the commission.

Ms. Lyons: Reminded members of original timeline set by the commission, and the debate as to whether the 60-day window by which the commission has to approve maps started on August 12 when the federal government released Census data, or the state's interpretation of that release date to be September 30, which has now turned into September 16. Reminded members that they reviewed the legal opinion sought by the Michigan Association of County Clerks from Warner, Norcross + Judd, and set its schedule in accordance with August 12 being the date that started the

60-day clock, and would work to have maps approved by October 12. Since that time, there continues to be discussion among clerks statewide as to how an unpredictable court would act in the event of a legal challenge with regards to the deadline. The statute requires the commission to adopt a plan not earlier than 30 days and no later than 60, and therefore, if we adopt a plan on October 8 as planned, we run the risk of a court determining that the plan was adopted outside of the window if the September 16 date is upheld. She stated that several other counties have petitioned the Court of Appeals for an extension to ensure full compliance with the statute. She stated that our legal counsel has recommended that the commission do this as well, and asked Mr. Cummings to expound on that process.

Mr. Cumings: Stated that there is no way to reconcile the difference in opinions regarding the dates, and while they stand behind the legal opinion, since the Bureau has taken a different view and is given a lot of authority by the court, it is prudent to seek the extension to not take any risk. Ottawa County sought and received an extension within a few days, and he believe the Court would be equally as responsive to Kent's petition for extension. If the commission were to request the extension today, it is likely that the court would respond by Friday. That would allow the commission to push Friday's (10/8/21) meeting to later in the month, which would mean we're in compliance with either deadline.

Ms. Lyons: Pointed out that this was an option for counties that was presented in the legal opinion provided.

Mr. VerHeulen: Asked counsel what would happen if the court does not act by Monday, should the commission schedule a meeting for Monday just in case.

Mr. Lyons: Suggested that if the court does not grant an extension by our next meeting date, the commission could keep it's Friday meeting to adopt a plan then come back later in the month to re-adopt the plan within the other timeframe. This is an option as well, but more counties are going the route of seeking an extension.

Mr. VerHeulen: Clarified that we are asking counsel to seek an extension, and if it is not granted by Friday at 10, we will still meet and adopt a plan as originally intended, and then we'll regroup later in the month to re-adopt the plan within the window. Asked whether that will meet legal requirements.

Mr. Cumings: Stated that that has not be done, or tested before, which is why other counties are instead seeking an extension.

Mr. MacGregor: Asked counsel if there was any reason to believe we will not be granted an extension by the court.

Mr. Cumings: In his opinion, because there is good cause it would meet the statutory requirement for extension, and that every county requesting has made a strong argument for having good cause given that the Bureau of Elections is promoting one date and legal opinions

state otherwise. Every Judge has granted extensions quickly.

Mr. VerHeulen: Would prefer the route of seeking an extension as opposed to needing to come back later to re-adopt a plan.

[Logistical discussion not germane to the record regarding the scheduling of future meetings]

Mr. Becker: The commission will cancel the meeting scheduled for Friday, October 8; schedule a meeting for Monday, October 11 at 11 A.M. as a contingency if the court does not respond; and if the court responds granting an extension prior to Monday's meeting, that meeting will be cancelled as well; and the commission will reconvene at a future date subject to the Call of the Chair.

Mr. VerHeulen: Asked whether a motion is needed to that effect.

Ms. Lyons made a motion, supported by Chair Becker, asking legal counsel to file a petition seeking an extension from the Court of Appeals. Motion carried unanimously.

Mr. VerHeuluen: Asked whether a motion is needed about meeting schedules.

Chair Becker: Clarified that a motion is not needed, the commission meets at the call of the Chair.

Mr. Cumings: Asked whether the commission is holding to the Friday (10/8/21) deadline for amendments to proposals, given the new schedule.

Ms. Lyons: Stated that she would defer to the map drafters, but having moved the meeting to Monday, that gives a clear ability to review those if we keep the Friday deadline in place.

Mr. VerHeulen: Stated that he supports keeping the deadline for amendments as is, Friday, which gives time to evaluate.

Mr. Saxton: Stated that he does not support a deadline and recalls this discussion from an earlier meeting, and that it is his position that anyone is free to offer amendments up until adoption – as agreed upon earlier. He does not envision drastic changes.

Mr. Cumings: Stated that he would recommend a deadline, giving the body enough time to review, but nothing precludes anyone from submitting an amendment past a deadline.

Mr. Lyons: Stated that having a deadline is ideal, but the understanding that anyone is free to submit an amendment at any time before adoption.

Mr. VerHeulen: Stated that the earlier an amendment is submitted, the more thorough an evaluation could occur. A 9:45 amendment prior to a 10:00 meeting can not be thoroughly vetted.

Mr. Saxton: With no meeting scheduled between now and Monday, what is the process for

submitting any amendments?

Ms. Lyons: Stated that submissions can be sent to apportionment@kentcountymi.gov and they will be forwarded to members of the commission. That email was set up to accept input, amendments, and submissions.

Chair Becker: Asked whether the Friday deadline for amendments would remain the previously scheduled meeting time (10:00 A.M.) or close of business.

Mr. VerHeulen: Suggested remaining consistent with past practice (submissions) to keep the time of the meeting as the deadline; 10:00 A.M. Friday morning.

Mr. Saxton: Stated that he is against setting any deadline as he is not sure it holds any power. Additionally, if the extension is granted by the court, the deadline would be several days from the next meeting time. Further stated that anyone can submit a proposed change at any time, the commission can decide whether to consider the proposal regardless of a deadline.

Chair Becker: Stated that he agrees with Mr. Saxton. Ms. Lyons and Mr. VerHeulen state that they agreed as well.

Ms. Lyons: Clarified that the meeting on Friday at 10:00 A.M. is cancelled.

Mr. VerHeulen: Asked for clarity as to Monday's meeting.

Ms. Lyons: Stated that Monday's meeting is scheduled until and unless the court grants an extension of the deadline.

Chair Becker: Stated that any individual with an amendment, the sooner you submit it, the better as far as consideration by the commission. Called for public comment and heard none.

Adjournment

Motion by Ms. Lyons, supported by Mr. Saxton to adjourn the meeting at 10:37 a.m.

Motion carried unanimously.


Lisa Posthumus Lyons, Secretary
Kent County Apportionment Commission