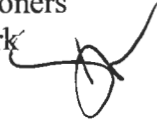


**AGENDA REPORT**

TO: Mayor & City Commissioners  
FROM: Diane Schmidt, City Clerk  
DATE: December 30, 2009  
RE: \*Communications



For the Agenda January 04, 2010

**\*Note: This is a Consent Agenda item and is considered as routine by the City Commission. As such, this matter shall be automatically enacted by one motion with all other Consent Agenda items unless a Commissioner or citizen requests this item be individually discussed, in which event it shall be removed from the Consent Agenda and considered and acted upon in its designated sequence on the approved Clare City Commission agenda of January 04, 2010.**

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The following major items of correspondence were either received by or transmitted by the City since the last regularly scheduled City Commission meeting:

Employment Tax Status - City Assessor. The City received the enclosed opinion letter from the city attorney regarding the employment tax status of the city assessor.

DOL Bureau of Construction Codes. The City received the enclosed notice of public hearing from the DOL related to proposed amendments to the Michigan Elevator Safety board General Rules and Construction Code-Part 7. Plumbing Code.

Charter Communications change in contact information. The City received notice that Charter Communications has made a change in management and has provided new technical contact information. Charter is also providing additional resources to monitor complaints and address interference problems with channels 96 and 97.

MMDC Correspondence. The latest editions of weekly *MMDC Bullets* are attached for the Commission's information.

Attachments. As noted above.

# JAYNIE SMITH HOERAUF, P.C.

ATTORNEY AT LAW

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601 Beech Street / P.O. Box 67 / Clare, Michigan 48617

Phone (989) 386-3434 / Fax (989) 386-3636

E-mail / [hoerauf@sbcglobal.net](mailto:hoerauf@sbcglobal.net)

December 15, 2009

Mr. Ken Hibl  
City of Clare  
202 West Fifth  
Clare MI 48617

RE: City Assessor – Employment Tax Status

Dear Ken:

Please accept this letter in response to your inquiry regarding the employment tax status of the city assessor. It is my opinion that the City's employment of BS & A Software Inc., to perform its assessing functions does not create an employment tax liability problem. I will explain.

The recent discussion has been regarding various tax opinions involving municipalities that treat the tax assessor as an independent contractor. The tax assessor is hired as a contract employee to perform the assessing functions and paid a contract sum in lieu of a wage. In this model, the assessor is given a "gross" contract amount, employment taxes are not withheld (and the employer portion not paid by the local government) and the income is reported to the government on Form 1099 rather than by use of a W-2 form. This type of employment is not favored under tax law and has been a popular tax avoidance tactic in some industries (i.e....construction). No matter how often it is done, it is usually inconsistent with employment tax law. The tax law is structured to result in a determination that the person is an employee, rather than an independent contractor. As an employee the person must be placed on the formal payroll and employment taxes withheld and paid as we go.

Mr. Ken Hibl  
Page 2  
December 15, 2009

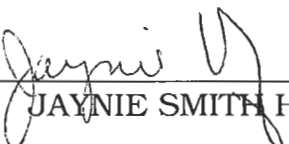
This inquiry and analysis does not pertain to the City under the circumstances. The City of Clare has had two assessors in the last few years. The first, Ms. Lemm, was a regular payroll employee (thus ending the inquiry). The second, Mr. Kirwin, is a payroll employee of a separate, bona fide company. He is paid wages by BS & A and (we have to assume that they manage their payroll duties/obligations like any other employer) receives his W-2 through them. The City has a contract for services, receives regular invoices, and pays the invoices. All of this is beyond question and there is no employee being paid contract wages and receiving a 1099, as in many other cities. The City has never retained an assessor under an independent contractor arrangement, apart from the corporation BS & A. Should the City have retained either individual on a contract basis and issued a Form 1099 for the compensation to the individual, the inquiry would be much different.

Your second question involves the proposed sharing of an assessor between several cities by virtue of an Urban Cooperation Act Agreement. Under that agreement, one City would act as employer, pay the assessor, withhold payroll taxes, make all employer contributions for taxes and the various cities would then remit their percentage share of the cost as reimbursement. It is my opinion that there is no employment tax liability issue on the proposed arrangement, either. In that instance, you have an individual on a payroll, with all payroll taxes being withheld and remitted pursuant to a written agreement. No sums would be paid to the assessor as independent contractor or reported via Form 1099. If you were to have a situation in which the individual has contracted for services to be rendered, the contract treating him as an independent contractor, with a 1099 issued in lieu of putting the individual on the payroll, the analysis would be very different.

I hope that this assists.

Sincerely,

JAYNIE SMITH HOERAUF, P.C.

BY   
JAYNIE SMITH HOERAUF

JSH/ss

DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH  
BUREAU OF CONSTRUCTION CODES  
NOTICE OF PUBLIC HEARING

Michigan Elevator Safety Board General Rules (SOAHR# 2008-005 LG)  
Construction Code – Part 7. Plumbing Code (SOAHR# 2009-007 LG)

The Department of Energy, Labor & Economic Growth, Bureau of Construction Codes, will hold a public hearing on January 20, 2010, at 9:30 a.m. in Conference Room 3, 1<sup>st</sup> floor, 2501 Woodlake Circle, Okemos, MI 48864. The proposed effective date of the Elevator Rule Set is August, 2010, and the proposed effective date of the Plumbing Rule Set is September, 2010.

The public hearing is to receive public comments on the proposed amendments to the administrative rules noted above. Testimony will be taken for each rule set in the order the rules are listed above. Individuals who are not present during testimony for a particular rule set will be provided an opportunity to testify after final testimony on the Plumbing Code rule set.

The proposed Michigan Elevator Safety Board General Rules will adopt the ASME A17.1-2007, ASME A18.1-2008, and ANSI A10.4-2007. The code covers the design, construction, operation, inspection, testing, maintenance, alteration, and repair of elevating devices. The hearing is being conducted by authority conferred on the director of the Department of Energy, Labor and Economic Growth by section 8 of 1967 PA 227 and section 8 of 1976 PA 333, Executive Reorganization Order No. 2008-4, MCL 445.2025.

The proposed Michigan plumbing rules will adopt the 2009 edition of the International Plumbing Code with amendments, deletions, and additions as deemed necessary for use in Michigan. The hearing is being conducted by the Department under the authority of Section 4 of 1972 PA 230, MCL 125.1504, and Executive Reorganization Order Nos. 2003-1 and 2008-4, MCL 445.2011 and MCL 445.2025.

The proposed rules will be published in the January 1, 2010, *Michigan Register*. Copies of the proposed Michigan amendments to the Michigan Elevator Safety Board General Rules and Construction Code – Part 7. Plumbing Code may be obtained for a fee of \$3.00 each by submitting a check or money order, made payable to the State of Michigan, to the Bureau at the address below. You may download a free copy of the proposed amendments by visiting our website at [www.michigan.gov/bcc](http://www.michigan.gov/bcc). The amendments are located under the What's New section.

Oral or written comments may be presented in person at the hearing on January 20, 2010, or submitted in writing by mail, email, or facsimile no later than 5:00 p.m., January 20, 2010. If your presentation is in written form, please provide a copy to a rules analyst at the conclusion of your testimony.

Department of Energy, Labor & Economic Growth  
Bureau of Construction Codes  
Office of Administrative Services  
P.O. Box 30254  
Lansing, MI 48909  
Telephone (517) 335-2972  
Facsimile (517) 241-9570  
[matsumotos@michigan.gov](mailto:matsumotos@michigan.gov)

Be sure all cellular telephones and pagers are turned off or set to vibrate during the hearing.

The meeting site and parking are accessible. Individuals attending the meeting are requested to refrain from using heavily scented personal care products in order to enhance accessibility for everyone. People with disabilities requiring additional services (such as materials in alternative format) in order to participate in the meeting should call Shannon Matsumoto at 517-241-6312 (voice) or 517-322-5987 (TTY) at least 14 days prior to the hearing. DELEG is an equal opportunity employer/program.



**Charter**  
COMMUNICATIONS®

A WIRED WORLD COMPANY™

December 29, 2009

City of Clare, MI  
Attn: Ms. Kay Haven, City Clerk  
202 West Fifth  
Clare, MI 48617

Dear Ms. Haven:

Charter Communications recently made a change in management areas that affected the contact information for technical operations with Charter Communications.

The new technical contact for you is as follows:

Technical Operations Manager Name: Lloyd Collins  
Address: 1145 S. Telegraph Road  
City, State, Zip: Monroe, MI 48161  
Phone: 734-240-4004 Fax: 734-234-2366  
E-Mail: [lloyd.collins@chartercom.com](mailto:lloyd.collins@chartercom.com)

Charter has also established the following resources in the event any of your constituents need to contact us concerning specific problems with Channels 96-99. Our regular customer service number is 888-GET-CHARTER. In addition, Charter will monitor the following email address for any complaints or concerns about interference on channels 96 and 97. [joegm@chartercom.com](mailto:joegm@chartercom.com). Anyone experiencing interference on those channels may email Charter at that email address, identifying the nature of their problem and their contact information. Charter will respond by email or phone to the complainant by the next business day and schedule a service call if required at the customer's convenience.

Second, Charter has set up a hotline, toll-free telephone number for the purpose of fielding any telephone complaints about interference on Channels 96 and 97. Anyone experiencing interference may call and leave a message at **877.976.1625**. Again, Charter will respond by the next business day and schedule a service call if required, at the customer's convenience.

In addition, I have a new direct dial telephone number for my office. My new number is 616-607-2378. Please note this change as well.

Best Regards,

Tim Ransberger  
Charter Communications

**From:** Carolyn Bennett [cbennett@mmdc.org]  
**Sent:** Wednesday, December 16, 2009 4:07 PM  
**To:** info@mmdc.org  
**Subject:** MMDC Bullets

## **MMDC Bullets – December 16, 2009**

- On December 4 we attended a Michigan Economic Developers Association (MEDA) event titled “Economic Development; Pushing the Boundaries.” This day-long seminar provided valuable insights on the various aspects of entrepreneurship, tourism, partnerships, and new industry (film industry being one) attraction, and the value of utilizing these tools to enhance our communities.
- The first Asset Based Community Development Training was held on Saturday, December 12 at the Mannsiding Lodge in Clare County. MMDC was able to provide this critical training through a grant received from the USDA. Twenty participants from Surrey Township, Freeman Township, Hayes Township, and Lake George attended. Lisa Hadden, Mt. Pleasant Area Chamber of Commerce President, facilitated the training.
- Thank you to the City of Clare for creating an Industrial Development District and Plant Rehab District for Robotic Welded Parts at its new location in the City of Clare. It continues to be a privilege to work with communities that have the best interest of their businesses at heart.
- The Harrison Area Economic Development Organization (HAEDCO) hosted its third “Bucks for Business” contest this week. This program offers entrepreneurs in the greater Harrison Area the opportunity to win \$1,000 toward the start-up or expansion of their business. In addition, all companies are provided information about local agencies that will assist with business development. The winner of the “Bucks for Business” contest will be announced in a future bullets broadcast.
- Bandit Industries has been approved by the Michigan Economic Development Corporation’s (MEDC) management team for inclusion in their EDJT (economic development job training) Pilot Program Grant. The approval is for \$25,000 to train 45 employees. Thank you to our local MEDC Business Development Manager Brenda Flory for working with Bandit Industries to make this happen!
- Congratulations to the City of Mt. Pleasant and Midori Sushi Restaurant and Martini Bar for receiving a grant from the MEDC for façade improvement at its location in downtown Mt. Pleasant.
- Mock Interview Day is scheduled for Tuesday, March 16 at CMU’s Bovee University Center. Thanks to the Clare County Enterprise Community, CME Mitsuba, Commercial Bank, FutureMold, Melling Products, and StageRight, MMDC is already halfway to its financial goal!
- Tomorrow is finally moving day! We’ve been packing and tossing for weeks and the time has finally come to move MMDC to its new location at 200 E. Broadway – the former Isabella Bank Building. Our offices will be closed on Thursday and Friday and will reopen on Monday, December 21 at our new location. Should you need to reach us, please leave a voicemail message or send an email. We’ll do our best to get back with you in a timely manner.

*Kathy & Carolyn*

Carolyn Bridges Bennett, CBSP

Director of Promotions & Workforce Development  
Middle Michigan Development Corporation  
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cbennett@mmdc.org  
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