

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF MARQUETTE

FREDERICK NANNESTAD,

Plaintiff,

vs. File No. 12-050920-AW

REPUBLIC TOWNSHIP SUPERVISOR
GARY JOHNSON, REPUBLIC TOWNSHIP
CLERK MARILYN BRANCHEAU, and
CURRENT REPUBLIC TOWNSHIP
TREASURER KRISTINA KOSKI,

Defendants.

_____ /

MOTION HEARING
(partial transcript - ruling only)

BEFORE THE HONORABLE THOMAS L. SOLKA

Marquette, Michigan - Thursday, October 10, 2013

APPEARANCES:

For the Plaintiff: Mr. Daniel D. Mead (P68793)
Graybill & Mead, P.L.L.C.
216 South Main Street
Ishpeming, MI 49849
(906) 485-6420

For the Defendant: Mr. David R. Mechlin (P17578)
Vairo, Mechlin & Tomasi, P.L.L.C.
400 East Houghton Avenue
Houghton, MI 49931
(906) 482-07770

RECORDED BY: JAVS Video Courtroom
TRANSCRIBED BY: Sharon A. Grabarczyk, CER 6727
NORTHERN REPORTERS
P.O. Box 27
Marquette, MI 49855
(906) 226-2706

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Marquette, Michigan

Thursday, October 10, 2013 - 1:40 p.m.

(From 1:40 until 3:28 p.m., proceeding
recorded, but not transcribed.)

THE COURT: All right. We are back and continuing on the record in the -- in File 50920-AW, in the matter of Frederick Nannestad versus Republic Township Supervisor Gary Johnson, the township clerk, Marilyn Brancheau, the former Republic Township Treasurer, Faye Mattila, and the current Republic Township Treasurer, Kristina Koski. Now, this is a mandamus and a declaratory judgment claim against the township officers, current and one former township officer, its former treasurer. Mr. Mead?

MR. MEAD: She's been dismissed, Your Honor, the former treasurer, Ms. Mattila.

THE COURT: All right. Well, I guess there was a voluntary or stipulated dismissal as to Ms. Mattila, so the current township officers.

Now, as I said, the township officers are officers of Republic Township. That's a small township, of which the Court will take judicial notice, in western Marquette County. Its 2010 census population I believe was about 570 people, with a median household income of about \$23,532. The

1 plaintiff in this case, Mr. Frederick Nannestad, is a
2 citizen, a taxpayer, and a resident, one of those
3 residents of the township.

4 Now, before the Court today for decision are
5 counter-motions for summary disposition on the
6 complaint. One motion was filed by the plaintiff here,
7 asking that the Court grant the relief he requests by
8 way of a mandamus order and declaratory relief, and the
9 other motion, the counter-motion, is that filed by the
10 township asking the Court to dismiss the complaint.
11 Plaintiff does also ask leave to file an amended
12 complaint, depending on the Court's decision on the
13 summary disposition motion.

14 Now, the complaint before the Court, this one
15 for a writ of mandamus, was filed November 16 of 2012.
16 The declaratory relief addendum to the complaint, or I
17 believe what one of the counsel has referred to in an
18 argument as the "wherefore" clause -- I think it's
19 still called the addendum. That's what it was called
20 when I started practicing law, but that was a long time
21 ago, and maybe it's changed. But the relief requested
22 clause for the complaint asks this Court to declare, on
23 a declaratory relief clause, the obvious, that these
24 township offices are required to comply with state law,
25 and I might add their oaths of office, specifically

1 laws detailing their duties of office in relation to
2 township records.

3 Now, the statutes cited of course are the
4 specific statutes as to each officer, 41.62 for the
5 township supervisor, 41.78 for the treasurer, and
6 MCL 41.65 for the clerk. The other statute cited in
7 the complaint is MCL 399.5, which deals with state
8 records -- well, records of all state agencies and
9 subdivisions of the state in relation to their duty --
10 duties as to those records in relation to the Michigan
11 Historic Commission, as well as the criminal code at
12 MCL 750.491, relating to public records.

13 Now, the mandamus relief requested, like the
14 complaint for declaratory relief, is similarly broad
15 and general. The addendum or the "wherefore" request
16 of the writ of mandamus asks the Court to order the
17 township officials to comply with their constitutional,
18 statutory and other lawful duties.

19 Now, specific allegations in Mr. Nannestad's
20 complaint fall into two broad categories, as I read it.
21 One is the alleged failure of the township officers to
22 keep, to retain and provide certain documents and
23 records under their control, including contracts,
24 public grant documents, audit records, fixed asset
25 ledgers, and specifically as to the treasurer, alleged

1 failure to keep, retain and provide certain financial
2 records, including copies of the cashier's checks,
3 regular non-cashier's checks, front and back, and
4 related bank statements and township banking records.

5 Now, the amended complaint proposed by the
6 plaintiff to be filed on motion is identical in its
7 addendum or "wherefore" clause on the relief requested.
8 The addendum to the proposed amended complaint,
9 likewise as to the declaratory judgment relief, asks
10 the Court to determine and declare the township
11 officers are required to conform to their duties under
12 the statutes I've already cited. And the mandamus
13 relief again is identical to that in the original
14 complaint, that is, a writ ordering the defendants to
15 comply with their constitutional, statutory, and other
16 legal duties as outlined in the declaratory judgment
17 relief.

18 Now, the amended complaint, as I've
19 considered it, and I've considered all of this on
20 motion, both the -- both motions for summary as -- in
21 relation to the Court's decision whether or not the
22 complaint, by leave of Court, should be or can be
23 amended. The amended complaint specifically alleges
24 the township fails to have a written record retention
25 policy and schedule. It also alleges with greater

1 specificity as to certain grant documents that have not
2 been retained or requested, that the plaintiff asked to
3 be provided to him, including the School Lake Grant,
4 the Republic Iron Ore Trailhead Acquisition Grant, a
5 water system project grant from the Department of
6 Agriculture Rural Development Office, the Evergreen
7 Street Improvement Grant, and the Hawks Drive Road
8 Mitigation Grant. The amended complaint also adds in
9 more specificity and detail, additional FOIA or Freedom
10 of Information Act issues, including plaintiff's
11 dissatisfaction that the township's response to the
12 July 2012 FOIA requests for all computer receipts for
13 purchases from a computer vendor, a Don Szenina,
14 including invoices for hardware and software purchased
15 from that vendor.

16 Other FOIA issues added to the mandamus
17 complaint are plaintiff's dissatisfaction with the
18 township's response to his request for bank records on
19 a Youth Center fund account with the Range Bank, and
20 the township's response to his requests for copies of
21 the annual audit -- part of the annual audit report,
22 specifically the F-65 report required by state law, as
23 well as records relating to any accounts the township
24 has with Hometown Bank. The amended complaint also
25 asks for copies of any and all checks, front and back,

1 of any township funds drawn on or deposited in that
2 bank identified as Hometown Bank.

3 The amended complaint contends inter alia
4 that the township's failure to maintain, keep and
5 provide these public records is a violation of both any
6 applicable state retention schedules as summed up here
7 by counsel in oral argument, as well as the Freedom of
8 Information Act. Finally the amended complaint
9 contends, as I read it -- really asserts, and my
10 reading of it is that the entire financial operations
11 of the township, from its banking to its receipt and
12 disbursement of funds and audits, is out of compliance
13 with the uniform accounting requirements of the state
14 treasurer as set forth in detail in the proposed
15 amended complaint, in Averments 9A through G.

16 Touching on that for a moment on the question
17 of the uniform accounting requirement and the statute,
18 I did leave the MCLA book on my desk in -- It's
19 actually on my side chambers I think -- on my side
20 table in chambers, Mr. Dossetto.

21 (Discussion off the record.)

22 THE COURT: The plaintiff does assert that
23 these failures of the township treasurer and other
24 officers, who maintain -- according to the State
25 Treasury requirements and the Uniform Accounting Act,

1 all are in violation of statutes that have already been
2 cited, particularly those in the criminal code, as well
3 as the Uniform Act.

4 Now, at the same time the complaint for
5 declaratory relief and mandamus was filed, on
6 November 16 of 2012, plaintiff already had pending
7 before this Court --

8 (Discussion off the record.)

9 THE COURT: Now, at the time this
10 complaint -- the original complaint in this case for
11 mandamus was filed, on November 16 of 2012, the
12 plaintiff had already filed a FOIA complaint, and that
13 was pending before the Court in this court's
14 File 50327-CZ. And the trial of the issues on that
15 FOIA complaint was underway. We had a series of
16 hearings, a bench trial, that I think stretched from
17 about September of 2012 into January of 2013. And
18 those issues were underway. I believe in that I had
19 granted the township's request for partial summary
20 dismissal of some aspects of that FOIA complaint
21 earlier. But in any event, the complete trial and
22 hearing on that FOIA complaint was not yet completed
23 when the plaintiff filed the present complaint with
24 this court.

25 Now, the complaint for mandamus and

1 declaratory relief do include some of the very issues
2 that were already pending before the Court in the FOIA
3 action, particularly the request for and the township's
4 response to records and contracts and other documents
5 related to a firm known as U.P. Engineering &
6 Architects, the F-65 audit reports for one particular
7 year and that FOIA request, the inadequacy of response
8 on cashier's check records and requests, bank
9 statements, and the township's alleged failure to file
10 a complete response to Mr. Nannestad's request for the
11 general fixed asset ledger of the township. These
12 claims and the deficiency in responses in these claims,
13 that were in the FOIA complaint already pending before
14 the Court, are repeated again in Mr. Nannestad's
15 proposed first amended complaint in this case, as well
16 as some of them in the underlying original complaint.

17 Now, as I consider the averments of the
18 complaint and the first amended complaint, as well as
19 the responsive pleadings, briefs, documents and
20 affidavits, and all of the exhibits submitted by both
21 the plaintiff, as well as the township officials,
22 first, as to these motions before the Court, I do not
23 see any disputed material facts. Both parties seem in
24 agreement on that, as well. The plaintiff moves for
25 summary grant of his requested relief under

1 MCL 2.116(C) (10) and (9). And the defendant township
2 officials contend in their motion that plaintiff's
3 complaint and amended complaint fail to even state a
4 claim for mandamus under 2.116(C) (8), and that
5 plaintiff lacks standing to bring this action under
6 2.116(C) (5) or in the alternative (C) (8).

7 Now, after careful consideration of the
8 pleading, the complaint, and the proposed first amended
9 complaint, what I regard as the undisputed facts, as
10 well as the law cited by both counsel in this court, I
11 come to the conclusion and I -- as part of that
12 conclusion, the Court's decision is to deny the
13 plaintiff's motion for summary disposition. I also
14 find and conclude that the township officers' motion to
15 dismiss the complaint, both as to mandamus and
16 declaratory relief, is to be granted. Now, under the
17 standards of MCR 2.116(I) (5) and 2.118, I also conclude
18 that the first -- the proposed first amended complaint
19 is not justified for the reason that -- and even
20 considering the first amended complaint as filed, the
21 Court comes to the same legal conclusion as it does on
22 the first complaint filed in November of 2012 in its
23 request for mandamus and declaratory relief.

24 Now, I reached these conclusions for the
25 following reasons. First, as it relates to the

1 complaint now before the Court, its Averments 9, 10,
2 14, 15, 18 and 19 of the November 2012 complaint are
3 averments and issues that related directly to those
4 matters that were already the subject of plaintiff's
5 complaint in the FOIA action that was then pending
6 before the Court for trial, which had not yet been
7 fully decided. And so I would certainly dismiss those
8 aspects of the original complaint under
9 MCR 2.116(C) (6).

10 Now, beyond that, as to the requested
11 mandamus relief, first, in general, a writ of mandamus
12 is a request that the Court order a public official, or
13 potentially other corporate officials, but generally a
14 public official to undertake a specific act that they
15 are required to do. Now, the writ of mandamus and the
16 relief of mandamus is an extraordinary and a
17 discretionary writ. It is not a writ of right. It is
18 discretionary with the Court, as set forth in *Donovan*
19 *versus Guy* at 344 Mich 187, and the *Board of Education*
20 *versus the Superintendent of Public Instruction* at
21 401 Mich 37, and as also discussed in an Upper
22 Peninsula case, *Iron County Board of Supervisors versus*
23 *Crystal Falls*, found at 23 Michigan Appeals 319.

24 Now, the right claimed in a mandamus
25 complaint must be as to a specific duty owed to the

1 plaintiff, not a right possessed by citizens in
2 general, as summarized in a case I believe cited by the
3 defendant, the *University Medical Affiliates, P.C.,*
4 *versus Wayne County Executive*, at 142 Michigan
5 Appeals 135, as well as *People versus Young*, at
6 220 Michigan Appeals 420. In his complaint,
7 Mr. Nannestad claims nothing specific to himself, but
8 only those general statutory rights belonging in some
9 cases to the State of Michigan, and all of its citizens
10 generally, such as the requirements of the Uniform
11 Budgeting and Accounting Act, and the Freedom of
12 Information Act in particular.

13 Now, in terms of harm specific to
14 Mr. Nannestad, he touched on this somewhat in a
15 discovery deposition taken by the township, he
16 complains of the burden of having to make FOIA demands
17 and to have -- and he had to file a FOIA complaint,
18 which this Court heard and did award him partial
19 relief, including a portion of his attorney fees,
20 although not all. He does cite about 22 percent of his
21 actual attorney fees were ordered to be reimbursed by
22 the Court. Now, that FOIA complaint, like this
23 mandamus complaint, had a similar broad stroke pattern
24 of multifaceted complaints of the township's FOIA
25 responses, spanning years, and almost all -- touching

1 on almost all aspects of the township operations. On
2 that FOIA complaint, Mr. Nannestad prevailed on four or
3 five of I think about eight or nine counts. The
4 township prevailed on the remaining counts.

5 Now, the duty sought to be enforced by
6 mandamus must be plain. It must be clear and defined
7 by law with such precision and certainty to leave
8 nothing to the exercise of discretion or judgment, as
9 summarized in *Taylor versus Smith* at 343 Mich 440. The
10 mandamus relief requested in these complaints,
11 including the complaint now before the Court, as well
12 as the proposed first amended complaint, is that the
13 township officers generally comply with their duties of
14 their office as set out in the statute. To issue such
15 an order would involve this Court in the day-to-day
16 operations of all aspects of the governance of Republic
17 Township. A mandamus order that the township treasurer
18 comply with his or her statutory duties would have the
19 Court supervise the township officer daily in all
20 aspects of her job, and that quite simply is not what
21 is contemplated in a mandamus order, and indeed, if
22 granted with this broad of relief, I would really have
23 this judicial branch of government overreaching into
24 the executive affairs of Republic Township.

25 And that is the exact concern touched on by

1 the Court of Appeals in the unpublished case cited by
2 counsel for the defendant, *Stackable versus Sergeant*
3 *Dahlke* of the Lansing City Police Department. That was
4 a Michigan Court of Appeals decision, unpublished. It
5 was at the COA Docket 282174 at 2009 Michigan Appeals
6 Lexis at 1153. It was decided back in January 27 of
7 '09. Now, as unpublished, it is certainly not
8 controlling authority of the case, but I think its
9 reasoning does make sense, and it is grounded on prior
10 Michigan Supreme Court decisions.

11 In that case, the plaintiff brought a
12 mandamus action against Sergeant David Dahlke
13 individually and as an agent of the Lansing Police
14 Department. The police requested -- The plaintiff, I
15 should say, requested a writ of mandamus for the
16 Lansing Police Department to issue parking tickets to
17 vehicles parked in plaintiff's private parking lot
18 without his consent. The trial court summarily
19 dismissed the complaint, and it was affirmed by the
20 Court of Appeals.

21 The Court of Appeals held, and I quote from
22 that decision, quote, Essentially, plaintiff argues
23 that when read together, Lansing Ordinances... mandate
24 that when an officer finds a vehicle parked without
25 permission on private property, the officer has no

1 discretion to decide whether to issue a citation." The
2 Court of Appeals went on to say, "The use of a writ of
3 mandamus to compel the police to enforce ordinances is
4 addressed in *Gowan v Smith*, 157 Mich 443," a 1909
5 decision of the Supreme Court. "There, the Court
6 determined that judicial interference was inappropriate
7 because the Court was unwilling to participate in
8 ongoing supervision of daily actions of the police and
9 because the police commissioner is clothed with
10 discretion in determining how to use his force to
11 enforce the law." This holding -- Continuing in the
12 quote, "This holding is consistent with 55 CJS," on the
13 subject of mandamus, at Section 244, which states,
14 quote, With respect to the enforcement of police
15 regulations, mandamus is not an appropriate remedy to
16 compel a general course of official conduct for a long
17 series of continuous acts to be performed under varying
18 conditions, unquote. Now, the end of that quote from
19 the *Stackable* case.

20 But I also indicate that the *Stackable* court
21 also cited *Diamond Match Company versus Powers* at
22 51 Mich -- 51 Mich at page 145, an 1883 decision of the
23 Michigan Supreme Court, in which the Supreme Court
24 explained, quote, When the case presents a single
25 occasion, and calls for an act which is presently

1 determined, it is entirely practicable" and direct -- I
2 should say, "it is entirely practicable to direct the
3 act by mandamus" be performed. "But where the case
4 contemplates something continuous, yet variable in its
5 conditions and aptitudes, the remedy by that process
6 seems an unfit one, unquote.

7 And I might add as well, as an aside here, as
8 it relates to this question of enforcement of police
9 measures and the criminal code by mandamus, the statute
10 that -- on which plaintiff relies at 750.491, 492, and
11 I think going over -- well, 491, 492, these are part of
12 the criminal code. Both of them create misdemeanors
13 for certain alleged acts by public officers, and the
14 misdemeanor acts alleged actually don't touch, as I
15 read the statute, on the specific issues raised in the
16 complaint here. But it is within the purview of the
17 prosecuting attorney and the prosecutor's discretion
18 whether or not to enforce the criminal code. And to
19 that extent, to the extent those statutes are cited,
20 very much like the issue set forth in the *Stackable*
21 decision.

22 Now, continuing on here, given the broad
23 nature of the relief sought here, and the reasons why
24 this Court has come to the conclusion that
25 Mr. Nannestad's concerns are not enforceable by

1 mandamus from this Court, I can only cite by way of
2 example I think what is typically more appropriate and
3 considered for mandamus relief. For example, if
4 Mr. Nannestad or any other citizen were to apply in the
5 township for a zoning compliance permit, he fills it
6 out, all the paperwork, pays his filing fee, submits it
7 to the zoning official, and the zoning official simply
8 refuses to act on it, doesn't grant it, doesn't deny
9 it, just doesn't do anything with it, doesn't do
10 anything with it because maybe the zoning official
11 doesn't like whoever filed the permit. The citizen
12 under those circumstances has a clear right to a
13 decision on the application, and such an explicit
14 failure to act by a township officer, mandamus is
15 entirely an appropriate remedy to get the act on that
16 decision. But again, to grant the relief requested
17 here would have this Court essentially take over and
18 supervise the township officials in the day-to-day
19 functions of their office as it relates to their public
20 recordkeeping.

21 As to the claim in more detail that the
22 township officials have not been keeping accounting and
23 financial records as required by the State Treasury
24 Department and the State Uniform Budget and Accounting
25 Act, the law is clear in this Court's judgment that

1 Mr. Nannestad lacks standing to press those claims in
2 particular. First, it has long been the law of this
3 court, going back as far as the 1920s, that to have
4 standing for mandamus, the plaintiff must show an
5 interest beyond that of a citizen generally interested
6 in enforcing the laws, particularly as to public
7 accounting laws.

8 In *Nowack versus Auditor General* at 243
9 Michigan 200 (1928), the Michigan Supreme Court held as
10 the law existed at that time, quote from that decision,
11 quoting, so in the instant case, the plaintiff, as a
12 citizen and taxpayer, has a common law right to inspect
13 the public records in the auditor general's office.
14 And that, you might say, as an aside here, but went to
15 the records of the State Auditor General himself or
16 herself, whoever it may have been -- to determine if
17 the public money is being properly expended. It is a
18 right that belongs to his citizenship. It is a right
19 which he enjoys in common with all other citizens, a
20 public right which can be enforced only by mandamus
21 proceeding brought by the Attorney General. It is not
22 and has never been the policy of law to permit private
23 individuals to use the writ of mandamus against public
24 officers except in cases where they had some special
25 interest not possessed by the citizens generally. And

1 there the Michigan Supreme Court cited *Smith versus*
2 *City of Saginaw* at 81 Mich 123.

3 Now, in that case, just so it's not misread
4 should this matter go up on appeal, ultimately the
5 plaintiff was found to have such a special right and
6 did get access. Of course, this case was long before
7 the Freedom of Information Act. There was no such
8 statute on the book. And -- But he did find -- The
9 Supreme Court did find that the plaintiff, Mr. Nowack,
10 in that case had such a special interest. They went on
11 to say, the plaintiff has not sought to enforce his
12 rights to the Office of Attorney General. He has begun
13 this suit in his own name. In order to maintain it, he
14 must show that he has a special interest not possessed
15 by the citizens generally. And in this particular
16 case, the court also found that the plaintiff, as an
17 owner and a publisher and an editor of a newspaper,
18 showed that he had been hampered and injured in his
19 business of publishing news by the refusal of the
20 defendant Auditor General to allow him to inspect the
21 records in his office. And the court found that, in
22 plaintiff's position, he did have a special interest to
23 entitle him to the aid of the courts by writ of
24 mandamus.

25 Now, in this case, Mr. Nannestad has made no

1 such showing. He is an interested and vigorous citizen
2 of Republic Township, and a taxpayer, and he stands
3 with all of his fellow citizens and taxpayers, but he
4 doesn't rise above them because of his level of
5 interest and willingness to spend his own personal
6 money to bring these suits.

7 Now, the holding of *Nowack* that a mandamus
8 plaintiff must show a specific special interest sought
9 to be protected by mandamus continues, in this Court's
10 judgment, to the present time, as found in *Booth*
11 *Newspapers versus Muskegon Probate Judge* at 15 Michigan
12 Appeals 203, which held and cited, quoting again from
13 the *Booth Newspapers* case, "The case of *Nowack v.*
14 *Auditor General*...remains the definitive law of this
15 State and has been employed by other jurisdictions to
16 assist in resolving problems similar to the present
17 one...When his request was denied, he sought --"
18 referring to the plaintiff in that case, "-- he sought
19 remedy by a writ of mandamus not through the office of
20 the attorney general, but in his own name, which
21 required that he show a 'special interest' not
22 possessed by the citizens generally."

23 Most recently, specifically to the State
24 Uniform Budgeting and Accounting Act, under which the
25 manual that the plaintiff cites here is founded -- And

1 that statute is at MCL 141.421. On this issue, the
2 Court of Appeals and the 46th Circuit Court, which is
3 Crawford County, at 266 Michigan Appeals 150, among
4 many other holdings, held that only parties with
5 standing to bring an action under the Uniform Budgeting
6 and Accounting Act -- the only parties, if I can
7 restate this again, with standing to bring an action
8 under the Uniform Budgeting and Accounting Act are the
9 Attorney General and the prosecuting attorney. And
10 that is explicitly set forth in the statute and -- as
11 it relates to enforcement of that Uniform Budgeting and
12 Accounting Act at MCL 141.431.

13 Now, so it's clear, again, should this matter
14 go up on appeal, the 46th Circuit Court, which is
15 Crawford County, the Court of Appeals was ultimately
16 reversed by the Michigan Supreme Court, at Volume 476.
17 I don't have the specific cite in front of me. At
18 issue in that case is whether a multi-county circuit
19 county, Otsego, Crawford, and whatever counties are
20 part of the 46th Circuit, whether or not they were
21 adequately budgeting and funding 46th Circuit Court
22 operations. The Court of Appeals held they were not
23 for reasons that are somewhat unrelated to this aspect
24 of their holding. It went up to the Supreme Court.
25 The Supreme Court reversed the Court of Appeals and

1 concluded that the counties did make a showing that
2 they were providing funding at a serviceable letter --
3 level, and the relief ordered by the Court of Appeals
4 was reversed. However, the language and the reading of
5 the Court of Appeals of the Uniform Budgeting and
6 Accounting Act I think certainly remains persuasive,
7 and it is consistent with the plain clear letter of the
8 statute. This is a statewide law mandating certain
9 budgeting and accounting standards for all units of
10 government in the State of Michigan, and it refers to
11 enforcement by the prosecutor and the Attorney General,
12 and it makes sense where those would lie.

13 Now, to the extent a citizen may have claimed
14 a special or unique harm as a result of failure to
15 comply with the act, I think in light of all of the law
16 I've cited, that citizen may well have standing, but I
17 don't see any such claim set forth in Mr. Nannestad's
18 pleading.

19 Now, Mr. Nannestad does have, as I've already
20 commented, broad and longstanding, and in many ways
21 well thought out concerns from a citizen's standpoint
22 about the efficacy of his township government and
23 governance. However, the plaintiff's efforts to
24 involve the courts in supervising and running the
25 day-to-day operations of the township officials does

1 not present, in this Court's judgment, a justiciable
2 issue capable of court remedy by mandamus, which would
3 really -- in the relief requested, as I said, would
4 have this Court supervising and running the township.
5 And I believe, for all of the cases that I've cited
6 here, the common law of mandamus makes this clear.

7 Mr. Nannestad is not without remedy. He
8 continues to exercise and has all of his rights under
9 the Freedom of Information Act statute. He continues
10 and has all of his rights under the Open Meetings Law.
11 He has rights under the election laws, rights of
12 recall, rights of petition. He has First Amendment
13 rights of addressing himself publicly to concerns about
14 the township. If he thinks the current elected
15 officials are not appropriately running the township,
16 these are all remedies where the concerns that
17 Mr. Nannestad has are better placed rather in the
18 courts in trying to detail those issues. So it is for
19 these reasons and conclusions that the township's
20 motion for summary dismissal of the mandamus complaint
21 is granted.

22 The proposed amended complaint, I've
23 considered it, and read it, and decided whether or not
24 justice would require or permit amendment of the
25 complaint. But it repeats, in some aspects, the claims

1 of the original complaint, and in other aspects adds on
2 almost entirely new complaints for mandamus with new
3 factual allegations. Nonetheless, in this Court's
4 judgment, it presents the same problems the Court finds
5 in the original pleading. Mr. Nannestad broadly seeks
6 compliance with the many laws under which the township
7 officials generally act without claiming specific
8 injury or loss or -- of any interest of his own that's
9 harmed by those actions.

10 He similarly brings in the proposed amended
11 complaint claims under the Uniform Budgeting and
12 Accounting Act that are reserved specifically for
13 action by the Attorney General or prosecuting attorney
14 on behalf of all of the people of the State of
15 Michigan. Whether the Court considers the original
16 complaint as filed, or even having considered the first
17 amended complaint as having been filed on leave
18 granted, I come to the same conclusion as it relates to
19 these pleadings.

20 Finally, the Court also grants summary
21 dismissal of the complaint -- the plaintiff's complaint
22 for declaratory relief, though granting of declaratory
23 relief is discretionary with the Court, and declaratory
24 relief can only be granted where there is an actual
25 case of controversy capable of judicial resolution, as

1 summarized in *Shavers versus Attorney General* at
2 402 Mich 554, and *Rott, R-O-T-T, versus Standard*
3 *Accident Insurance Company* at 299 Mich App 384. The
4 declaratory relief sought by the plaintiff in the end,
5 and not to diminish it in any way, but in terms of
6 judicial relief is -- the only word I could come to is
7 meaningless. He asks the Court to enter a judgment and
8 order declaring and determining that the township
9 official must comply with their statutory duties and
10 oaths of office. That's an absolute given and a matter
11 of law, and it does not require a judgment of this
12 Court to so declare.

13 If any citizens and the voters of Republic
14 Township think these officials are not complying with
15 their statutory duties and oaths of office, again the
16 remedy is at the ballot box, the First Amendment, and
17 rights of redress, and the other tools that are
18 available to citizens under the Freedom of Information
19 Act, of which Mr. Nannestad has sought, and which this
20 Court has partially granted relief to him, and the tool
21 of the rights under the Open Meetings Act, and other
22 avenues of citizen involvement in government, but not
23 here in the courtroom. This Court cannot reasonably
24 declare the rights and relationship of these parties as
25 to any specific case of controversy in the form pleaded

1 by the plaintiff.

2 So in the exercise of discretion, the
3 complaint for declaratory relief is likewise dismissed.
4 The township I find to be the prevailing party on all
5 issues in this matter, and I will award the statutory
6 costs. So that is the Court's decision. I'll prepare
7 a short order consistent with that decision for reasons
8 stated on the record.

9 I have other parties in the courtroom that
10 have been waiting for a three o'clock hearing. If
11 there is a request for clarification or
12 reconsideration, of course the parties have such
13 rights, but I do intend, with dispatch here, to move on
14 to the next trial. So we'll stand in recess.

15 * * * * *

16 (The hearing concluded at about 4:05 p.m.)

17

18

19

20

21

22

23

24

25

1 STATE OF MICHIGAN)
)
2 COUNTY OF MARQUETTE)

3 I certify that this transcript, consisting of 27 pages,
4 is a complete, true, and correct transcript of the
5 proceedings and testimony taken in this case on October 10,
6 2013.

7

8

Date

Sharon A. Grabarczyk, CER 6727
Northern Reporters
P.O. Box 27
Marquette, MI 49855

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25