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## Whistleblower: ?Everyone Else Pays for Their Own Sidewalk? <sup>[1]</sup>

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**By:**

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*Above: The City Attorneys? property and the retaining wall at issue.*

A whistleblower who ? along with the U.S. Department of Justice ? sued the City of East Lansing <sup>[2]</sup> for misuse of \$134,300 in U.S. Housing and Urban Development (HUD) grant funds is now asking a federal judge to vacate the 2017 settlement agreement and function as an advocate for East Lansing?s taxpayers.

That?s because HUD decided after the settlement to demand the City give the grant money back <sup>[3]</sup>, which means the financial burden in the case has been shifted fully to City taxpayers. The whistleblower never wanted the burden to fall on East Lansing taxpayers; he has always wanted

it to fall on City Attorney Tom Yeadon and his partners.

The case relates to a sidewalk and crumbling, old retaining wall (shown below) that were rebuilt outside the City Attorney's private property in 2011 (as shown above) at public expense, using about \$15,000 from the City of East Lansing's coffers and \$134,300 from HUD.



The lawsuit, brought under the federal False Claims Act <sup>[4]</sup>, centered on the issue of the City Attorney and his partners allegedly benefitting from a kind of insider deal, allegedly under false pretenses. The False Claims Act allows a citizen to bring a lawsuit claiming fraudulent use of federal funds.

Whistleblower Phil Bellfy and the Department of Justice settled the suit with the City late last year. As part of that settlement, the City had to pay \$20,000 <sup>[2]</sup> to Bellfy and his attorney.

The City was also required to formally disclose to HUD the conflict of interest involving Yeadon. In that post-settlement formal disclosure <sup>[5]</sup>, City Manager George Lahanas tried to convince HUD to give the City a waiver for the conflict of interest and not to make the City give back the \$134,300.

But in March of this year, HUD demanded that the City pay back the money.

HUD told the City on March 19 <sup>[6]</sup> of this year, "We have determined that there was a conflict of interest stemming from the contracted attorneys' property receiving a direct benefit of the city's re-construction of the retaining wall."

HUD also informed the City that, "After further review of the project, it has been determined that the project itself is an ineligible activity and should not have been paid for with CDBG

[Community Block Development Grant] funds.?

Facing having to repay the money, the East Lansing City Council formally voted 5-0 at its last meeting, on June 19, to pay for the project out of local taxpayer funds.

Council did so without discussion of the matter as part of a major budget vote. You had to know the backstory to spot the one line that referred to the case in a long memo [7]: "The public works function requires an additional \$134,300, related to the HUD repayment for a sidewalk project."

Easing the financial blow somewhat, HUD has given the City additional funds in the same amount, so that the City could carry out other HUD-eligible projects. The City has just used those funds to pay for putting in disability-accessible ramps on Albert Avenue [8] in the area of the colorful parking ramp (shown below).



But the bottom line is that, since Bellfy convinced the feds *they* should not have paid for the project ? and City Council decided not to go after Yeadon and his partners for the money as Bellfy had hoped City Council would ? City of East Lansing taxpayers are paying for the sidewalk, the wall, the settlement, and the legal bills.

The City hired the outside firm of Foster Swift to defend the case, and legal costs have to date exceeded \$18,000. The cost to East Lansing taxpayers for the whole scene is approaching \$200,000.

### **What Bellfy is now seeking:**

Now Bellfy is formally filing pleadings asking U.S. District Court Judge Paul Maloney to re-open the case, because he wants the City's taxpayers paid back in full by McGinty, Hitch, Person,

Yeadon & Anderson, P.C. That's the law firm that includes current and past City Attorneys and maintains offices on the property at issue in the law suit.

Bellfy's communication to Judge Maloney insists, "It is not the City of East Lansing, or its employees and elected officials, that [Bellfy] is upset with." Rather, he says, his actions are "directed at the law-firm that has taken advantage of its position within the City of East Lansing's political establishment."

Bellfy tells ELi he believes that City Council "should have made [City Attorney Tom Yeadon] pay for his own sidewalk just like every property owner in East Lansing. If the City wants to pay for his sidewalk, they can pay for everybody's sidewalk!"

*Below: City Attorney Tom Yeadon*



Bellfy is asking the judge to make Yeadon's firm pay back the taxpayers and to pay him back, as Plaintiff/Relator, for all legal costs incurred in the case. He's also asking the judge to stop the attorneys who own the property from practicing municipal law. That includes Yeadon.

Part of Bellfy's beef is this: Bellfy says that, in advance of the settlement, he was led by the Department of Justice's lawyer to believe HUD wasn't going to ask for the money back. Documents obtained through the Freedom of Information Act indicate City staff, like Bellfy, was surprised when, a few months after the settlement, HUD *did* ask for the funds back. When he

received HUD's determination in March, City Manager Lahanas told Council, "This was not the outcome we expected from working through the process with the U.S. attorney's office."

If Bellfy had known HUD was going to ask for the money back, he might well have held out instead of settling. That's because, under the False Claims Act, he would have been owed a percentage of the money returned. As it is, he settled for less than he might have gotten.

### **Who pays for sidewalks and retaining walls?**

The major point of contention in this case was the question of who should have paid to rebuild the retaining wall and sidewalk adjacent to the City Attorney's private property at 601 Abbot Road.

Bellfy has maintained that the use of about \$150,000 in public funds for this project represented a kind of insider kickback. City Manager George Lahanas has repeatedly said that because the project was done mostly in the public right-of-way, it was appropriate to use public funds.

ELi has spent months looking into this question. What we've found is that the reconstruction of the vast majority of sidewalks and retaining walls in East Lansing are paid for by private property owners, even if the sidewalks and retaining walls are on publicly-owned land adjacent to the private property.

*Below: a privately-paid-for retaining wall rebuilt about a block west of the City Attorney's offices, following citation by the City for the wall's poor repair.*



In fact, as is the case with municipalities all over Michigan, East Lansing law effectively *requires* private-property owners to pay for sidewalks and retaining walls in right-of-ways when they need repair.

Section 38-123 of East Lansing's code states: "It shall, in all cases, be the duty of the owner of

every lot or parcel of land in the city to build sidewalks in front of or adjoining his/her premises and to reconstruct the sidewalks when so ordered by the council pursuant to the provisions of this article, and to maintain such walks in good repair and to keep them free from all obstructions.?

Section 34-73 more specifically speaks of retaining walls: ?Persons carrying out soil erosion and sediment control measures under this chapter, and all subsequent owners of property concerning which such measures have been taken, shall maintain all permanent anti-erosion devices, retaining walls, structures, plantings, and other protective devices.?

Every year, City Council votes in favor of sidewalk projects that require private property owners to pay for sidewalk reconstruction and, in some cases, also retaining wall reconstruction. In some cases, the City helps to defer some of the costs, including by getting a bulk contracting rate and passing on the discount to property owners.

But rare indeed are the cases where the City deploys public funds to pay for an entire project like this one, with no charge to the adjacent private-property owner.

City Manager Lahanas has named one other example, saying HUD funds were similarly used for a retaining wall and sidewalk project along Burcham Drive (shown below). ELi has requested documentation to support that contention.



Even in the case of the Center City District project, when the City recently used some of a \$25 million public bond to pay for rebuilding the sidewalk along Albert Avenue, the City did *not* pay to rebuild the crumbling retaining wall outside 7-11, adjacent to the new sidewalk. Nor did it pay to repair or replace the decaying retaining wall outside Harper's Brewpub and Restaurant, also adjacent to the new sidewalk.



So it would at least appear that what happened outside 601 Abbot Road was extraordinary.

### **Is the City Attorney responsible?**

Bellfy has made clear throughout this process that he has had zero interest in having the financial burden of this case shifted from federal taxpayers to local taxpayers. Instead, he has wanted the City to ask City Attorney Tom Yeadon and his partners to pay.

City Manager Lahanas, meanwhile, has maintained that Yeadon isn't at fault. Lahanas has said Yeadon didn't oversee the grant ? that what happened was a combination of City staff making mistakes and HUD not fully understanding the project.

Lahanas told HUD, ?The City attorneys did not participate in the decision-making process, assist in preparing the CDBG application or action plan and were not asked to render an opinion regarding the existence of a potential conflict of interest due to the location of the project. Only after the project was completed, the City requested the City attorney?s assistance in preparation of an easement for the neighboring property that was affected by the project.?

In fact Yeadon also ?assisted? in a legal easement for his *own* property on this project as well. His partner Tom Hitch signed for the property owners, while Yeadon acted as City Attorney, advising Council on the easement. In his cover letter <sup>[9]</sup> to City Council, Yeadon did not disclose his co-ownership of the property.

Section 1.8 of the Michigan Rules of Professional Conduct <sup>[10]</sup> for lawyers prohibits transactions like this unless the lawyer discloses in writing to a client (in this case, the City of East Lansing)

that he is on both sides of an agreement. ELi has been unable to find any evidence Yeadon made such a written disclosure.

In obtaining the HUD grant application through the Freedom of Information Act, ELi finds that not only did the City not disclose to HUD the potential conflict of interest of the City Attorneys as required in the grant process, the City ultimately allotted \$2,000 to pay Yeadon for reviewing the contract and the easements on the project ? including, apparently, the easement on his own property.

**ADDENDUM 2  
Line Item Budget**

Please complete a separate line item budget for each activity/project you are proposing. Please only provide the budget for the grant amount you are applying for.

Activity/Project #1: Abbot Road Sidewalk Reconstruction	
Goal: Improve the Safety of the Walking Public in a Constricted Area	
Personnel Expenses	Amount
1. Legal Services for Easements & Contract Review	\$ 2,000
2.	
3.	
4.	

But, Lahanas has consistently maintained in his communications to HUD, it was City staff, and not the City attorneys, who screwed this up. By Lahanas? logic, it is therefore the City taxpayers, and not the City Attorneys, who should be on the hook for the failure to follow HUD?s conflict of interest rules.

Lahanas has also consistently claimed that ?There was no significant financial benefit that arose to the property owners nor the City attorneys from the project.? The project, says Lahanas, benefitted only the public.

Moreover, says Lahanas, ?The cost of the improvement without the grant funding would have been cost prohibitive to the property owner.? In Lahanas?s estimation, the City Attorneys couldn?t have afforded to make these fixes themselves.

**A majority of Council sticks with Yeadon so far:**

Whether Judge Maloney decides to respond positively or negatively to Bellfy?s new pleading remains to be seen.

In the meantime, Yeadon?s contract came up last month for renewal. This was at the same meeting Council voted formally, but without discussion, to shift the burden of the \$134,300 repayment to HUD to the City?s taxpayers.

At that meeting, when the subject of Yeadon?s contract came up, Council Members Aaron Stephens and Shanna Draheim pushed to look into possibly hiring someone else as City Attorney by opening the job to all applicants.

As ELi reported, Stephens and Draheim were rebuffed [11] by Mayor Mark Meadows, Mayor Pro Tem Erik Altmann, and Council Member Ruth Beier. Yeadon?s contract [12] was extended and so,

for now, Yeadon's firm retains the job, as it has since the 1960s. That contract presently pays the firm over a half-million dollars per year.

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[7] [http://eastlansing.granicus.com/MetaViewer.php?view\\_id=2&clip\\_id=1008&meta\\_id=64035](http://eastlansing.granicus.com/MetaViewer.php?view_id=2&clip_id=1008&meta_id=64035)

[8] <https://www.cityofeastlansing.com/CivicAlerts.aspx?AID=751>

[9] <https://eastlansinginfo.org/sites/default/files/retaining%20wall%20easements.pdf>

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