*Michigan State University Extension*
*Public Policy Brief*

# Selected Planning and Zoning Decisions: 2025 (August 2024-August 2025)

*Original version: (September 24, 2025)*
*Last revised:*

**Contents**

This is a fact sheet developed by experts on the topic(s) covered within MSU Extension. Its intent is to assist Michigan communities in keeping up to date on current planning and zoning court cases. This document is written for use in Michigan and is based only on Michigan law and statute. One should not assume the concepts and rules for zoning or other regulation by Michigan municipalities and counties apply in other states. This is not original research or a study proposing new findings or conclusions.

# Published Cases

This document reports cases from Michigan courts of record (Appeals Courts, Michigan Supreme Court), or federal courts that have precedential value (Appeals Court [specially the 6th Circuit Court of Appeals], United States Supreme Court). Thus, Michigan Circuit, District court cases; federal district court cases are generally not reported here.

Typically, a federal district court's interpretation of state law (as opposed to federal law) is not binding on state courts, although state courts may adopt their reasoning as persuasive. But the U.S. Sixth Circuit Court of Appeals takes the position that the doctrine of stare decisis makes a federal district court decision is binding precedent in future cases in the same court (until reversed, vacated, or disapproved by a superior court, overruled by the court that made it, or rendered irrelevant by changes in the positive law.) So U.S. District court rulings may apply only in certain parts of Michigan:

**United States District Court for the Eastern District of Michigan** (roughly the east half of the lower peninsula):

> **The Northern Division** (located in Bay City) comprises the counties of Alcona, Alpena, Arenac, Bay, Cheboygan, Clare, Crawford, Gladwin, Gratiot, Huron, Iosco, Isabella, Midland, Montmorency, Ogemaw, Oscoda, Otsego, Presque Isle, Roscommon, Saginaw, and Tuscola.
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> **The Southern Division** (located in Ann Arbor, Detroit, Flint, and Port Huron) comprises the counties of Genesee, Jackson, Lapeer, Lenawee, Livingston, Macomb, Monroe, Oakland, Saint Clair, Sanilac, Shiawassee, Washtenaw, and Wayne.

**United States District Court for the Western District of Michigan** (roughly the west half of the lower peninsula and all of the Upper Peninsula):

> **The Northern** Division (located in Marquette and Sault Sainte Marie) comprises the counties of Alger, Baraga, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon, and Schoolcraft.
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> **The Southern** Division (located in Grand Rapids, Kalamazoo, Lansing, and Traverse City) comprises the counties of Allegan, Antrim, Barry, Benzie, Berrien, Branch, Calhoun, Cass, Charlevoix, Clinton, Eaton, Emmet, Grand Traverse, Hillsdale, Ingham, Ionia, Kalamazoo, Kalkaska, Kent, Lake, Leelanau, Manistee, Mason, Mecosta, Missaukee, Montcalm, Muskegon, Newaygo, Oceana, Osceola, Ottawa, Saint Joseph, Van Buren, and Wexford.

A glossary at the end of this document contains common legal terms.

# Restrictions on Zoning Authority

## City Does Not Violate FSA by Prohibiting Sale of Fireworks From Temporary Structures

Case: *Samona v. City of Eastpointe, Michigan*

Court: Michigan Court of Appeals, No. 66648, 2024 Mich. App. LEXIS 6745, 2024 WL 3996101 (August 29, 2024, Decided).

Holding that defendant-city's ordinances regulating the sale of fireworks from temporary structures does not violate the Michigan Fireworks Safety Act (FSA), the court reversed the trial court's order invalidating the ordinances, and remanded. Plaintiffs sued defendant seeking to invalidate its ordinances prohibiting the sale of fireworks in temporary structures and limiting the sale of consumer fireworks to brick-and-mortar buildings with fire suppression systems.

The trial court invalidated the challenged ordinances as conflicting with provisions of the MSA. On appeal, the court agreed with defendant that MCL 28.457(4) permits its regulation of firework sales from temporary structures, and thus, its limitation of consumer firework sales to permanent structures equipped with fire safety equipment is a permitted use regulation. It found the ordinances at issue, "particularly § 50-91(c)(12), do not conflict with the FSA and are valid." The ordinance "does not prohibit the sale of consumer fireworks; rather, it limits the locations where consumer fireworks may be sold." It also "does not directly conflict with MCL 28.457, and that statute was not violated by [defendant] enacting a regulation outside the examples provided in a non exhaustive list stated within the statute." In addition, defendant "did not prohibit the sale of fireworks; rather, § 50-91(c)(12) prohibits the sale of fireworks from temporary locations. [It] also required that if consumer fireworks are sold from brick-and-mortar buildings, the structures must have fire suppression systems. Therefore, the ordinance does not conflict with MCL 28.457(4) in this regard."

The statute also gives defendant "full discretion to determine how to regulate the sale of fireworks from temporary structures." Finally, MCL 28.457(4) "states that a local ordinance 'may not prohibit the temporary storage, transportation, or distribution of fireworks by a consumer fireworks certificate holder at a retail location that is a permanent building or structure.' And [defendant] expressly protected this activity by permitting the sale of consumer fireworks from brick-and-mortar buildings with fire suppression systems in Eastpointe Ordinances, § 20-95."(Source: State Bar of Michigan *e-Journal* Number: 82201; August 30, 2024.)

https://www.michbar.org/opinions/content_search_detail/EJournalNumber/82201

# Takings, Special Assessments, Proportionality

## Streetscape Improvement Special Assessment to Property, Proportional to Benefit

Case: *New 555 Commercial, LLC v. City of Birmingham*

Court: Michigan Court of Appeals, No. 372022, 2024 Mich. App. LEXIS 6557, 2024 WL 3906492 (August 22, 2024, Decided).

Concluding defendant's "city commission complied with the city's ordinances and" as a result, the city was entitled to the presumption of validity, the court held that the [Tax Tribunal] did not err in denying petitioners' summary disposition motion in this special assessment dispute. Petitioners are related entities that own commercial properties referred to as the 555 Complex. "The city commission confirmed

a special assessment roll to fund a sidewalk and streetscape reconstruction project bordering the 555 Complex." The court determined the key ordinance language "required, in the context of this case, that the city commission adopt a resolution determining what benefits the 555 Complex would receive as a result of the sidewalk and streetscape improvement and that the city commission make a determination that the special assessment would be in proportion to the benefits received. These provisions constituted requirements that had to be satisfied before the special assessment roll could be confirmed." Pursuant to the ordinance definition of the term improvement, "a determination by the city that there will be an 'improvement' to property necessarily correlates to a determination that the property will be 'specially benefited' for purposes of the BCC."

The city presented an affidavit from its assistant city engineer (Z), "who averred that he was involved in preparing two reports for the city commission that informed the members of 'the proposed special benefits, the nature of it, the improvement, the costs, the benefit derived therefrom, and the reasonable proportionality of assessing the special assessment against the affected property owners.'" The minutes of the meeting at which the commission confirmed the special assessment roll showed Z "was present and provided information to the commission and that the commissioners confirmed the roll after making remarks finding that the project would greatly improve the aesthetics and safety of the area."

The court concluded "the city commission complied with the ordinances by determining that the 555 Complex would receive benefits from the project in the form of aesthetic and safety improvements created by the physical attributes of the streetscape and that the special assessment would be in proportion to or in accordance with the benefits to be received." The case had to proceed in the [Tax Tribunal] "for a determination whether the special assessment was reasonably and substantially proportionate to any increase in" the Complex's market value due to the improvements. Affirmed. (Source: State Bar of Michigan e-Journal Number: 82160; September 4, 2024.)

https://www.michbar.org/Portals/0/opinions/appeals/2024/082224/82160.pdf

# Open Meetings Act, Freedom of Information Act

## Individual Officials May Be Subject to Open Meetings Act

Case: *Exclusive Capital Partners, LLC v. City of Royal Oak*

Court: Michigan Court of Appeals, No. 366247, 2024 Mich. App. LEXIS 9689, 2024 WL 4982606 (December 4, 2024, Decided).

The court rejected plaintiffs' claims that defendant-city's recreational marijuana ordinance (1) was void for vagueness and (2) violated the MRTMA's school-buffer and competitive-process requirements. It also found no substantive due process violation. But based on Pinebrook II, it concluded an OMA violation occurred. Plaintiffs challenged the city's award of marijuana retail licenses to other applicants. As to the void for vagueness challenge, the court rejected the city's arguments that the doctrine did not apply. However, it determined that plaintiff-Exclusive "failed to overcome its burden of demonstrating that the marijuana ordinance is unconstitutionally vague." The court noted that the "relevant inquiry is whether the ordinance is so lacking in standards as to give those charged with implementing it carte blanche to follow their personal predilections. This ordinance does not."

As to plaintiffs' MRTMA arguments, the court found "(1) the marijuana ordinance and general zoning scheme do not conflict with MCL 333.27959(3)(c) and (2) awarding the retail license to" one of the successful applicants "did not violate the MRTMA's school-buffer requirement despite the close proximity to a school." The court also determined that the "marijuana ordinance did not conflict with the

competitive-process requirement of MCL 333.27959(4), and there was no genuine issue of material fact that the city manager complied with the ordinance and the MRTMA."

*Because the city manager made a de facto policy choice for the City Commission, the city manager met the definition of 'governing body,' and, thus, was subject to the OMA.*

However, relying on Pinebrook II and Booth, the court concluded "the city manager and his designees acted as a public body subject to the OMA." It found that "the city manager effectively selected who would receive the two recreational marijuana licenses. Because the city manager made a de facto policy choice for the City Commission, the city manager met the definition of 'governing body,' and, thus, was subject to the OMA. It follows that the meetings that the city manager had with his workgroup should have been noticed and made open to the public." The court affirmed the circuit court's grant of summary disposition to the city in all respects except as to the OMA violation. It reversed the circuit court's decision in that regard and remanded for consideration of "whether invalidation of the license awards is appropriate under MCL 15.270(2) and to provide the public body with the opportunity to remedy" the violation. (Source: State Bar of Michigan ***e-Journal*** Number: 82757; December 5, 2024.)

https://www.michbar.org/Portals/0/opinions/appeals/2024/120424/82757.pdf

## Mayor's ARPA Advisory Committee Not a Public Body Under the OMA

Case: *Estate of Mays v. Neeley*

Court: Michigan Court of Appeals, No. 368773, 2025 Mich. App. LEXIS 5372, 2025 WL 1900463 (July 9, 2025, Decided).

Holding that the advisory committee (the ARPA committee) at issue was an MMB under defendant-City of Flint's charter, the court concluded plaintiffs stated a claim that the committee's formation violated a provision of the charter. But it held that the ARPA committee was not a public body under the OMA. Thus, it found that the trial court erred in granting defendants summary disposition on the charter violation claim but correctly granted them summary disposition on the OMA claim. The committee was formed "to advise the city on funding allotments under the" federal ARPA. On appeal, the court agreed with plaintiffs that "the ARPA committee meets the definition of an MMB" set forth in the charter "as it is an 'advisory committee . . . composed of more than one person, and acting, or purporting to act, in the exercise of official duties.'"

It concluded "that under a plain reading of the charter, and accepting the allegations in plaintiffs' complaint as true and construing them in a light most favorable to plaintiffs, 'acting or purporting to act in the exercise of official duties' encompasses the actions with which the committee was charged. . . . Taking the allegations of the complaint as true, [defendant-]Mayor Neeley formed the committee to play an official role in the exercise of a city function, i.e., the allocation of grants." In addition, the committee "had all of the trappings of an official, city-sanctioned endeavor." The court found that at "the very least, plaintiffs have sufficiently alleged that the ARPA committee purported to carry out official duties at the city's direction, which is enough to satisfy the definition of an MMB under Flint Charter, § 1-405."

It also agreed "with plaintiffs that, on the basis of the factual allegations in their complaint, the ARPA committee's formation and operation appears to violate the city charter. As stated, it was not established by ordinance or resolution as required by Flint Charter, § 6-101(A). Nor were appointments to the

committee approved by city council as required by Flint Charter, § 6-101(B)(3)." But the court concluded plaintiffs failed to state a claim for violation of "the OMA, given that the committee's recommendations remained subject to review by Mayor Neeley and the city council such that the committee cannot be considered a public body." Affirmed in part, reversed in part, and remanded. (Source: State Bar of Michigan ***e-Journal*** Number: 83960; July 9, 2025.)

https://www.michbar.org/Portals/0/opinions/appeals/2025/070925/83960.pdf

## Special Use and Site Plans

### Planning Commission Did Not Adequately Articulate Basis for Denial of SLU

Case: *JS Beck Rd., LLC v. Charter Township of Northville*

Court: Michigan Court of Appeals, No. 367958, Mich. App. LEXIS 5372, 2025 WL 1900463 (November 18, 2024, Decided).

The court held that defendant-Township's Planning Commission (PC) did not adequately articulate its basis for denying plaintiff-Beck's "special land use application as required by MCL 125.3502(4)." But the circuit court erred in directing the PC "to consider additional evidence on remand because Beck failed to present the evidence before the PC before asking the circuit court to consider it." The court noted that "MCL 125.3502(4) states that a decision on a special land use application shall be incorporated in a statement of findings or conclusions. During the meetings, the commissioners individually expressed concerns regarding the Premier Academy development's incompatibility with adjacent land uses, incompatibility with the Township's master plan, and adverse impact on nearby traffic. Yet, none of the individual commissioners made findings. And the [PC] never incorporated its members' individual concerns in a statement of findings or conclusions specifying the basis for its denial of" the application.

*"Yet, none of the individual commissioners made findings. And the PC never incorporated its members' individual concerns in a statement of findings or conclusions specifying the basis for its denial of" the application."*

As a result, the court concluded here, as it did in Lakeview Vineyards, that the PC "failed to comply with MCL 125.3502(4). Therefore, the circuit court did not misapply legal principles or otherwise misapply the substantial-evidence test by vacating the PC's denial of Beck's special land use application and remanding for further proceedings before the" PC. However, the "circuit court misapplied legal principles by directing the" PC to consider a report on remand. The court found that "the statute under which the circuit court required the PC to consider [the] report, MCL 125.3606(2), does not apply to an appeal of a special land use decision. It only applies to an appeal involving a" ZBA's decision. Further, as Beck did not present the report as evidence before the PC, the circuit court "should not have considered the report in determining whether the PC's decision was authorized by law and whether its findings were supported by competent, material, and substantial evidence on the whole record."

The court affirmed the circuit court's decision to remand the matter to the PC. It reversed "the circuit court's decision to the extent it required the" PC to consider the report. "On remand, the PC shall make findings and conclusions regarding the special land use application as provided by MCL 125.3502(4). As part of that process, it may, but is not required to, hold additional hearings or consider additional evidence." (Source: State Bar of Michigan ***e-Journal*** Number: 82668; November 19, 2024.)

https://www.michbar.org/Portals/0/opinions/appeals/2024/111824/82668.pdf

# Unpublished Cases

(Generally unpublished means there was not any new case law established, but presented here as reminders of some legal principles. They are included here because they state current law well, or as a reminder of what current law is.) A case is "unpublished" because there was not any new principal of law established (nothing new/different to report), or the ruling is viewed as "obvious." An unpublished case may be a good restatement or summary of existing case law. Unpublished opinions are not precedentially binding under the rules of stare decisis. Unpublished cases might be cited, but only for their persuasive authority, not precedential authority. One might review an unpublished case to find and useful citations of published cases found in the unpublished case.)

## Takings

### City Action Did Not Amount to a Taking

Case: *Tollbrook, LLC v. City of Troy*

Court: Michigan Court of Appeals, Unpublished Opinion, No. 368634, 2025 Mich. App. LEXIS 3711, 2025 WL 1385578 (May 13, 2025, Decided).

The court held that the trial court did not err by granting defendant-city summary disposition of plaintiffs' claim that land use regulations it imposed burdened their property to such a degree that they constituted a regulatory taking. The trial court rejected plaintiffs' claim. On appeal, the court agreed with the trial court that there was no genuine issue of material fact that defendant's land use regulations did not constitute a taking of plaintiffs' property. They offered "no evidence—no appraisal report, no market analysis, no expert affidavit—that would allow a court to weigh the extent of the economic impact. Lacking any such evidence, this factor weighs heavily against plaintiffs."

As to the first factor, "the character of the government's action—plaintiffs point to no physical occupation or forced dedication of land. Instead, [defendant] has simply declined to rezone property that has been zoned for single-family residential use since the 1960s." And the third factor, "the extent of interference with distinct, investment-backed expectations—at best offers plaintiffs only limited support." Plaintiffs' expectation that "rezoning would follow as a matter of course lacks legal support. Moreover, they have not offered, for instance, testimony from another developer with experience in [the city] indicating that such an expectation would have been reasonable." As such, "this factor at most slightly favors plaintiffs—but not enough to overcome the weight of the other two factors."

In sum, "plaintiffs offered no evidence of the economic impact of the challenged regulation; the character of the government's action weighs against a taking; and while the extent of interference with investment-backed expectations may modestly support plaintiffs' position, it does not meaningfully tip the weight of an otherwise one-sided scale. Because the Penn Central factors do not support plaintiffs' claim, there is no genuine issue of material fact as to whether [defendant] effected a taking. It did not." Affirmed. (Source: State Bar of Michigan e-Journal Number: 83675; May 27, 2025.)

https://www.michbar.org/Portals/0/opinions/appeals/2025/051325/83675.pdf

### Promissory Estoppel Claim and Takings Claim

Case: *Hill v. Marengo Twp.*

Court: Michigan Court of Appeals, Unpublished Opinion, No. 367670, 2025 Mich. App. LEXIS 4827, 2025 LX 157976 (July 9, 2025, Decided).

Agreeing with the trial court that plaintiff "failed to plead viable claims premised on promissory estoppel, regulatory takings, and equal protection," and that declaratory relief was unobtainable, the court affirmed. Plaintiff sued defendant-township alleging that, in reliance on its ordinance amendment allowing unlimited marijuana grower permits, he spent over $300,000 to convert his property into a "Cannabis Grow Park," in hopes of selling parcels to marijuana grow operators, but that defendant's subsequent limit on permits rendered his property almost worthless. The trial court ruled for defendant and dismissed the case.

On appeal, the court rejected plaintiff's argument that the trial court erred by granting defendant summary disposition of his promissory estoppel claim, noting he "did not establish the 'promise' element of promissory estoppel." The ordinances at issue provided "that defendant's board could review and amend the number of permits 'annually or as it determines to be advisable.' This language unmistakably demonstrates that defendant's amendment to the number of . . . grower permits was not a promise to plaintiff that the number of permits would remain indefinitely 'unlimited.'"

The court also upheld summary disposition of his regulatory taking claim. "[A]ccepting plaintiff's factual allegations as true and applying them to the Penn Central balancing test, we conclude . . . that no compensable taking of plaintiff's property occurred . . . [and] that no factual development could change this outcome," rendering summary disposition on this issue appropriate. Because he "failed to plead facts demonstrating either a categorical taking of his land such that his property was rendered wholly unusable, or a noncategorical taking under the Penn Central inquiry, the trial court correctly granted summary disposition on plaintiff's takings claim."

The court also held that the trial court did not err by granting defendant summary disposition of his equal protection claim. He "did not identify a similarly situated property owner whom defendant treated differently under the ordinance." His allegation that defendant told two marijuana growers "that it would issue additional Class C grower permits to them has no bearing on plaintiff's position as a seller of land, because he does not grow marijuana and he did not assert that he applied for any Class C grower permits that defendant denied." Finally, because it affirmed the dismissal of his underlying claims, it likewise affirmed "dismissal of his claim for declaratory relief." (Source: State Bar of Michigan *e-Journal* Number: 367670; July 9, 2025.)

https://www.michbar.org/Portals/0/opinions/appeals/2025/070925/83961.pdf

## Land Divisions & Condominiums

### ZBA Did Not Provide Sufficient Factual Findings Land Division Variance

Case: *Keep Whitewater Twp. Rural, Inc. v. Township of Whitewater*

Court: Michigan Court of Appeals, Unpublished Opinion, No. 371421, 2025 Mich. App. LEXIS 4695, 2025 LX 110292, 2025 WL 1682203 (June 13, 2025, Decided).

Holding that appellee-township's ZBA did not provide sufficient factual findings, the court vacated the trial court's order affirming the ZBA's order and remanded to the ZBA for further explanation of its decision to grant a land-division variance. Appellee's ZBA granted a land-division variance allowing a

parcel of real property owned by third-party intervenor to comply with relevant ordinances, despite the fact that the parcel did not comply with the requirement that its depth-to-width ratio must not exceed 4:1. The trial court affirmed.

On appeal, the court rejected appellant's argument that the procedure used to approve the land division in 2020, which created the subject parcel, rendered the ZBA's 2023 variance award invalid. "We cannot see how an alleged procedural deficiency in the 2020 land-division approval process could have any impact on the 2023 variance request, given the fact that the 2020 land-division approval had been deemed invalid by the time of the 2023 variance request." However, the "ZBA provided insufficient factual findings on" the five necessary "elements to permit us to meaningfully review the ZBA's decision to grant a variance." Because the ZBA "gave no meaningful explanation for its decision, the [trial] court grossly misapplied the substantial-evidence test to the ZBA's factual findings when it affirmed the ZBA's order." [Vacated and remanded to the ZBA for further consideration] (Source: State Bar of Michigan ***e-Journal*** Number: 83858; June 30, 2025.)

https://www.michbar.org/Portals/0/opinions/appeals/2025/061325/83858.pdf

# Appeals, Variances (use, non-use)

## Expired Variance Does Not Establish a Vested Property Right

Case: *Dalaly v. Charter Twp. of W. Bloomfield Zoning Bd. of Appeals*

Court: Michigan Court of Appeals, Unpublished Opinion, No. 368665, 2025 Mich. App. LEXIS 1062, 2025 LX 273081, 2025 WL 452522 (February 10, 2025, Decided).

Holding that a zoning use variance is a vested property right only if the variance is acted upon by the applicant, the court reversed the trial court's order and remanded. Defendant-ZBA denied plaintiff's application for variances on his property. After remand by the trial court, the ZBA "moved to 'grant the minimum variances necessary to accommodate a commercial building not to exceed 3,352 square feet total.'" Plaintiff never obtained a building permit, and construction never started. Five years later, the Township Board adopted an ordinance providing that "the ZBA was no longer authorized 'to grant use variances.'" Plaintiff sought to have the court ordered variances granted because the prior variances granted by the ZBA were ineffective under the new ordinance. The trial court found that plaintiff possessed "a vested right in the use variances previously granted" and remanded to the ZBA.

On appeal, the court agreed with the ZBA that the trial court erred by denying its motion for relief from judgment as it fulfilled the requirements of the trial court's earlier order by granting the variances, that "those variances expired and became null and void" through no fault of the ZBA, and that it no longer had legal authority to grant plaintiff the requested use variances. "The ZBA carried out the trial court's mandate by granting to plaintiff the requested variances . . . , and no further action was required to comply with the order." In addition, "plaintiff had one year from the time his zoning use variance was granted to obtain a building permit, and the variance did not take effect, i.e. it did not vest, until a building permit was issued." As in Norman, "because plaintiff never acted upon the variances granted to him" in 2012, he never acquired a vested property right.

"Under the plain language of the applicable zoning ordinance, the approval of the variances expired and became null and void, and plaintiff never timely requested the ZBA to extend the time period to secure a building permit. It is undisputed the variances became ineffective as a result." The court concluded it was "bound to apply the zoning ordinance as amended," and the ZBA cannot reissue the variances. Finally, the court found moot the ZBA's contention that the trial court erred by granting plaintiff's motion for civil contempt, noting the trial court did not explicitly hold the ZBA in contempt. (Source: State Bar of Michigan e-Journal Number: 83130; February 24, 2025.)

*As in Norman, "because plaintiff never acted upon the variances granted to him" in 2012, he never acquired a vested property right.*

https://www.michbar.org/Portals/0/opinions/appeals/2025/021025/83130.pdf

# Nonconforming Uses

## Reconstruction of a Nonconforming Cabin Requires Permits

Case: *West Bloomfield Twp. v. United German Am. Recreational Soc'y*

Court: Michigan Court of Appeals, Unpublished Opinion, No. 366565, 2025 Mich. App. LEXIS 1253, 2025 WL 511175 (February 14, 2025, Decided).

The court held that the trial court did not err by granting plaintiff-township summary disposition of its action against defendants-landowners. Defendants demolished their old cottage and constructed a new, larger one on the property. Plaintiff eventually sued, seeking demolition of the new cottage based on zoning violations, public nuisance, and nuisance per se. On appeal, the court rejected defendants' argument that the trial court erred by concluding there was no genuine issue of material fact as to their equitable estoppel affirmative defense. As a threshold matter, it noted that while factual disputes remained as to whether defendants obtained a building permit in compliance with the ZO, this was immaterial because they were "not able to meet the justifiable reliance standard to prevail on their equitable estoppel defense." Under circumstances in which plaintiff made it clear that defendants' "newly constructed cottage violated the [ZO], the trial court did not err by holding that [their] reliance on the issuance of the building permit was not justified and would not equitably estop the township from enforcing the" ZO.

The court next found that "genuine issues of material fact did not remain for trial regarding whether [defendants'] reliance on the township's past pattern of conduct was justified in establishing their belief that [it] would not enforce the provisions of its [ZO] as they constructed their new cottage." The evidence suggested "that plaintiff did not consistently enforce its [ZO] in the years after its enactment in 1966, and it" supported defendants' contention that plaintiff "allowed members of the UGARS community to secure permits for alterations, additions, and renovations after the fact."

But the "specific issues here are whether plaintiff either intentionally or negligently induced [defendants] to believe that it would not enforce its [ZO], and whether it was justifiable for" them to rely and act on this belief. To the extent they suggested they were "being treated differently than anyone else in the UGARS membership or that their lot is being treated disparately than any other lot on the UGARS property, [plaintiff] has conceded that it did issue after-the-fact permits for more minor alteration, addition and renovation work." However, aside from defendants, only one other couple completely demolished and rebuilt "a new home without the required approval and permits . . . . , and their structure

was ordered to be demolished in" 12/20. More significantly, defendants did "not put forth any evidence to indicate that any other demolished or rebuilt structures were not required to submit to the same permit requirements of the" ZO. Affirmed. (Source: State Bar of Michigan *e-Journal* Number: 83186; March 5, 2025.)

https://www.michbar.org/Portals/0/opinions/appeals/2025/021425/83186.pdf

### Upgrade to Shooting Range Not an Unlawful Expansion of Prior Nonconforming Use

Case: *Pierce v. Nye*

Court: Michigan Court of Appeals, Unpublished Opinion, No. 368883, 2025 Mich. App. LEXIS 4962, 2025 WL 1752109 (June 24, 2025, Decided).

The court held that the trial court did not err by ruling "that the recent use of the east side of the" defendant-sport shooting range "was not an unlawful expansion of defendants' prior nonconforming use." This private zoning enforcement case arose from plaintiffs' concerns of increased shooting activity at the range. The court noted that "the range was operating as a prior nonconforming use under both the 1979 ordinance and the current ordinance."

The crux of the issue here was "whether the sporting clays course on the east side of the property was unlawfully extended or enlarged in 2021, in violation of 2008 Ordinance, § 19.03(1)(a)." The court concluded that it was not. It found "that the trial court did not clearly err by determining that the Spring 2021 upgrades were merely a continuation of the range's legal, prior nonconforming use status. The upgrades did not amount to an entirely new shooting concept or facility. Instead, the upgrades were made to regulate the shooting range and effectuate a safer experience for the range's customers. Importantly, the same style of shooting took place before and after the upgrades were made. Accordingly, the continuation of the nonconforming use of the property did not expand the previous nonconforming use." Affirmed. (Source: State Bar of Michigan *e-Journal* Number: 83905; July 10, 2025.)

https://www.michbar.org/Portals/0/opinions/appeals/2025/062425/83905.pdf

## Open Meetings Act, Freedom of Information Act

### Marijuana Selection Committee Subject to OMA

Case: *Blue Water Cannabis Co., LLC v. City of Westland*

Court: Michigan Court of Appeals, Unpublished Opinion No. 359144, 2025 Mich. App. LEXIS 3131, 2025 LX 67182 (April 21, 2025, Decided).

On remand from the Supreme Court for reconsideration in light of Pinebrook Warren II, the court held that the trial court erred in ruling that defendant-Westland Marijuana Selection Committee (the SC) "could not have violated the OMA because it was not a 'public body.'" The case arose from defendant-city's process for granting licenses to sell marijuana. "The OMA requires that 'meetings,' 'decisions,' and 'deliberations' of a 'public body' must be open to the public." The Supreme Court, in Pinebrook Warren II, held that defendant-city of Warren's "Review Committee, which functioned in a very similar manner to that alleged with respect to the city's [SC] in this case, was acting as a 'public body.'" The allegations here were "very similar to those in Pinebrook Warren. In both cases, a separate committee was set up to review and score applications for licenses, and the final results were sent to the governing body, the city council, for its decision.

Plaintiffs alleged in this case, as was alleged in Pinebrook Warren, that the committee was charged with reviewing and scoring the applications, and that the city council did not independently consider the merits of those applications. Therefore, under Pinebrook Warren II, plaintiffs' allegations, if proven, would support the conclusion that the [SC] in this case was the de facto decisionmaker" as to awarding marijuana-seller licenses and thus, "subject to the OMA." The arguments made by defendants and intervening defendants did "not alter this conclusion." While they pointed "out that appeals from the decisions of the city's Review Board were open to the public, it is the activity of the [SC] that is at issue in plaintiffs' OMA claims.

By the time the Review Board heard appeals, the selection process had been completed and the applicants had already been ranked." Further, it appeared that it "made no changes to the [SC's] recommendations, suggesting that [it] may have merely 'rubber stamped' the [SC's] work. Additionally, the city council arguably had insufficient time to engage in an independent review of the work performed by the [SC] if it was only acting in an advisory capacity. Defendants and intervening defendants" failed to establish this case was "different enough from Pinebrook Warren to compel a conclusion that they should prevail as a matter of law." The court reversed the portion of the order granting them summary disposition under MCR 2.116(C)(8) on the OMA claims and remanded. (Source: State Bar of Michigan *e-Journal* Number: 83576; May 7, 2025.)

https://www.michbar.org/Portals/0/opinions/appeals/2025/042125/83576.pdf

# Special Use and Site Plans

## Moratorium on Wind Project SLUP

Case: *Algonquin Power (MI Energy Devs.) LLC v. Township of Speaker*

Court: Michigan Court of Appeals, Unpublished Opinion, No. 371424, 2025 Mich. App. LEXIS 4897, 2025 WL 1730087 (June 20, 2025, Decided).

In this case involving a moratorium on applications for commercial wind project SLUPs, the court dismissed the appeal as moot. Defendant-Township of Speaker challenged the trial court's grant of a writ of mandamus to plaintiff (doing business as Liberty Power), "requiring that its SLUP application be considered by Speaker by a date certain, as well the trial court's holdings that the moratorium should have been passed by amendment to Speaker's zoning ordinance, and did not advance a legitimate governmental purpose." Speaker asserted "that the trial court erred in: (1) holding that the moratorium required an amendment under the MZEA; (2) determining the moratorium did not advance a legitimate governmental purpose; and (3) issuing the writ of mandamus." Among other things, Liberty asserted that the appeal was moot.

The court failed "to see any actual case or controversy with regard to whether Speaker lawfully enacted its initial moratorium for a legitimate governmental purpose. Speaker heard and denied Liberty's SLUP application, and just days later, enacted a moratorium by referendum in accordance with the MZEA, which is what Liberty claimed was required." Thus, it was "unclear what legal effect a ruling on these issues would have on the existing controversy." Speaker argued the issue was not moot, asserting "that it expects Liberty to appeal the denial of its SLUP application[.]" But the court noted that "any potential appeal of Speaker's denial of Liberty's application does not alter this Court's decision, as we should only consider the effect of our ruling on the existing controversy." Speaker also asserted "that, even if moot, the issue of whether a police power moratorium is valid in these circumstances is one of public significance that is likely to recur, yet evade judicial review, citing the fact that Liberty raised the issue in

another lawsuit[.]" However, merely "stating that municipalities often adopt moratoria outside of zoning ordinance amendments, citing to a federal district court case in which a municipality used its police power to adopt a moratorium and to the fact that Liberty has previously made this argument, has not convinced us that recurrence is likely, as opposed to simply possible. Michigan caselaw, albeit unpublished, has addressed this issue, and as Speaker argues, this issue may arise in a subsequent appeal of the decision denying the SLUP application." The court was also not convinced "that this is a matter of public significance." Likewise, it found Speaker's argument as to the writ of mandamus moot (Source: State Bar of Michigan *e-Journal* Number: 83884; July 7, 2025.)

https://www.michbar.org/Portals/0/opinions/appeals/2025/062025/83884.pdf

# Riparian, Littoral, Water's Edge, Great Lakes Shoreline, Wetlands, Water Diversion

## Floating Home Ordinance Upheld

Case: *Dune Ridge SA LP v. City of Saugatuck*

Court: Michigan Court of Appeals, Unpublished Opinion, No. 367059, 2025 Mich. App. LEXIS 4679, 2025 WL 1667080 (June 12, 2025, Decided).

In Docket No. 367059, the court reversed the trial court's order finding that genuine issues of material fact existed regarding whether defendant-City was engaged in a governmental or proprietary function. The City was entitled to immunity on plaintiff's (collectively, Dune Ridge) Counts IV, V, VI and IX. In Docket No. 367078, it affirmed "the trial court's orders granting the City's BOC Motion and Promissory Estoppel Motion and the trial court's orders denying Dune Ridge's BOC Motion and Ordinance Motion." Dune Ridge entered into an agreement with the "City to swap parcels of land located along the Kalamazoo River. Though not expressed in the agreement itself, Dune Ridge planned to develop its resulting parcel into a high-end floating homes rental business.

The Saugatuck City Council (City Council), however, subsequently enacted several ordinances regulating the use of floating homes, which disrupted Dune Ridge's plans." The City argued, among other things, "that the trial court erred by denying its Immunity Motion because there is no genuine issue of material fact regarding the City's entitlement to governmental immunity as to Dune Ridge's tort claims."

First, the court agreed "with the City that there is no genuine issue of material fact that the City was engaged in a governmental function when the alleged torts occurred, and the trial court erred by concluding otherwise." There was "no genuine issue of material fact that the City was authorized to enter into the LSA and therefore was engaged in a governmental function when the alleged torts occurred. Accordingly, the trial court erred by denying the City's Immunity Motion on this basis." The court concluded that the "trial court also erred by finding that there was a genuine issue of material fact as to whether the City was engaged in a proprietary function." The court found "no merit in Dune Ridge's argument that the property exchange was commercial in nature or that there is otherwise a genuine issue of material fact as to whether the City's primary purpose was to produce a pecuniary profit. Accordingly, the trial court also erred by denying the City's Immunity Motion on this ground." Reversed in part, affirmed in part, and remanded. (Source: State Bar of Michigan *e-Journal* Number: 83847; June, 26 2025.)

https://www.michbar.org/Portals/0/opinions/appeals/2025/061225/83847.pdf

# Nuisance and other police power ordinances

## Proper Procedure Followed in Entering Default Judgement Against Blighted Structure

Case: *Township of Tyrone v. Lesko*

Court: Michigan Court of Appeals, Unpublished Opinion, No. 367096, 2024 Mich. App. LEXIS 6845, 2024 WL 4100203 (September 5, 2024, Decided).

The court concluded it did not have jurisdiction to hear defendant-property owner's appeal by right of the order for demolition of a blighted structure on her property, and even if it did, she would be unable to prevail on the merits. A default judgment was entered against her. "Despite enough time elapsing for multiple adjournments of the show-cause hearing, defendant never moved to set aside the default judgment. Instead, she simply asked the [trial] court for more time to comply with it. Further, the order from which defendant has filed this claim of appeal is a show-cause order." The court noted it explained in Moroun "that 'an order finding a party in civil contempt of court is not a final order for purposes of appellate review.'" It was unclear "from the record if defendant was formally held in contempt of court. However, even if framed as an order enforcing the prior default judgment, defendant still maintains no right to appeal because she never moved to set aside the default."

She argued that the trial "court abused its discretion and clearly erred by determining without any expert testimony that the building was blighted in violation of the Township's ordinances." The court disagreed, noting the ordinance did "not require any expert testimony for a court to make findings regarding whether a building is blighted. Moreover, the complaint went unanswered, the court records do not show any defects in the motion for entry of default, and the [trial] court followed proper procedure by entering a default judgment. Because defendant did not answer the complaint, the [trial] court accepted allegations in the complaint as true and deemed the allegations of the blighted conditions admitted by defendant."

Given that she never moved to set aside the default, she "effectively admitted that the building is blighted and in violation of the" ordinance. The court also rejected her claim that the trial court should have allowed her more time to rehabilitate the structure. It concluded the "trial court acted reasonably within its discretion by ordering demolition because defendant failed on numerous occasions to show any proof that she is capable of performing the necessary repairs." Affirmed. (Source: State Bar of Michigan e-Journal Number: 82249; September 18, 2024)

https://www.michbar.org/Portals/0/opinions/appeals/2024/090524/82249.pdf

## Right To Farm Act Defense in a Nuisance Abatement

Case: *Township of Fraser v. Haney*

Court: Michigan Court of Appeals, Unpublished Opinion, No. 368834, 2025 Mich. App. LEXIS 5336, 2025 WL 1900791 (July 9, 2025, Decided).

The court held that "the trial court erred as a matter of law in concluding that the RTFA defense was unavailable on nonretroactivity grounds, and did not make the additional factual findings necessary under the RTFA to enable further appellate review." But it did not err in ruling that laches and equitable

estoppel did not bar the action. This was a nuisance abatement action to enjoin a piggery owned by defendant-Haney, on real property within the boundaries of plaintiff-Township, under its zoning ordinance. The court noted that all "the relevant events in Travis occurred before the effective date of the 2000 amendment to the RTFA. In this case, plaintiff's zoning ordinance has not changed since the 1970s, so under Travis the 2000 amendment to the RTFA did not retroactively invalidate that ordinance as applied to pre-2000 activity. But defendant began his pig farming operation after 2000, and plaintiff seeks only injunctive—not retrospective—relief. MCL 286.474(6), by providing that 'a local unit of government shall not enact, maintain, or enforce an ordinance, regulation, or resolution that conflicts in any manner with this act or [GAAMPs]' . . . prohibits prospective enforcement of a zoning ordinance that is contrary to the RTFA and GAAMPs, even if the enactment of the ordinance itself predated the 2000 amendment to the RTFA.

Therefore, the trial court erred as a matter of law by holding that defendant's MCL 286.474(6) defense to plaintiff's nuisance abatement action was barred under Travis." Given that the "zoning ordinance must yield to the RTFA and GAAMPs," the court turned to whether defendant "raised a meritorious RTFA defense." It found "no error, much less clear error, in classifying defendant's activities as a farm operation. [He] testified that he initially raised elk and deer, and later approximately 50 pigs, for profit. He also testified that he would sell variable amounts of pigs for hunting at $400 to $450 apiece and would sell approximately twenty pigs per year at auction where they would fetch $150 to $250 each."

The court found that he "met his burden to show that he was engaged in the 'commercial production of a farm product,' because he cultivated animals that were 'intended to be marketed and sold at a profit.'" But because the trial court found "that the RTFA did not apply, it did not make any factual findings or a legal determination regarding the second element of the RTFA defense: whether defendant's farm operation conformed to 'all applicable GAAMPs.'" The court concluded that this "failure to make factual findings regarding defendant's compliance with applicable GAAMPs inhibits appellate review of this issue, and requires a remand for the trial court to make such findings in the first instance." it vacated the judgment for plaintiff and remanded. (Source: State Bar of Michigan e-Journal Number: 83963; July 18, 2025.)

https://www.michbar.org/Portals/0/opinions/appeals/2025/070925/83963.pdf

# Marijuana, MRTMA

## Regulatory Ordinance Alleged to be Zoning and Issues with Competitive Scoring

Case: *1864 US-23 LLC v. City of Port Huron*

Court: Michigan Court of Appeals, Unpublished Opinion No. 364708, 2024 Mich. App. LEXIS 6729, 2024 WL 4002340 (August 29, 2024, Decided).

In these consolidated appeals, the court held that (1) the trial court did not abuse its discretion in denying motions to file amended complaints, (2) the ordinance at issue was regulatory, not zoning, (3) defendant-city did not act arbitrarily and capriciously in scoring plaintiff-1864's license application, and (4) the city's ordinance did not conflict with the MRTMA. The case related to the issuance of licenses for marijuana retailers, provisioning centers, and designated consumption establishments in the city. In one of these appeals, plaintiff-BRT argued the trial court abused its discretion in denying BRT's motion to file a second amended complaint. The court was inclined to agree the "proposed amended complaint would

not be 'futile.'" But it found no abuse of discretion "for two reasons. First, the amended complaint would have added parties to this litigation. Thus, this litigation would not merely have expanded the legal issues already pending, the matter would have expanded the parties involved in" it. Second, while the trial court did not expressly discuss it, "several of the intervenors would have been unduly prejudiced if the amended complaints were allowed to be filed."

In another appeal, intervenor-Trucenta argued the trial court erred in granting "summary disposition because the ordinance at issue is a regulatory ordinance, not a zoning ordinance." The court disagreed. Apart from an ordinance specifically stating that the provisions of the article were "'regulatory in nature and not intended to be interpreted as zoning laws[,]'" the city's zoning ordinances were found in Chapter 52. Further, nearly all "the provisions of the ordinance at issue concern the operation of marijuana facilities, not where those facilities must operate." The court could not "identify a particular provision in the ordinance that expressly limits where a marijuana facility may, or may not, operate within the municipality. Such provisions are separately found in Chapter 52."

It concluded that, on balance, the ordinance was regulatory rather than zoning. In another appeal, 1864 also argued the trial court erred in granting summary disposition. The court rejected its claim that it had a property interest in having its application properly scored. Further, it determined the plain language of the ordinance supported the city's decision not to "award 10 points to 1864's application for a structure exceeding 2,000 square feet." Affirmed. (Source: State Bar of Michigan e-Journal Number: 82210; September 12, 2024.)

https://www.michbar.org/Portals/0/opinions/appeals/2024/082924/82210.pdf

## Other Unpublished Cases

### Rezoning Decision Not Arbitrary or Unreasonable

Case: Adkison-Hoyt v. Superior Charter Twp.

Court: Michigan Court of Appeals, Unpublished Opinion, No. 369764, 2025 Mich. App. LEXIS 2648, 2025 LX 270033 (April 8, 2025, Decided).

Concluding that ultimately, defendant-Superior Township Board of Trustees's (the Board) "legislative decision to rezone the property was not arbitrary or unreasonable[,"] the court held that the trial court did not err by granting summary disposition to defendants. Plaintiffs (who own land near the property in question) contended that the Board's decision to rezone the Dixboro property violated defendant-Superior Charter Township's zoning ordinance. Plaintiffs first argued that "the rezoning did not meet the proper criteria required for PC zoning, per the Zoning ordinance's language." The court held that the "findings of fact, which the Board relied on when making its legislative determination to rezone the Dixboro property, were adequately supported by the record, which contains extensive documentation submitted by [intervening defendant-Garrett's Space (GS)] regarding its plans for the site."

The court saw "no cause to disturb the [Planning) Commission's findings in this matter." Also, it found that it bore "repeating that the Commission found, and the Board agreed, that rezoning the property would be rationally related to the goals set forth in the Township's Master Plan."

Plaintiffs had failed to present a genuine issue of material fact in relation to the Township's adherence to the "zoning ordinance that would lead us to conclude that the trial court's ruling should be reversed."

*"repeating that the Commission found, and the Board agreed, that rezoning the property would be rationally related to the goals set forth in the Township's Master Plan."*

They next contended "that the Dixboro property failed to meet the criteria applicable to PC zoning districts set forth in Superior Charter Township Zoning Ordinance, § 7.301(B)." Their complaints as to "§ 7.301(B) are unsupported by the record, and again only show that 'legitimate difference[s]' of opinion exist as to whether the Dixboro property should have been rezoned." But plaintiffs had "again failed to show that the Board's decision to rezone the property from A2 to PC zoning was invalid by presenting evidence that the zoning amendment was arbitrary or unreasonable." Ultimately, they "have neither presented a compelling argument as to why this Court should not defer to the findings of the Commission, the Board, and the trial court," nor did they show "a genuine issue of material fact warranting reversal[.]" Affirmed. (Source: State Bar of Michigan *e-Journal* Number: 83464; April 17, 2025.)

https://www.michbar.org/Portals/0/opinions/appeals/2025/040825/83464.pdf

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For help and assistance with land use training and understanding more about these court cases contact your local MSU Extension land use educator. For a list of who they are, territory covered by each and contact information see: https://www.canr.msu.edu/land_use_education_services/



# Glossary

- **aggrieved party:** One whose legal right has been invaded by the act complained of, or whose pecuniary interest is directly and adversely affected by a decree or judgment. The interest involved is a substantial grievance, through the denial of some personal, pecuniary or property right or the

imposition upon a party of a burden or obligation. It is one whose rights or interests are injuriously affected by a judgment.

- **clean-hands doctrine:** The clean-hands doctrine is the principle that a party's own inequitable misconduct precludes recovery based on equitable claims or defenses. The doctrine requires that a party act fairly in the matter for which they seek a remedy.
- **curtilage:** includes the area immediately surrounding a dwelling, and it counts as part of the home for many legal purposes, including searches and many self-defense laws.
- **defendant:** a person summoned to answer a charge or complaint.
- **de novo:** Latin, "anew." For example, a trial de novo is a trial anew or a new trial, as opposed to a mere review of the record of the first trial. De novo is one of the standards of review used, for example, by a trial court when reviewing the decision of a referee, or by an appellate court when considering a case on appeal.
- **estoppel:** the principle which precludes a person from asserting something contrary to what is implied by a previous action or statement of that person or by a previous pertinent judicial determination.
- **injunction:** 1. A judicial order restraining a person from an action or compelling a person to carry out a certain act. 2 . an authoritative warning.
- **laches:** unreasonable delay in asserting a claim, which may result in its dismissal.
- **mandamus:** a judicial writ issued as a command to an inferior court or ordering a person to perform a public or statutory duty.
- **Plaintiff:** In a civil matter, the party who initiates a lawsuit (against the defendant).

For more information on legal terms refer to:

1. Cornell Legal Information Institute, https://www.law.cornell.edu/

2. *Handbook of Legal Terms* prepared by the Michigan Judicial Institute for Michigan Courts: https://www.courts.michigan.gov/resources-for/judges-court-staff/court-staff/mji-resources-for-trial-court-staff/other-resources/

- **stare decisis:** the legal principle of determining points in litigation according to precedent. ORIGIN Latin, literally 'stand by things decided'.
- **sua sponte:** to act spontaneously without prompting from another party. The term is usually applied to actions by a judge, taken without a prior motion or request from the parties. ORIGIN Latin for 'of one's own accord'.
- **writ:** a form of written command in the name of a court or other legal authority to do or abstain from doing a specified act. (one's writ) one's power to enforce compliance or submission. **2.** archaic a piece or body of writing.