Michigan State University Extension
Public Policy Brief

Selected Planning and Zoning Decisions: 2018 (May 2017-April 2018)

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This public policy brief summarizes the important state and federal court cases and Attorney General Opinions issued between May 1, 2017 and April 30, 2018.

"I know of no safe depository of the ultimate powers of the society but the people themselves . . . and if . . . not enlightened enough to exercise their control . . . the remedy is . . . to inform their discretion."
Thomas Jefferson

This is a fact sheet developed by experts on the topic(s) covered within MSU Extension. Its intent and use is to assist Michigan communities making public policy decisions on these issues. This work refers to university-based peer reviewed research, when available and conclusive, and based on the parameters of the law as it relates to the topic(s) in Michigan. 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. In most cases they do not. This is not original research or a study proposing new findings or conclusions.

Contents

Published Cases

New law. 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.
  - 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.
  - 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.

Restrictions on Zoning Authority

Preemption of city, village, township and county ordinance concerning farming activities.

Michigan Attorney General Opinion 7302 (March 28, 2018)

In response to a question from Gordon Wenk, Director of the Department of Agriculture and Rural Development, the Michigan Attorney General issued an opinion that the Right to Farm Act, 1981 PA 93, MCL 286.471 *et seq.* (RTFA), preempts provisions in ordinances adopted by cities, villages, townships and counties that regulate farming activities when the Commission of Agriculture and Rural Development has developed generally accepted agricultural and management practices that address those farming activities.

Wenk's questions to the Attorney General were more specific. And the Attorney General found that a local government ordinance cannot regulate any of the following things due to RTFA's section 4(6):

1. limit the number of livestock per acre,
2. require a site plan be submitted to and approved by the local zoning administrator,
3. limit manure application to fields in which the farmer owns or holds a 7-year lease
4. specify manure application methods, and

5. require a comprehensive nutrient management plan be submitted to and approved by the local unit of government.

There are other subjects which are preempted from local regulation in addition to what is listed here, these were just the ones the Attorney General was asked about. See the article "Right to Farm Act can preempt local regulation authority, but not all local regulations."[1]

"There is no question regarding legislative intent [in the RTFA]—local ordinances seeking to regulate those activities are preempted." the Attorney General Opinion said [brackets added].

> 'Although the Right to Farm Act's preemption language is broad, it is "only those ordinances, regulations, and resolutions by local units of government that either purport to extend or revise or that conflict with the [Right to Farm Act] or the GAAMPs [that] are improper." *Scholma v Ottawa County Road Commission*, 303 Mich App 12, 25-27 (2013) at 23.'

Local ordinance provisions are preempted by section 4(6) of the RTFA because they extend, revise, or conflict with the RTFA or the GAAMPs adopted by the Commission of Agriculture and Rural Development under the Act.

Copy of the Attorney General Opinion:

https://content.govdelivery.com/attachments/MIAG/2018/03/29/file_attachments/981333/%25237302.pdf

Zoning prohibiting outdoor growing of medical marijuana is preempted by MMMA

Case: *Charter Twp. of York v. Miller*

Court: Michigan Court of Appeals (2018 Mich. App.; LEXIS 137; (No. 335344); January 18, 2018)

Concluding that the plaintiff-township's zoning ordinance (ZO) clearly purported to prohibit the outdoor growing of medical marijuana that the Michigan Medical Marihuana Act (MMMA) (MCL 333.26421 *et seq.*) otherwise allows, the court held that it conflicted with, and thus was preempted by, the MMMA.

While plaintiff argued that its authority under the Michigan Zoning Enabling Act (MZEA) (MCL 125.3101 *et seq.*) "permitted it to regulate medical marijuana and restrict registered caregivers' marijuana growing to indoors in" residentially-zoned areas, the court disagreed. The dispositive issues were "whether the MMMA permits outdoor medical marijuana growing, and if so, whether it preempted" plaintiff's ZO prohibiting such growing in residential areas. Reading the relevant parts of the ZO together, they "only permitted medical marijuana growing exclusively indoors." Further, defendants' violation of the ZO "held serious penalties." Reading MCL 333.26424(b)(2) and 333.26423(d) together, they "permit growing medical marijuana outdoors by registered caregivers as long as the growing occurs within an enclosed, locked facility as specified. The MMMA also provides that other state law inconsistent with the MMMA may not interfere with the rights established under the MMMA."

The court concluded that the ZO "effectively denied registered caregivers the right and privilege that MCL 333.26424(b) permits in conjunction with MCL 333.26423(d)." Thus, under *Ter Beek v. City of Wyoming* (Ter Beek I), "plaintiff's prohibition against medical marijuana outdoor growing by a registered caregiver directly conflicts with the MMMA. Further, enforcement of" its ZO would result in imposing penalties against persons like defendants not permitted by the MMMA.

[1] http://msue.anr.msu.edu/news/right_to_farm_act_can_preempt_local_regulation_authority_but_not_all_local

The court held that the ZO "was void and preempted by the MMMA." The trial court also correctly ruled that "defendants' enclosed, locked facility must comply with MCL 333.26423(d), construction regulations, and plaintiff's construction permit requirements. Contrary to plaintiff's contention," its ruling did not grant them "immunity and exemption from all zoning and construction regulations." The court affirmed the trial court's judgment declaring that plaintiff could not enforce its ZO's prohibition against outdoor growing of medical marijuana. (Source: State Bar of Michigan e-Journal Number: 67047; January 22, 2018.)

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2018/011818/67047.pdf

Requiring underground electric lines within/near right-of-ways is unreasonable, unconstitutional

Case: *Charter Township of Oshtemo v Michigan Electric transmission Company LLC*

Court: Michigan Supreme Court (894 N.W.2d 551; 2017 Mich. LEXIS 906; 500 Mich. 988; May 12, 2017)

This was a Michigan Supreme Court order. The text of the order in full is:

> On order of the Court, leave to appeal having been granted and the briefs and oral arguments of the parties having been considered by the Court, we AFFIRM the judgment of the Court of Appeals on the basis that appellant Oshtemo Township exercised control over its streets pursuant to clause three of Const 1963, art 7, §29 when it enacted Zoning Ordinance No. 525 and that §230.004(b) of such Ordinance—requiring that all new utility "lines, wires, and/or related facilities and equipment" within the Township be constructed underground "within the public road right-of-way and to a point within 250 feet either side of said public right-of-way"—is unconstitutional because it is unreasonable. See People v McGraw, 184 Mich 233, 238 (1915). Therefore, the certificate that appellee Michigan Public Service Commission issued to appellee Michigan Electric Transmission Company pursuant to the Electric Transmission Line Certification Act, MCL 460.564 *et seq.*, prevails over §230.004(b) of Ordinance No. 525.

(Source: Michigan Courts web page).

Full Text Opinion: http://publicdocs.courts.mi.gov/SCT/PUBLIC/ORDERS/150695_160_01.pdf

Denial of special use permit not a substantial burden under RLUIPA.

Case: *Livingston Christian Schs. v. Genoa Charter Twp.*

Court: U.S. Court of Appeals Sixth Circuit (858 F.3d 996; 2017 U.S. App. LEXIS 9760; 2017 FED App. 0117P (6th Cir.); 2017 WL 2381336; June 2, 2017)

[This appeal was from the ED-MI.]

The court held that defendant-Genoa Township's refusal to issue a special use permit to plaintiff-plaintiff-Livingston Christian Schools (LCS) for a Christian school did not "substantially burden" LCS's right to exercise its religion under the Religious Land Use & Institutionalized Persons Act's (RLUIPA) .

LCS sought to relocate its school to a church property it leased in the Township. The Township Board denied a special use permit for the school, citing "traffic concerns, inconsistency with the single-family residential zoning of the surrounding area, the failure of the Planning Commission's proposed conditional approval to mitigate these problems, and the Church's history of noncompliance with the zoning ordinance" and conditions on prior special use permits.

LCS sued, alleging that the refusal violated RLUIPA's "substantial-burden provision." The district court granted the Township summary judgment, ruling that the application denial did not impose a substantial

burden on LCS where LCS had two other properties that were "adequate alternatives" to the Township property.

The Appeals Court acknowledged that RLUIPA protects leasehold interests in property. The issue was whether the permit denial imposed a substantial burden on LCS's ability to exercise its religious mission. The Supreme Court has not considered whether a land-use regulation can impose a substantial burden under RLUIPA. The court had only considered the issue in two unpublished cases, *DiLaura v. Township of Ann Arbor* (Unpub. 6th Cir.) and *Living Water Church of God v. Charter Twp. of Meridian* (Unpub. 6th Cir.). Looking at these cases, along with cases from other circuits, the court held that "a burden must have some degree of severity to be considered 'substantial.'" It considered factors used by other circuits to determine whether a substantial burden could be established, such as "whether the religious institution has a feasible alternative location from which it can carry on its mission[;]" whether it will suffer "substantial 'delay, uncertainty, and expense'" due to imposition of the regulation; and "whether LCS's burden was self-imposed . . . ."

The court held that LCS failed to show why the alternative property in Pinckney was inadequate, and the fact that LCS had subsequently leased the property to another entity did not create a substantial burden because it was leased after the special permit was denied. Further, "the unavailability of other land in the particular jurisdiction 'will not by itself support a substantial burden claim.'" The record did "not indicate that traveling the roughly dozen miles to Pinckney would be unduly burdensome to LCS's students" or show that "LCS's religious beliefs required it to locate within Genoa Township specifically." Affirmed.
(Source: State Bar of Michigan e-Journal Number: 65343; June 6, 2017.)

Full Text Opinion: http://www.michbar.org/file/opinions/us_appeals/2017/060217/65343.pdf

Takings

Regulatory Takings Evaluated for the Whole Parcel.

Case: *Murr v Wisconsin*

Court: United States Supreme Court (137 S. Ct. 1933; 198 L. Ed. 2d 497; 2017 U.S. LEXIS 4046; 85 U.S.L.W. 4441; 47 ELR 20082; 84 ERC (BNA) 1713; 26 Fla. L. Weekly Fed. S 717; 2017 WL 2694699; June 23, 2017)

The Court of Appeals of Wisconsin was correct to analyze the lot owners' property as a single unit in assessing the effect of the challenged governmental action.

The United States Supreme Court affirmed, 5-3, in an opinion by Justice Kennedy on June 23, 2017. Chief Justice Roberts filed a dissenting opinion, in which Justices Thomas and Alito joined. Justice Thomas filed a dissenting opinion. Justice Gorsuch took no part in the consideration or decision of the case.

The petitioners own two adjacent lots (E and F) along the St. Croix River. This river is a protected river by federal, state, and local law. State and local regulations prevent use or sale of parcels under common ownership to become two separate building sites unless each separate parcel meets the minimum parcel building envelope size requirements. (Smaller parcels in separate ownership prior to January 1, 1076 are grandfathered.

Petitioners bought lots E and F in the 1960s as separate parcels and kept them separate. In the 1990s the two lots were combined. Both lots are more than one acre, but topography results in a building envelope less than one acre in size.

Petitioners sought to sell lot E, tried to get a variance to do so and was denied. They filed suit. The county Circuit Court ruled against Murrs explaining petitions had other options, they were not deprived of all

economic value of the property. Wisconsin Court of Appeals affirmed and found the two lots were combined into one parcel and one could only build on lots E and F as one parcel. The law suit claimed the regulations were a "regulatory taking that deprived them of all, or practically all, of the use of Lot E." The Appeals Court also held "that the takings analysis properly focused on Lots E and F together and that, using that framework, the merger regulations did not effect a taking."

The United States Supreme Court found "the State Court of Appeals was correct to analyze petitioner's property as a single unit in assessing the effect of the challenged governmental action. Pp. 6-11."

Quoting from the court opinion syllabus:

> Regulatory takings jurisprudence recognizes that if a "regulation goes too far it will be recognized as a taking" (*Pennsylvania Coal Co. v. Mahon*). This area of the law is characterized by "ad hoc, factual inquiries, designed to allow careful examination and weighing of all the relevant circumstances" (*Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*). The Supreme Court has, however, identified two guidelines relevant for determining when a government regulation constitutes a taking. First, "with certain qualifications . . . a regulation which 'denies all economically beneficial or productive use of land' will require compensation under the Takings Clause" (*Palazzolo v. Rhode Island* (quoting *Lucas v. South Carolina Coastal Council*). Second, a taking may be found based on "a complex of factors," including (1) the economic impact of the regulation on the claimant; (2) the extent to which the regulation has interfered with distinct investment-backed expectations; and (3) the character of the governmental action (*Palazzolo* (citing *Penn Central Transp. Co. v. New York City*). Yet even the complete deprivation of use under Lucas will not require compensation if the challenged limitations "inhere . . . in the restrictions that background principles of the State's law of property and nuisance already placed upon land ownership" (*Lucas*). A central dynamic of the Court's regulatory takings jurisprudence thus is its flexibility. This is a means to reconcile two competing objectives central to regulatory takings doctrine: the individual's right to retain the interests and exercise the freedoms at the core of private property ownership (*id.*), and the government's power to "adjus[t] rights for the public good" (*Andrus v. Allard*)
>
> This case presents a critical question in determining whether a regulatory taking has occurred: What is the proper unit of property against which to assess the effect of the challenged governmental action? The Court has not set forth specific guidance on how to identify the relevant parcel. However, it has declined to artificially limit the parcel to the portion of property targeted by the challenged regulation, and has cautioned against viewing property rights under the Takings Clause as coextensive with those under state law. Courts must consider a number of factors in determining the proper denominator of the takings inquiry:
>
> (1) The inquiry is objective and should determine whether reasonable expectations about property ownership would lead a landowner to anticipate that his holdings would be treated as one parcel or as separate tracts. First, courts should give substantial weight to the property's treatment, in particular how it is bounded or divided, under state and local law. Second, courts must look to the property's physical characteristics, including the physical relationship of any distinguishable tracts, topography, and the surrounding human and ecological environment. Third, courts should assess the property's value under the challenged regulation, with special attention to the effect of burdened land on the value of other holdings.

(2) The formalistic rules for which the State of Wisconsin and petitioners advocate do not capture the central legal and factual principles informing reasonable expectations about property interests. Wisconsin would tie the definition of the parcel to state law, but it is also necessary to weigh whether the state enactments at issue accord with other indicia of reasonable expectations about property. Petitioners urge the Court to adopt a presumption that lot lines control, but lot lines are creatures of state law, which can be overridden by the State in the reasonable exercise of its power to regulate land. The merger provision here is such a legitimate exercise of state power, as reflected by its consistency with a long history of merger regulations and with the many merger provisions that exist nationwide today.

Under the appropriate multifactor standard, it follows that petitioners' property should be evaluated as a single parcel consisting of Lots E and F together. First, as to the property's treatment under state and local law, the valid merger of the lots under state law informs the reasonable expectation that the lots will be treated as a single property. Second, turning to the property's physical characteristics, the lots are contiguous. Their terrain and shape make it reasonable to expect their range of potential uses might be limited; and petitioners could have anticipated regulation of the property due to its location along the river, which was regulated by federal, state, and local law long before they acquired the land. Third, Lot E brings prospective value to Lot F. The restriction on using the individual lots is mitigated by the benefits of using the property as an integrated whole, allowing increased privacy and recreational space, plus an optimal location for any improvements. This relationship is evident in the lots' combined valuation. The Court of Appeals was thus correct to treat the contiguous properties as one parcel.

Considering petitioners' property as a whole, the state court was correct to conclude that petitioners cannot establish a compensable taking. They have not suffered a taking under *Lucas*, as they have not been deprived of all economically beneficial use of their property (See 505 U. S., at 1019). Nor have they suffered a taking under the more general test of *Penn Central*.

2015 WI App 13, 359 Wis. 2d 675, 859 N. W. 2d 628, affirmed. (Source: U.S. Supreme Court Syllabus for this case.)

Full Text Opinion: https://www.supremecourt.gov/opinions/16pdf/15-214_f1gj.pdf

Open Meetings Act, Freedom of Information Act

Public body's time for fulfilling request for public records.

Michigan Attorney General Opinion 7300 (December 12, 2017)

Michigan Attorney General Opinion underlines the distinction between 'granting a Freedom of Information Act (FOIA) request within five business days' and the time taken to actually produce the requested documents to the person requesting them. 'Granting a FOIA request' is not the same as producing the documents. This AG opinion indicates the five business days applies only the pronouncement that the FOIA request is/will be granted in part or in whole. The Opinion then talks about how long, and how a government estimates how long, it will take to produce/deliver the documents. The Opinion summary reads:

Subsection 4(8), MCL 15.234(8), of the Freedom of Information Act, 1976 PA 442, MCL 15.231 *et seq*., does not impose a specific time by which a public body must fulfill a request for public records that it has granted. Instead, the public body is guided by, but is

not bound by, the "best efforts estimate" the public body must provide in its response required by subsection 5(2), MCL 15.235(2).

A public body's "best efforts estimate" under subsection 4(8), MCL 15.234(8), of the Freedom of Information Act, 1976 PA 442, MCL 15.231 *et seq*., as to the time it will take to fulfill a request for public records, must be a calculation that contemplates the public body working diligently to fulfill its obligation to produce the records to the requestor. The estimate must be comparable to what a reasonable person in the same circumstances as the public body would provide for fulfilling a similar public records request. In addition, under subsection 4(8), MCL 15.234(8), the "best efforts estimate" must be made in "good faith," that is, it must be made honestly and without the intention to defraud or delay the requestor.

In calculating its "best efforts estimate" for fulfilling a request for public records under subsection 4(8), MCL 15.234(8), of the Freedom of Information Act, 1976 PA 442, MCL 15.231 *et seq*., a public body may take into consideration events or factors affecting its ability to produce requested records.

When thinking about the practical logistics of doing all this: A government has to retrieve, review, and vet the request to be able to determine what part, all, or none of the request can be granted. At that point the records are 'out of the file' and easy to reproduce before putting all the records back in files. It may be less bureaucratic to handle this as one step (pronouncement, and reproduction). The only additional time consuming chore between pronouncement and reproduction might be (1) estimating reproduction costs and (2) any redaction that may be necessary. Redaction is made easier with redaction tape available at most office suppliers. (For example Post-It® Labeling & Cover-up Tape.) It is a role of opaque tape available in various widths to mimic the various common line heights for standard fonts and typewriter text.

Copy of the Opinion: https://content.govdelivery.com/attachments/MIAG/2017/12/12/file_attachments/928539/%25237300.pdf

Appointments at improperly OMA posted meeting have no force or effect

Case: *Lockwood v. Township of Ellington*

Court: Michigan Court of Appeals (2018 Mich. App.; LEXIS 634; 2018 WL 1308321; (No. 338745); March 13, 2018)

The court held that appointments to the township planning commission were made at a township board meeting that was violative of the Open Meetings Act (OMA) (MCL 15.265) and never ratified, they had no force or effect. Comparatively, the subsequent appointments of defendants-Zbytowski and Talaski to the planning commission were valid, and should remain in effect because they were made at a meeting properly noticed and held in compliance with OMA.

The township board rescheduled its regular meeting so it would be held November 1, 2016 (to avoid meeting on its regular meeting date of November 8, 2016 which was Election Day). But the rescheduled meeting was not posted in compliance with the OMA. At the election different township board members were elected, with a background controversy about a proposed wind energy project. The newly elected township board held a special meeting on November 22, 2016 – that was properly noticed – and decided the November 1 meeting was not properly posted and agenda items from the November 1 meeting would all be placed on the December 15, 2016 regular meeting. Agenda items were ratified at the December meeting but not the planning commission appointments. Instead the new township board accepted additional applications and appointed different persons to the three year terms on the planning commission at the township board's regular January 17, 2017 meeting.

The appeal was to challenge the trial court's order granting summary disposition, pursuant to MCR 2.116(C)(10) reinstating the November 1 appointees. The Appeals Court reversed and vacated the trial court order granting summary disposition in favor of plaintiffs and the judgment in favor of plaintiffs, the January 17 appointees.

Defendants argued that the trial court erroneously held that the 60-day period for filing a civil action under the OMA had expired and thus, it did not have jurisdiction over any alleged violation of the OMA. The case involved allegations of an OMA violation, i.e. the defendant-Township's board held its meeting without providing the requisite notice. As to the meeting, the board was required to post "within 3 days after the meeting at which the change is made, a public notice stating the new dates, time, and places of its regular meetings" in order to be in compliance with OMA. It was uncontested that no notice of the meeting was provided, and that the meeting was violative of the OMA.

The OMA also lays out the procedure to be utilized by the attorney general, the county prosecuting attorney, or any other person when seeking invalidation of a decision made by a public body. The court found no error with the trial court's determination that it did not have jurisdiction over any alleged OMA violation relating to the meeting. It appeared from the court's review of the record that the minutes from the meeting were neither approved nor made available to the public. While it agreed with defendants that because the minutes were never approved and released and thus, the 60-day statute of limitations had not begun to run, it nevertheless held that the trial court did not have jurisdiction because no party had filed an action in the circuit court to invalidate any decision made at the meeting.

The Appeals Court agreed with defendants that the trial court erred in ruling that the board could not cure any alleged OMA violation on its own without being sued. (Source: State Bar of Michigan e-Journal Number: 67392; March 15, 2018)

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2018/031318/67392.pdf

Intergovernmental Cooperation

Intergovernmental Condition Transfer of Property (in lieu of annexation) may require a party enact particular zoning.

Case: *Clam Lake Twp. v. Department of Licensing & Regulatory Affairs*

Court: Michigan Supreme Court (500 Mich. 362; 902 N.W.2d 293; 2017 Mich. LEXIS 1338; 2017 WL 2853480; July 3, 2017)

These consolidated cases present two issues. First, in *Clam Lake Twp v Dep't of Licensing & Regulatory Affairs*, Michigan Supreme Court "must decide whether the State Boundary Commission (Commission), when reviewing an annexation petition, has authority to determine the validity of a separate agreement entered into under the Intergovernmental Conditional Transfer of Property by Contract Act, 1984 PA 425, MCL 124.21 *et seq.* (Act 425 agreement)." The Court held that it does not.

Second, in *TeriDee LLC v Haring Charter Twp.*, the Supreme Court "must decide whether an Act 425 agreement can include requirements that a party enact particular zoning ordinances. The plain language of MCL 124.26(c) permits these requirements. Accordingly, the Court of Appeals erred by determining that they were prohibited," and the Supreme Court reversed the decision.

In these consolidated appeals, the Supreme Court held that the appellee-Commission, "when faced with an Act 425 agreement in annexation proceedings, may only review whether the agreement is 'in effect.' An agreement is 'in effect' if it is entered into and properly filed." Those conditions were met. The Supreme Court overruled *Casco Twp. v. State Boundary Comm'n*. Appellee-TeriDee's annexation petition was

preempted, and the Court reversed the trial court's decision. It also held that Act 425 authorizes local units such as the defendants-Township "to provide for zoning ordinances in their conditional land transfer agreements. The Townships properly included such provisions in their agreement," and the court reversed the Court of Appeals' decision to the contrary.

It remanded both cases to the trial court for further proceedings. In *Clam Lake Twp v Dep't of Licensing & Regulatory Affairs*, the court held that the Commission, in reviewing an annexation petition, does not have authority to determine the validity of a separate agreement entered into under Act 425. The "Commission may only make the more limited determination of whether an Act 425 agreement is 'in effect,' as described by the statute, in which case the agreement preempts the annexation petition." The conditional land transfer under an Act 425 agreement "takes place when the parties enter into the contract and file the appropriate documents with the county clerk and Secretary of State. At that point, the agreement is operative, or 'in effect,' and the agreement preempts any other method of annexation."

In this case the Commission failed to properly limit its consideration of the Act 425 agreement. "Rather than asking whether the agreement was 'in effect' under the statute, the Commission erred by more broadly reviewing the agreement's validity." Because the Act 425 agreement met the statutory requirements for being "in effect," it preempted the annexation petition.

Because Casco misinterpreted Act 425, the court overruled it. In *TeriDee LLC v Haring Charter Twp.*, the Court held that the plain language of MCL 124.26(c) permits an Act 425 agreement to include requirements that a party enact particular zoning ordinance. Thus, the Court of Appeals erred by determining that they were prohibited. (Source: State Bar of Michigan e-Journal Number: 65557; July 5, 2017.)

Full Text Opinion: http://www.michbar.org/file/opinions/supreme/2017/070317/65557.pdf

Other Published Cases

Dark Store Property Tax Assessment not Upheld by Courts

Case: *Menard, Inc. v. City of Escanaba*

Court: Michigan Supreme Court (2017 Mich. LEXIS 2100; 501 Mich. 899; 901 N.W.2d 901; October 20, 2017)

The Michigan Supreme Court choose not to accept an appeal of *Menard, Inc. v. City of Escanaba* from the Michigan Court of Appeals – letting stand the Appeals Court decision in a case concerning "dark stores." Normally a case about property taxes would not be covered here. But this issue also has tangential impact on zoning and planning. If the tax assessment based on the lower true cash value reflected by deed restrictions not allowing big box stores to be used by another like-retailer the result is abandoned buildings, circumventing of local zoning intended to allow commercial use and etc. House Bill 5578 of 2016 which was never adopted into law.

The Summary of the Michigan Court of Appeals, upheld by the Supreme Court, ruling is reproduced here:

Case: *Menard, Inc. v. City of Escanaba*

Court: Michigan Court of Appeals (315 Mich. App. 512; 891 N.W.2d 1; 2016 Mich. App. LEXIS 1090; 2016 WL 3022785; May 26, 2016)

The Appeals Court held that the Michigan Tax Tribunal (TT) committed a reversible error of law by rejecting the respondent's cost-less-depreciation approach and adopting the petitioner's sales-

comparison approach, which failed to fully account for the effect on the market of the deed restrictions on the comparables.

Thus, the Appeals Court reversed the TT's ruling for petitioner and remanded, directing the TT to take additional evidence on (1) the market effect of the deed restrictions and (2) the cost-less-depreciation approach.

The property at issue "is a 166,196 square foot 'big-box' store" built on 18.35 acres. Petitioner appealed the ad valorem property tax assessments for tax years 2012-14. The court noted that petitioner owns a fee simple interest in the property, which currently "is not subject to any use restrictions. However, half of the comparables" petitioner's appraiser (T) used in his sales-comparison valuation "contained deed restrictions that limited the use of the properties for retail purposes, thereby preventing sale of an entire fee simple interest in the property." T did not "mention all the deed restrictions in his valuation report, did not make any adjustments for their existence," and contended "that the restrictions did not affect the value of the comparables because the parties involved in the comparable sales told him that the restrictions did not affect the sale price."

The TT used the deed-restricted comparables in its True cash value (TCV) determination. Thus, it "did not value the subject property at its highest & best use (HBU), an owner-occupied freestanding retail building, but instead valued it as a former owner-occupied freestanding retail building that could no longer be used for its HBU and could best be used for redevelopment for a different use."

The court concluded that the TT's finding "was based on an error of law and was not supported by competent, material, and substantial evidence." It also concluded that the cost-less-depreciation approach was appropriate to value the TCV of this property, and that the TT erred in refusing to consider respondent's evidence under this approach. (Source: State Bar of Michigan e-Journal Number: 62834; May 31 2016.)

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2016/052616/62834.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.)

Restrictions on Zoning Authority

City Jurisdiction over oil & gas well case dismissed.

Case: *City of Southfield v. Jordan Dev. Co., LLC*

Court: Court: Michigan Court of Appeals (Unpublished Opinion No. 333970, November 21, 2017)

The Appeals Court held that the issue of whether the plaintiff-City's ordinances were preempted was moot because defendant-Jordan Development had abandoned the project due to its determination that there were insufficient resources for the drilling to take place; the City identified no reason to believe that

such a factual situation would likely recur and prevent review of any preemption issue in other cases. Thus, it dismissed the appeal.

The City argued that the trial court erred in concluding that Part 615 of the Natural Resources and Environmental Protection Act (MCL 324.61501 *et seq.*) (NREPA) preempts the City's ordinances as to oil and gas drilling. The City requested declaratory and injunctive relief as to an oil and gas well project that was being pursued by Jordan on the defendant-church's (WOF) property pursuant to a permit issued by the Michigan Department of Environmental Quality (DEQ). "The trial court granted summary disposition to Jordan and WOF after determining that Part 615 of the NREPA preempts the City's ordinances to the extent that the ordinances purport to regulate the oil and gas drilling project."

The City's concession in its appellate reply brief that Jordan was abandoning the project was consistent with news media reports. The court held that the issue was moot because Jordan planned to plug the well and was "no longer pursuing the project that the City sought to regulate."

While there was no indication that the permit granted to Jordan by the DEQ was revoked, that made no difference because the City was "not contesting that the DEQ has regulatory authority over oil and gas matters. Rather," it contended that the DEQ's authority was not exclusive and that "the City has authority in this area that is not preempted by Part 615 of the NREPA.

Jordan's abandonment of the project" made it impossible for the court to fashion a remedy. Given that Jordan was "no longer pursuing the project that the City wished to regulate, the preemption issue presents only an abstract question of law" that did not rest on existing facts or rights. While the preemption issue was one of public significance, the City identified no reason to believe that the issue was "likely to recur but evade judicial review." (Source: State Bar of Michigan e-Journal Number: 66499; December 5, 2017.)

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2017/112117/66499.pdf

Several regulations of regulating sexually oriented businesses upheld

Case: *Jon Jon's, Inc. v. City of Warren*

Court: Michigan Court of Appeals (Unpublished Opinion No. 332504, October 26, 2017)

The Appeals Court held that the trial court did not err by granting summary disposition for defendant-City of Warren in this case involving constitutional challenges to its licensing and zoning ordinances regulating sexually oriented businesses.

On appeal, the court first held that the trial court correctly found that plaintiffs lacked standing to challenge the licensing ordinance beyond their overbreadth argument. It next rejected plaintiffs' argument that the ordinance's no-touching provision is overbroad because "an employee might violate the ordinance if he or she regularly appears semi-nude, but while fully clothed, accidentally brushes against" a customer, noting the provision expressly does not prohibit accidental contact. As to their claim that the terms "lewdness" and "public indecency" are impermissibly vague, the ordinance at issue "does not actually prohibit 'lewdness' or 'public indecency' at all, but rather prohibits specific and defined conduct for a purpose, the arguable vagueness of which is largely irrelevant."

The court further rejected their challenge to the ordinance's prohibition against nudity and restrictions against "semi-nudity" on First Amendment freedom of expression grounds, noting they failed to show how such restrictions violate the First Amendment.

In addition, it rejected their contention that "the ordinance revision that eliminated an exception to the prohibition against alcohol inside sexually oriented businesses deprives them of a protected property interest in their liquor license without due process," finding they "have not been deprived of that license,

but rather from serving liquor under certain circumstances, and they do not have a due process right to the continuation of an existing law."

Finally, the court rejected their argument that the trial court erred in finding that defendant's zoning ordinance leaves open adequate alternative channels of adult expression. "Given that there is only one entity seeking to operate an adult business in" the city, "and there exist over 100 whole or partial parcels where an adult business could be located, the zoning ordinance clearly does not deny plaintiffs a reasonable opportunity to operate a sexually oriented business in" the city. Affirmed. (Source: State Bar of Michigan e-Journal Number: 66340; November 16, 2017.)

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2017/102617/66340.pdf

Fireworks regulation okay unless regulation permits what the statute prohibits or prohibits what the statute permits.

Case: *Z & Z Fireworks v. City of Roseville*

Court: Michigan Court of Appeals (Unpublished Opinion No. 333642, May 25, 2017)

Comparing their plain language, which it was bound to do, the Appeals Court held that there was no direct conflict between the Michigan Fireworks Safety Act (MFSA) (MCL 28.451 *et seq.*) (specifically MCL 28.457(1)) and the defendant-city's ordinance, because there was "no evidence that 'the local regulation permits what the statute prohibits or prohibits what the statute permits.'" Thus, the Appeals Court affirmed the trial court's grant of summary disposition to the defendant.

Plaintiff argued that because MCL 28.457(1) of the MFSA preempts the enforcement of defendant's ordinance, summary disposition should not have been granted to defendant. Relying on the ordinance, "defendant denied plaintiff's applications for licenses to sell fireworks from tents because plaintiff was not an established merchant and failed to provide proof that [it] maintained an ongoing business selling substantially similar goods that amounted to 10% of plaintiff's gross sales." Plaintiff asserted that defendant's enforcement of the ordinance against plaintiff's fireworks sales business was preempted by MCL 28.457(1) because the statute prohibits cities from "enact[ing] or enforc[ing] an ordinance . . . pertaining to or in any manner regulating the sale . . . of fireworks regulated under this act."

Considering direct conflict preemption first, the court must find that MCL 28.457(1) preempts the ordinance if "the local regulation permits what the statute prohibits or prohibits what the statute permits." The statute "contains no guidance regarding the sale of goods from temporary structures, and defendant's ordinance does not specifically mention or regulate fireworks. If MCL 28.457(1) stated that fireworks must be permitted to be sold in tents, or if the ordinance stated that fireworks could not be sold in tents, then the outcome would be different." The court also held that the ordinance was not subject to the field preemption of the MFSA. (Source: State Bar of Michigan e-Journal Number: 65318; June 9, 2017.)

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2017/052517/65318.pdf

Land Divisions & Condominiums

Claims involving land division application subject to statute of limitations

Case: *Foster v. Ganges Twp.*

Court: Michigan Court of Appeals (Unpublished Opinion Nos. 336937; 337278)

The Appeals Court held that the trial court properly granted defendants summary disposition under MCR 2.116(C)(7) (statute of limitations) and MCR 2.116(C)(10) (no genuine issue of material fact). Also, the trial court did not abuse its discretion in awarding attorney fees and costs to defendant-township.

The case concerned the use of private roads, B Avenue and M Street, located in a subdivision. The parties agreed that the 6-year limitations period in MCL 600.5813 governed. First, to the extent plaintiff argued that the township erred in approving the year 2000 land division application, the trial court properly concluded that the claim was barred by the statute of limitations. It was undisputed that the application was approved by the township in 2000, which was almost 16 years before plaintiff filed his petition for a writ of mandamus. He appeared

> "to argue both that the period of limitations did not begin to run until the township started to follow its own regulations and ordinances or that his claim did not accrue until the building started in 2016. At any rate, any dispute involving the validity of the application accrued in 2000."

Thus, the period of limitations expired by the time he filed suit.

Second, to the extent plaintiff contended that the township erred in granting the adjacent property owner a building permit in February 2016, "he should have challenged the permit at the local administrative level, or filed a lawsuit in an attempt to prohibit the owner from building the home or the city from issuing the permit." He sought an injunction in 2000 to stop construction of another neighbor's residence on M Street. However, he stipulated to dismissal of that suit "after the zoning board of appeals granted a zoning variance in favor of the neighbor."

Thus, plaintiff's own actions showed that "he was aware of additional courses of action to challenge the issuance of the building permit; seeking a writ of mandamus" was improper. He also "failed to provide any factual support for his claim that he has suffered property damage from flooding as a result of the township failing to follow any state laws or local regulations." Finally, the trial court did not clearly err in determining that his suit was frivolous and in awarding the township attorney fees and costs. Affirmed.
(Source: State Bar of Michigan e-Journal Number: 67350; March 14, 2018.)

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2018/030118/67350.pdf

Substantive Due Process

If regulation fails to advance a legitimate governmental interest, not a valid regulation

Case: *City of Holland v. MCBR Prop., LLC*

Court: Michigan Court of Appeals (Unpublished Opinion No. 336057, January 11, 2018)

The appeals court held that the trial court applied an incorrect standard to defendants-MCBR Properties, LLC (MCBR) and VBH Properties, LLC (VBH)'s substantive due process claim, and that they raised a genuine issue of material fact as to whether the six-vehicle rule at issue was an unreasonable means of advancing a legitimate governmental interest. Further, it erred as a matter of law by concluding that defendants and nonparty-Hope College were not similarly situated as to their leasing of residential housing in the Hope Neighborhood Area (HNA) overlay district to primarily college students. It also erred as a matter of law by failing to apply the standard articulated in *Brittany Park Apts. v. Harrison Charter Twp.* for an equal protection challenge to a legislative enactment.

Thus, while the trial court properly denied defendants' motion for summary disposition on their claims, it erred by granting the plaintiff-City of Holland summary disposition. The trial court "ruled that the six-

vehicle rule was intended to advance a legitimate governmental interest, i.e., 'the reduction of traffic, noise, and noxious fumes.'"

The appeals court agreed "that 'the reduction of traffic, noise, and noxious fumes' caused by vehicular traffic is a reasonable governmental interest." However, defendants argued that the six-vehicle rule was an unreasonable means of advancing that interest because (1) nothing in the record established that the rule had "any impact on reducing traffic, noise, or noxious fumes in the HNA" and (2) the rule did "not in any meaningful way accomplish its stated objective because it only applies to some, but not all, of the residential-rental properties in the HNA." Also, their argument suggested the possibility that the rule "could be arbitrary and capricious as applied to defendants because the rule has no relation to the size of the parcel in question."

The appeals court said:

> The trial court applied an incorrect standard of law to defendants' substantive due process claim. This Court examined the *Kropf [v. City of Sterling Heights]* decision and its progeny in detail in *Hecht [v. Niles Twp.]*, 173 Mich App at 458-460, and noted that a series of four rules had been developed in the case law of this state, to be applied to constitutional challenges to zoning ordinances:
>
> 1. [The] ordinance comes to us clothed with every presumption of validity.
>
> 2. [It] is the burden of the party attacking to prove affirmatively that the ordinance is an arbitrary and unreasonable restriction upon the owner's use of his property .... It must appear that the clause attacked is an arbitrary fiat, a whimsical *ipse dixit*, and that there is no room for a legitimate difference of opinion concerning its reasonableness.
>
> 3. Michigan has adopted the view that to sustain an attack on a zoning ordinance, an aggrieved property owner must show that if the ordinance is enforced the consequent restrictions on his property preclude its use for any purpose to which it is reasonably adapted.
>
> 4. This Court, however, is inclined to give considerable weight to the findings of the trial judge in equity cases. [*Hecht*, 173 Mich App at 458-459, quoting *Kropf*, 391 Mich at 162-163 (quotation marks and citations omitted; ellipsis in original).]
>
> The *Hecht* Court then explained how these four rules apply to different types of challenges to a zoning ordinance:
>
> We believe that a careful reading of *Kropf*, in particular the context from which these rules were extrapolated, reveals what we perceive as the proper application of the four rules:
>
> 1. Rule No. 1 applies to all ordinances, regardless of the theory under which a property owner makes a challenge as to its constitutionality;
>
> 2. Rule No. 2 applies to a challenge to a zoning ordinance which has as its basis the reasonable relationship of land use regulation under the police power of a governmental unit to public health, safety, morals, or general welfare;
>
> 3. Rule No. 3 applies to a challenge to a zoning ordinance which has as its basis a claim of confiscation or wrongful taking under the Fifth or Fourteenth Amendments;
>
> 4. Rule No. 4 applies to an appellate court's review of a trial court's findings regardless of the theory or theories advanced. [*Hecht*, 173 Mich App at 459-460.]

Later the appeals court said:

> Michigan case law is clear that unless the aggrieved property owner is claiming that the zoning ordinance results in a confiscation of his property, it is not necessary to establish that the ordinance precludes any reasonable use. We agree. In non-confiscatory substantive due process zoning challenges, such as the present case, the aggrieved property owner need only establish that the zoning ordinance fails to advance a legitimate governmental interest, or does so unreasonably. *Hecht*, 173 Mich App at 461.

The appeals court further agreed with defendants that the trial court applied an erroneous burden of proof in ruling on their substantive due process claim, as Michigan case law is clear that in non-confiscatory substantive due process zoning challenges such as this, "the aggrieved property owner need only establish that the zoning ordinance fails to advance a legitimate governmental interest, or does so unreasonably." Affirmed in part, reversed in part, and remanded. (Source: State Bar of Michigan e-Journal Number: 67007; February 2, 2018.)

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2018/011118/67007.pdf

Due Process and Equal Protection

Approval of special use permit remanded as it is did not include competent, substantial and material evidence on the record

Case Name : *Northern MI Envtl. Action Council & Townsend v. City of Traverse City*

Court : Michigan Court of Appeals (Unpublished Opinion No. 332590, October 24, 2017)

The Appeals Court held that appellee-Townsend had standing to bring the action, and that there was not competent, material, and substantial evidence supporting the other party-city's decision to grant intervening appellant-Pine Street Development One, LLC (Pine Street) a special land use permit (SLUP).

Thus, the court affirmed the circuit court's order vacating the SLUP and remanding the matter to the city's planning commission.

Pine Street applied for the SLUP to construct two 96-foot tall buildings in the city's downtown. The SLUP was needed because the height exceeded 60 feet – a conservable controversy concerning height of buildings in Traverse City. Townsend and the other appellee sued the city challenging the SLUP. While Pine Street argued on appeal that appellees lacked standing, the court concluded that "the loss of access airflow, sunlight, or a view could be considered a 'special injury' to Townsend, even if she has no legal entitlement to those things. This special injury would also affect Townsend differently from the citizenry at large because it would specifically affect her as the resident a building adjacent to the proposed development." Thus, she had standing, unlike the other appellee – Northern Michigan Environmental Action Council.

As to the merits, the Appeals Court held that the city commission's "conclusion that the development was adequately served by police protection, existing highways and streets, and local schools was not supported competent, material, and substantial evidence" due to the absence of evidence as to the adequacy of those services "or whether an appropriate city employee made any substantial appraisal of those services." Substantial evidence also did not support the "conclusion that the proposed development would create additional tax revenue that offset the increased cost of infrastructure" and services. The city commission simply "adopted the staff report's conclusion and repeated it; there was no factual analysis or data to support that conclusion." Thus, the determination that "the development would not create excessive expenditures with public funds was not supported by competent, material, and substantial evidence."

Because aspects of the city's decision as to two sections of its zoning ordinance were not supported by competent, material, and substantial evidence, the Appeals Court agreed with the trial court that the matter had to be remanded to the city commission. (Source: State Bar of Michigan e-Journal Number: 66311; November 13, 2017.)

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2017/102417/66311.pdf

Denial of special use permit upheld as it is supported by competent, substantial and material evidence on the record

Case: *Jewett v. Charter Twp. of Garfield*

Court: Michigan Court of Appeals (Unpublished Opinion, No. 331092, August 17, 2017)

Holding that there was no merit to appellants' claim that the appellee-Planning Commission abused its discretion by denying the special use permit (SUP) based solely on the project's size, the court affirmed.

The circuit court affirmed the Commission's decision denying the application for SUP to the Commission for the construction of a senior living apartment complex. Appellants claimed that the circuit court erred by concluding that the denial of the SUP was supported by substantial evidence and by looking exclusively to the Commission's findings that the project was too large. In reviewing the Commission's decision, the circuit court first re-stated the Commission's relevant findings. It found that the "Planning Commission discussed each general and specific standard provided for in the Ordinance and indicated how and why the proposed project met or did not meet each standard" and also "provided rationale for its determination that the project was inharmonious and incompatible with the Single Family Residential District." The circuit court's decision concluded, "The Planning Commission's determination that Appellants [*sic*] project failed to meet the requirements and standards for approval is supported by competent, substantial and material evidence on the record . . . ." It fully summarized the administrative proceedings and reiterated the Commission's very explicit and detailed findings.

Read as a whole, the circuit court's opinion patently, but albiet implicitly, agreed that the evidence in the record would convince a reasonable mind to accept that evidence as supporting the Commission's decision. Thus, the Appeals Court could not conclude that the circuit court "misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings." Also, the court noted, more specifically, that the circuit court did not err by finding that the Commission's decision was not based on size alone, i.e., that it contemplated a number of factors, including density of the surrounding area, noise and glare, and the character of the general vicinity as reflected in the Commission's findings. (Source: State Bar of Michigan e-Journal Number: 65874; August 31, 2017.)

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2017/081717/65874.pdf

Special use and site plans

Appeal over interpretation of listed possible special use.

Case: *Grandview Beach Ass'n v. County of Cheboygan*

Court: Michigan Court of Appeals (Unpublished Opinion Nos. 335159; 335206, January 16, 2018)

The appeals court affirmed the circuit court order affirming the decision of the defendant-Planning Commission to grant a special use permit to the intervenors.

Intervenors requested a special use permit and site plan approval for a proposed development known as the Farm. They "presented the Farm as a 'therapeutic farm community' for residents with mental illnesses that 'substantially affect' one or more major life activity."

Plaintiff argued that defendants violated the Michigan Zoning Enabling Act (MZEA) (MCL 125.3101 *et seq.*) by granting intervenors' special use permit application. According to plaintiff, "defendants violated the MZEA by acting outside their authority by granting a special use permit for uses" that were not allowed under the Cheboygan Zoning Ordinance. In particular, plaintiff asserted that (1) the Farm's proposed uses did not meet the criteria for a "convalescence home" allowed in the M-AF district and (2) portions of the convalescence home, such as cabins and the dining facility, were "located in the P-LS district, which does not allow for convalescence homes."

The court found that plaintiff's argument that the Farm did not fall within the definition of convalescent home lacked merit. Reviewing the question of ordinance interpretation *de novo*, the court held that "the Commission did not commit an error of law in finding that the Farm constituted a 'convalescent home.'" Given the "definition of 'infirm' and the undisputed evidence that the Farm will have facilities to provide care for up to 24 mentally ill individuals, the Commission's conclusion that the Farm will provide care for more than four 'infirm' patients was not an error of law." The record also did not support plaintiff's argument that the Farm could not be a convalescent home because it will not require a license. Given the licensing requirements, "the Commission did not commit an error of law in determining that the Farm constituted a 'convalescent home.'"

Plaintiff next argued that even if the Farm was a convalescent home, parts of the Farm resided in the P-LS district, which does not allow convalescent homes. This argument lacked merit because, as to "the P-LS district, the Commission only allowed cabin colonies and a restaurant, which are permitted by special use permit in that district." (Source: State Bar of Michigan e-Journal Number: 67036; February 5, 2018.)

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2018/011618/67036.pdf

Nonconforming Uses

Nonconformity (commercial use in residential zone) is entire parcel

Case: *Azzar v. City of Mackinac Island*

Court: Michigan Court of Appeals (Unpublished Opinion No. 331308, May 23, 2017)

Holding that the plaintiff's claims against the defendant-City were moot and that he failed to establish a question of fact as to an improper expansion of defendant-D and S North Real Estate's nonconforming use, the Appeals Court affirmed the trial court's separate orders granting summary disposition to the City and D and S.

Plaintiff argued that the use of a "loop road," and apparently particularly the west portion of it, constituted an impermissible expansion of the prior nonconforming use.

The court held that to the extent that the nonconforming use was limited to the area that was nonconforming at the time the ordinance was enacted, the entire parcel was nonconforming, because it was being used for a commercial, rather than residential, purpose. "Further, it is the operation of a commercial dock on residentially zoned property that constitutes the nonconforming use, not the access road or roads from the dock to the street."

Plaintiff pointed to "nothing in the township's zoning ordinance that would prevent access from the street to the lake or dock using any part of either lot 41 or lot 42 if the dock was used for a residential rather than commercial purpose."

The dock had not expanded or moved. Also, the 1991 letter from the City to the resort located across the highway from the Beaver Dock parcel contained "no recognition of a limitation of use to any particular

part of the Beaver Dock parcel." Further, the record did not support plaintiff's latest claim that the prior nonconforming use involved only lot 42, such that lot 41 could not be used in the future. The evidence established that "more than one portion of the Beaver Dock parcel, including the entirety of the 'loop road,' had historically been used to transfer goods from the dock to the road." The photo and survey evidence indicated that "a portion of this road lies within lot 41 as it passes a shed on the east side of a reverse L-shaped building. More significantly, however, it is clear that at least part of lot 41 was, until plaintiff's earlier lawsuit, used for transportation purposes. In order to move freight along the 'Beaver Dock Road' adjacent to the lake in front of plaintiff's property," D & S's predecessor in interest "would have had to use part of lot 41." This undercut plaintiff's argument that the trial court had to "find that the prior nonconforming use involved only a portion of the Beaver Dock parcel. At one point, many parts of both lot 41 and lot 42 were used." (Source: State Bar of Michigan e-Journal Number: 65301; June 9, 2017.)

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2017/052317/65301.pdf

Nonconformity continues with new land owner

Case: *Trail Side LLC v. Village of Romeo*

Court: Michigan Court of Appeals (Unpublished Opinion July 6, 2017, No. 331747)

Holding that the trial court erred by affirming the defendant-village's ZBA's denial of the plaintiffs-business and managing member's (Rogers) request to recognize the prior nonconforming use of property they purchased, the court reversed and remanded.

Rogers petitioned the ZBA to recognize the prior nonconforming use of the property and find that enforcement of R-1 zoning was inappropriate. He

> sought to continue to use the property in the same manner as the predecessors in title to: store materials inside and outside the existing structure; store vehicles, trailers, and other equipment; and engage in mechanical work, welding, cutting, fabrication, painting, and other similar endeavors.

The ZBA denied his request.

The trial court later affirmed, holding that although defendant had to allow the previous owners to continue their use of the property after the rezoning, "when they sold it to Trail Side, 'it became possible to replace that use with one that conforms to the local zoning ordinance.'" As such, the property could only be used for residential purposes.

On appeal, the Appeals Court first found that plaintiffs' appeal was proper and that Rogers was an "aggrieved party." It then agreed with plaintiffs that the prior nonconforming use of the property ran with the land and, thus, the ZBA improperly denied their petition. It noted that "Rogers was not attempting to establish a prior nonconforming use, he was attempting to continue a prior nonconforming use. The industrial zoning classification had been changed to a residential zoning classification years before but the [previous owners] continued to use the property consistent with the industrial classification which is what Trail Side was doing." Further, Rogers "did not request to expand or enlarge the prior nonconforming use; rather, he requested to continue the nonconforming use in substantially the same form and scope as the" previous owners. Finally, "the hearing minutes clearly demonstrate that decision of the [ZBA] was not premised on any request to expand or enlarge the prior nonconforming use; rather, the decision was an outright denial of the request to continue substantially the same nonconforming use." (Source: State Bar of Michigan e-Journal Number: 65565; July 21, 2017.)

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2017/070617/65565.pdf

Open Meetings Act, Freedom of Information Act

Out-of-meeting conversation between two people is not deliberation

Case: *Mullendore v. City of Belding*

Court: Michigan Court of Appeals (Unpublished Opinion No. 335510, December 7, 2017)

Concluding that plaintiff-former city manager failed to produce evidence sufficient to show a question of material fact as to whether defendants-city council members "engaged in 'deliberations' or made 'decisions' outside of a public meeting" as to her termination, the court affirmed summary disposition for defendants on her OMA claims.

She alleged that they violated MCL 15.263 and MCL 15.265 when they met at a store on January 20, 2015, contending that there was circumstantial evidence defendants-city council members Cooper, Jones, and Scheid met together to deliberate. She alternatively argued that there was evidence they met in a sub-quorum in a manner violating the OMA. However, the evidence showed that when Cooper came to the store, he only had a conversation with Jones "about his intent to bring a motion to terminate plaintiff at the Council meeting later that evening." Scheid, while he was "at the store as an employee, was not a part of this conversation." Jones and Scheid both confirmed that Scheid did not take part. Since "only two defendants spoke to each other at a time, these conversations did not constitute a quorum, and thus, were not meetings."

Plaintiff also asserted "the significance of Jones's conduct as evidence that a prohibited sub-quorum meeting occurred" at the store. Her argument was that the fact he "changed his mind within a short time period along with the very limited conversation at the meeting where the termination vote occurred created an inference that the conversations between Cooper, Jones, and Scheid were of a substantive and deliberative nature."

The court disagreed. While there was "no dispute that Cooper met Jones and Cooper also met with Scheid and that Cooper informed them of his intentions to move to terminate" plaintiff, her proofs did not "create an inference that deliberations took place." Rather, there were "merely discussions" about the fact that Cooper was going to bring a motion to terminate plaintiff at the January 20, 2015 Council meeting "and what everyone's position was going to be on that motion." This case lacked "the testamentary evidence and admissions found in *Booth Newspapers, Inc. v. Wyoming City Council* that the sub-quorums or quorums discussed extensively matters of public concern." (Source: State Bar of Michigan e-Journal Number: 66717; December 21, 2017.)

Full text opinion: http://www.michbar.org/file/opinions/appeals/2017/120717/66717.pdf

Pattern of past OMA violations can result in injunctive relief

Case: *Emsley v. Lyon Charter Twp. Bd. of Trs.*

Court: Michigan Court of Appeals (Unpublished Opinion No. 337123, March 27, 2018)

The court held that the trial court erred in granting summary disposition to defendants-board and unknown officials on plaintiffs' claim for injunctive relief. Plaintiffs were entitled to summary disposition as to their claim for injunctive relief, and the court remanded for entry of judgment in their favor on that claim, and for an award of court costs and actual attorney fees in accordance with MCL 15.271(4). It affirmed the trial court's rulings rejecting their claims seeking declaratory relief and money damages for an intentional Open Meetings Act (OMA) (MCL 15.261 *et seq.*)violation. It also affirmed the trial court's decision not to allow plaintiffs to add the township clerk as a party.

As to injunctive relief, the trial court found that, even "viewing the evidence in a light most favorable to plaintiffs, there was no ongoing OMA violation or pattern of violating the OMA that justified relief." It observed that defendants re-enacted

> "the special meeting and closed session to cure any OMA violations or deficiencies." It acknowledged that the proposed second amended complaint referred to a pattern of OMA violations dating back to 2008, but "agreed with defendants 'that injunctive relief is unwarranted because there is no reason to believe [d]efendants will continue to violate the OMA.'"

The Appeals Court could not agree with the trial court's analysis and ruling, as it was "completely inconsistent with" *Citizens for a Better Algonac Cmty. Schs. v. Algonac Cmty. Schs.*. It noted that it had to "examine patterns of past conduct, not reassurances of compliant conduct in meetings down the road." Further, defendants' re-enactment "could not undo the eight years of OMA violations for purposes of injunctive relief."

In sum, the court agreed with plaintiffs that they were entitled to summary disposition under MCR 2.116(I)(2) as to the injunctive relief claim based on ongoing OMA violations in connection with procedural failures as to closed sessions, under MCL 15.267 and MCL 15.268. As to the minutes, the court found that it was unclear they were actually prepared for all closed sessions. To the extent they were "not prepared for closed sessions in compliance with the OMA, defendants shall do so in the future." Affirmed in part, and reversed and remanded in part. (Source: State Bar of Michigan e-Journal Number: 67568; April 11, 2018.)

Full text opinion: http://www.michbar.org/file/opinions/appeals/2018/032718/67568.pdf

Zoning Administrator/Inspector, Immunity, and Enforcement Issues

A report, in furtherance of inspector's official duty, for purposes of dissemination to a legislative body is privileged

Case: *FJN LLC v. Parakh*

Court: Michigan Court of Appeals (Unpublished Opinion No. 331889, June 22, 2017)

Concluding that the report the defendant-former township building officer (Parakh) prepared for the defendant-township's board was absolutely privileged (immunity from suit), the Michigan Court of Appeals held that FJN LLC-plaintiffs' defamation claims failed as a matter of law and the trial court did not err in granting Parakh's motion for summary disposition as to Counts II-IV.

Parakh's report indicated that he informed plaintiffs before the grand opening of the restaurant "that they could not use Phase II and directed an ordinance officer to post a 'Danger' placard at the site." The report contained several assertions about the scene at the grand opening.

On appeal, plaintiffs claimed that the trial court's holding that their defamation claims failed as a matter of law because Parakh's report was absolutely privileged amounted to legal error. However, the Appeals Court determined from the record that he "was acting within the scope of his authority when he prepared the report for the Board. Parakh, as building official, had authority under the zoning ordinance to issue certificates of occupancy, which necessarily included the authority to inspect establishments before issuing the certificates." Also, he had "authority to administer and enforce various ordinance provisions. By inspecting plaintiffs' premises and preparing a report for the Board with the observations of his

inspection, the report was of a public concern and was prepared 'in furtherance of an official duty' and for a quasi-legislative proceeding." Plaintiffs argued that he distributed the report to the media and attached copies of a news article that addressed the contents of his reports, contained a photo of him, and quoted him.

However, the court could not find any evidence in the record to support that he "prepared the report for the purposes of disclosing it to the media." Instead, the record showed that "the report was prepared in furtherance of Parakh's official duty as building officer for purposes of dissemination at a quasi-legislative proceeding." Thus, it was "absolutely privileged and, where 'a statement is absolutely privileged, it is not actionable even if it was false and maliciously published.'" Affirmed. (Source: State Bar of Michigan e-Journal Number: 65493; July 5, 2017.)

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2017/062217/65493.pdf

Request for attorney fees denied when failure to present establishing reasonableness of the fees

Case: *Township of Greenwood v. Raub*

Court: Michigan Court of Appeals (Unpublished Opinion No. 334107, October 12, 2017)

The court held that the circuit court did not err in finding that it had subject-matter jurisdiction over the plaintiff-township's nuisance abatement claim, nor in denying defendants leave to amend their pleadings. It did not abuse its discretion in denying their request for attorney fees in light of their failure to present any evidence establishing the reasonableness of the requested fees. Finally, it did not err in awarding them $1 each in nominal damages for a violation of their First Amendment rights, given their failure to show they suffered an actual injury.

Plaintiff-township filed the nuisance abatement action based on defendants' alleged violations of the zoning ordinance, "which prohibited certain signs on residential property. Regardless of the constitutionality of the zoning ordinance before its amendment, it prohibited certain signs, including political signs, on residential property." The record showed that "defendants maintained signs on their properties that violated the zoning ordinance." Thus, they maintained an abatable nuisance *per se*, "and the circuit court had equitable authority to abate the nuisance."

Defendants' motions for leave to amend did not include "the proposed amendment in writing. 'If a plaintiff does not present its proposed amended complaint to the court, there is no way to determine whether an amendment is justified.'" Thus, the circuit court did not abuse its discretion in denying them leave to amend. Assuming that their "First Amendment claim was a § 1983 claim, § 1988(b) would have provided defendants a basis for attorney fees." However, they did not present any evidence showing "the attorney fees they incurred. Rather, defendants' counsel simply asked for $5,000,000 in attorney fees, presumed damages, and punitive damages, without specifying the amount attributable to attorney fees." As to damages, they failed to produce "any evidence of an actual injury based on the violation of their constitutional rights."

The record showed that plaintiff took no action other than filing the case to compel them to remove the signs, which remained on their properties throughout. Absent proof of an actual injury, they were not entitled to compensatory damages. Affirmed. (Source: State Bar of Michigan e-Journal Number: 66179; October 23, 2017.)

Full text opinion: http://www.michbar.org/file/opinions/appeals/2017/101217/66179.pdf

Fees for operation of the enforcing agency can be for current, past, or future expenses

Case: *Michigan Ass'n of Home Builders v. City of Troy*

Court: Michigan Court of Appeals (Unpublished Opinion No. 331708, September 28, 2017)

Note: While this case is about construction code fees, the principle that fees collected can only be used to cover part or all of the cost of administering permits also holds for zoning administration (*Bolt v. City of Lansing*).

The court held that there was no merit to plaintiffs' contention the placement of surplus fees into the general fund and their use to offset prior shortfalls of the defendant-City's Building Department violated MCL 125.1522(1). It also rejected plaintiffs' claim that the fees were a disguised tax that violated the Headlee Amendment.

Thus, it affirmed the trial court's grant of summary disposition for defendant and denial of plaintiffs' motion for partial summary disposition. Plaintiffs claimed that the application of the user fee surplus to offset an alleged shortfall for the Department violated MCL 125.1522(1). Specifically, they argued that the statute requires the fees to be used for current expenses incurred in operating the Department and could not be applied, as was being done by defendant, "to compensate for past costs incurred."

The Appeals Court first rejected plaintiffs' assertion that the plain language of MCL 125.1522(1) precluded "defendant's application of surplus user fees to historical shortfalls the Building Department has incurred." The plain language of MCL 125.1522(1) "simply does not contain any wording that would support plaintiffs' interpretation." The first sentence of the statute "provides for the establishment of fees 'for acts and services performed . . . .'" The court's reading of this language confirmed that "use of the term 'performed' can be understood to mean future, current, and past services provided." There was "no restricting or limiting language preceding the word 'performed' indicating a temporal constraint, such as 'currently performed,' 'to be performed,' or 'previously performed.' Moreover, the final sentence of MCL 125.1522(1), indicating '[t]he legislative body . . . shall only use fees generated under this section for the operation of the enforcing agency . . .' likewise fails to suggest a temporal restriction pertaining to the word 'operation.'"

Thus, the court agreed with defendant that "the operation" of the Department "can denote a current, past, or future action. Although the final sentence of MCL 125.1522(1) does restrict the use of 'fees generated' to 'the operation of the enforcing agency . . . and . . . not . . . for any other purpose[,]'" it was not persuaded that defendant's applying surplus fees to past shortfalls was inconsistent with this language.

(Source: State Bar of Michigan e-Journal Number: 66101; October 10, 2017.)

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2017/092817/66101.pdf

A report, in furtherance of inspector's official duty, for purposes of dissemination to a legislative body is privileged

Case: *FJN LLC v. Parakh*

Court: Michigan Court of Appeals (Unpublished Opinion No. 331889, June 22, 2017)

Concluding that the report the defendant-former township building officer (Parakh) prepared for the defendant-township's board was absolutely privileged (immunity from suit), the Michigan Court of Appeals held that FJN LLC-plaintiffs' defamation claims failed as a matter of law and the trial court did not err in granting Parakh's motion for summary disposition as to Counts II-IV.

Parakh's report indicated that he informed plaintiffs before the grand opening of the restaurant "that they could not use Phase II and directed an ordinance officer to post a 'Danger' placard at the site." The report contained several assertions about the scene at the grand opening.

On appeal, plaintiffs claimed that the trial court's holding that their defamation claims failed as a matter of law because Parakh's report was absolutely privileged amounted to legal error. However, the Appeals Court determined from the record that he "was acting within the scope of his authority when he prepared the report for the Board. Parakh, as building official, had authority under the zoning ordinance to issue certificates of occupancy, which necessarily included the authority to inspect establishments before issuing the certificates." Also, he had "authority to administer and enforce various ordinance provisions. By inspecting plaintiffs' premises and preparing a report for the Board with the observations of his inspection, the report was of a public concern and was prepared 'in furtherance of an official duty' and for a quasi-legislative proceeding." Plaintiffs argued that he distributed the report to the media and attached copies of a news article that addressed the contents of his reports, contained a photo of him, and quoted him.

However, the court could not find any evidence in the record to support that he "prepared the report for the purposes of disclosing it to the media." Instead, the record showed that "the report was prepared in furtherance of Parakh's official duty as building officer for purposes of dissemination at a quasi-legislative proceeding." Thus, it was "absolutely privileged and, where 'a statement is absolutely privileged, it is not actionable even if it was false and maliciously published.'" Affirmed. (Source: State Bar of Michigan e-Journal Number: 65493; July 5, 2017.)

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2017/062217/65493.pdf

Solid Waste (Landfills, recycling, hazardous waste, junk, etc.)

Junk Ordinance Enforcement

Case: *Township of Big Creek v. Boyer*

Court: Michigan Court of Appeals (Unpublished Opinion No. 337104, April 24, 2018)

The court concluded that defendant-Boyer failed to present a valid argument challenging the trial court's basis for granting the plaintiff-township summary disposition in this case alleging violations of ordinances prohibiting blight and dangerous structures, as well as statutes prohibiting maintaining dangerous buildings.

Plaintiff "asserted that there was substantial debris in defendant's yard, along with junk vehicles, and that [her] home was in a dilapidated and dangerous condition." It contended that her property was a nuisance in fact and *per se*, and asked the trial court to order her "to remove the dangerous house or bring it into compliance with the law" and to clean up the blighted conditions.

The trial court awarded the requested relief, including taxable costs, because defendant failed to submit documentary evidence countering plaintiff's MCR 2.116(C)(10) motion.

The Appeals Court held that the trial court properly granted the motion. While defendant argued that the township supervisor's affidavit should not have been considered because it was conclusory, the court found that while it

> "was short, it was sufficient for purposes of the township's motion under MCR 2.116(C)(10). The affidavit indicated that there was 'debris scattered around the property,' that there were 'junk vehicles still located on the property,' and that the house had 'broken out windows, structural issues[,] and missing siding.'"

He also averred that it "was in violation of the blight and dangerous-building ordinances, that defendant had been notified of the violations, and that [she] had not corrected the violations."

Defendant tried to raise constitutional arguments on appeal, but they were inadequately briefed, and the court found that they lacked substantive merit – "the ordinances are not unconstitutionally vague, defendant has not been unlawfully deprived of the reasonable use of her property, the ordinances are authorized by statute, and defendant was not otherwise deprived of her due process rights." Affirmed
(Source: State Bar of Michigan e-Journal Number: 67767; May 2, 2018.)

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2018/042418/67767.pdf

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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. The party's interest must be immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgment – that is affected in a manner different from the interests of the public at large.

aliquot

1 a portion of a larger whole, especially a sample taken for chemical analysis or other treatment.

2 (also aliquot part or portion) Mathematics a quantity which can be divided into another an integral number of times.

3 Used to describe a type of property description based on a quarter of a quarter of a public survey section.

n verb divide (a whole) into aliquots.

ORIGIN from French aliquote, from Latin aliquot 'some, so many', from alius 'one of two' + quot 'how many'.

amicus (in full amicus curiae)

n noun (plural amici, amici curiae) an impartial adviser to a court of law in a particular case.

ORIGIN modern Latin, literally 'friend (of the court).'

certiorari

n noun Law a writ by which a higher court reviews a case tried in a lower court.

ORIGIN Middle English: from Law Latin, 'to be informed', a phrase originally occurring at the start of the writ, from certiorare 'inform', from certior, comparative of certus 'certain'.

corpus delicti

n noun Law the facts and circumstances constituting a crime.

ORIGIN Latin, literally 'body of offence'.

curtilage

n noun An area of land attached to a house and forming one enclosure with it.

ORIGIN Middle English: from Anglo-Norman French, variant of Old French courtillage, from courtil 'small court', from cort 'court'.

dispositive

n adjective relating to or bringing about the settlement of an issue or the disposition of property.

En banc

"By the full court" "in the bench" or "full bench." When all the members of an appellate court hear an argument, they are sitting en banc. Refers to court sessions with the entire membership of a court participating rather than the usual quorum. U.S. courts of appeals usually sit in panels of three judges, but may expand to a larger number in certain cases. They are then said to be sitting en banc.

ORIGIN French.

estoppel

n noun Law 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.

ORIGIN C16: from Old French estouppail 'bung', from estopper.

et seq. (also et seqq.)

n adverb and what follows (used in page references).

ORIGIN from Latin et sequens 'and the following'.

hiatus

n (plural hiatuses) a pause or gap in continuity.

DERIVATIVES hiatal adjective

ORIGIN C16: from Latin, literally 'gaping'.

in camera

Refers to a hearing or inspection of documents that takes places in private, often in a judge's chambers. Depending on the circumstances, these can be either on or off the record, though they're usually recorded.

In camera hearings often take place concerning delicate evidentiary matters, to shield a jury from bias caused by certain matters, or to protect the privacy of the people involved and are common in cases of guardianships, adoptions and custody disputes alleging child abuse.

ORIGIN Lat. in chambers.

in limine

To pass a motion before the trial begins. Usually requested in order to remove any evidence which has been procured by illegal means or those that are objectionable by jury or which may make the jury bias.

ORIGIN Lat. At the threshold or at the outset

injunction

n noun

1 Law a judicial order restraining a person from an action, or compelling a person to carry out a certain act.

2 an authoritative warning.

inter alia

n adverb among other things.

ORIGIN from Latin

Judgment non obstante veredicto

Also called judgment notwithstanding the verdict, or JNOV.

A decision by a trial judge to rule in favor of a losing party even though the jury's verdict was in favor of the other side. Usually done when the facts or law do not support the jury's verdict.

laches

n noun Law unreasonable delay in asserting a claim, which may result in its dismissal.

ORIGIN Middle English (in the sense 'negligence'): from Old French laschesse, from lasche 'lax', based on Latin laxus.

littoral

n noun Land which includes or abuts a lake or Great Lake is "littoral." When an inland lake it includes rights to access, use of the water, and certain bottomland rights. When a Great Lake it includes rights to access and use of the water. See "riparian."

mandamus

n noun Law a judicial writ issued as a command to an inferior court or ordering a person to perform a public or statutory duty.

ORIGIN C16: from Latin, literally 'we command'.

mens rea

n noun Law the intention or knowledge of wrongdoing that constitutes part of a crime. Compare with actus reus.

ORIGIN Latin, literally 'guilty mind'.

obiter dictum

n noun (plural obiter dicta) Law a judge's expression of opinion uttered in court or in a written judgement, but not essential to the decision and therefore not legally binding as a precedent.

ORIGIN Latin obiter 'in passing' + dictum 'something that is said'.

pari materia

The general principle of in pari materia, a rule of statutory interpretation, says that laws of the same matter and on the same subject must be construed with reference to each other. The intent behind applying this principle is to promote uniformity and predictability in the law.

pecuniary

Adjective formal relating to or consisting of money.

DERIVATIVES pecuniarily adverb

ORIGIN C16: from Latin pecuniarius, from pecunia 'money'.

per se

n adverb Law by or in itself or themselves.

ORIGIN Latin for 'by itself'.

quo warranto

Latin for "by what warrant (or authority)?" A writ quo warranto is used to challenge a person's right to hold a public or corporate office. A state may also use a quo warranto action to revoke a corporation's charter.

res judicata

n noun (plural res judicatae) Law a matter that has been adjudicated by a competent court and may not be pursued further by the same parties.

ORIGIN Latin, literally 'judged matter'.

riparian

n noun Land which includes or abuts a river is riparian, and includes rights to access, use of the water, and certain bottomland rights. Thies v Howland, 424 Mich 282, 288 n 2; 380 NW2d 463 (1985). (Land which includes or abuts a lake is defined as "littoral." However, "the term 'riparian' is often used to describe both types of land," id.) See "littoral."

scienter

n noun Law the fact of an act having been done knowingly, especially as grounds for civil damages.

ORIGIN Latin, from scire 'know'.

stare decisis

n noun Law the legal principle of determining points in litigation according to precedent.

ORIGIN Latin, literally 'stand by things decided'.

sua sponte

n noun Law 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

n noun

1 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.

ORIGIN Old English, from the Germanic base of write.

For more information on legal terms, see Handbook of Legal Terms prepared by the produced by the Michigan Judicial Institute for Michigan Courts: http://courts.michigan.gov/mji/resources/holt/holt.htm.