Michigan State University Extension
Public Policy Brief

Selected Planning and Zoning Decisions: 2019 (May 2018-April 2019)

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This public policy brief summarizes the important state and federal court cases and Attorney General Opinions issued between May 1, 2018 and April 30, 2019.

Contents

"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.

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 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: Does home occupation zoning ordinance conflict with Michigan Medical Marihuana Act (Kent County)

Case: *DeRuiter v. Township of Byron (and Michigan Townships Association and Michigan Municipal League)*

Court: Michigan Court of Appeals 325 Mich. App. 275, 2018 Mich. App. LEXIS 2812 (July 17, 2018) (Published Opinion No. 338972)

The court held that the trial court properly analyzed the interplay between defendant-Township's home occupation zoning ordinance provisions and the Michigan Medical Marihuana Act (MCL 333.26421 *et seq.*) (MMMA). The trial court correctly held as a matter of law that the MMMA preempted the zoning "because the ordinance directly conflicted with the MMMA by prohibiting what the MMMA permitted, and it improperly imposed regulations and penalties upon persons who engage in MMMA-compliant medical use of marijuana."

Defendant argued that its ordinance merely regulated land use by restricting the location of medical use of marijuana while allowing patients and caregivers to fully exercise their rights and privileges. The Appeals Court held that

> "the MMMA permits medical use of marijuana, particularly the cultivation of marijuana by registered caregivers, at locations regardless of land use zoning designations as long as the activity occurs within the statutorily specified enclosed, locked facility. No provision in the MMMA authorizes municipalities to restrict the location of MMMA-compliant medical use of marijuana by caregivers. Neither does the MMMA authorize municipalities to adopt ordinances restricting MMMA-compliant conduct to home occupations in residential locations. So long as caregivers conduct their medical marijuana activities in compliance with the MMMA and cultivate medical marijuana in an 'enclosed, locked facility' as defined by MCL 333.26423(d) and do not violate MCL 333.26427(b)'s location prohibitions, such conduct complies with the MMMA and cannot be restricted or penalized." Here, ordinances "§§ 3.2.G and H improperly restricted the medical use of marijuana by permitting MMMA-compliant activities only as a home occupation within a dwelling or garage in residential zoned areas within the township."

Section 3.2.H.3 of the zoning ordinance reads:

> "required caregivers to obtain a permit by filing an application and paying a fee, and such permits were revocable for noncompliance with the ordinance regardless of whether a patient's or caregiver's medical use of marijuana fully complied with the MMMA. Sections 3.2.G and H plainly prohibited caregivers from conducting noncommercial medical marijuana activities at nonresidential locations."

The Appeals Court held that §§ 3.2.G and H of the zoning ordinance plainly purported to prohibit the exercise of rights and privileges that the MMMA otherwise permits.

Section 14.11 of the zoning ordinance imposed serious consequences including fines and penalties for noncompliance. The Appeals Court held that §§ 3.2.G

and H of the zoning ordinance plainly purported to prohibit the exercise of rights and privileges that the MMMA otherwise permits.

The zoning ordinance's prohibition of registered caregivers' MMMA-compliant medical use of marijuana in a commercial building was void and preempted by the MMMA. Affirmed.

Source: State Bar of Michigan *e-Journal* Number: 68296; July 19, 2018

Full text opinion: http://www.michbar.org/file/opinions/appeals/2018/071718/68296.pdf

EDITOR'S NOTE: This MI Supreme Court has accepted to hear this case in 2019 (921 N.W.2d 537, 2019 Mich. LEXIS 45, 2019 WL 326500 (Supreme Court of Michigan January 23, 2019, Decided)). This case deals only with issues of growing 72 or fewer marijuana plants as a caregiver under the Michigan Medical Marihuana Act. It does not apply (and this zoning can still restrict to which zoning districts) for grower-licensed operations under the Medical Marihuana Facilities Licensing Act (MCL 333.27101 *et seq.*) for 73 to 1,500 plants.

Substantive Due Process

Registration of vacant property and warrantless searches of 'dangerous buildings' challenged (Saginaw County)

Case: *Benjamin v. Stemple*

Court: U.S. Court of Appeals Sixth Circuit, 2018 U.S. Dist. LEXIS 85147 (United States District Court for the Eastern District of Michigan, Northern Division May 22, 2018, Filed)

The court held that the district court properly dismissed the plaintiffs-property owners' constitutional claims arising from the City of Saginaw, Michigan's "Dangerous Building Ordinance" where warrantless searches of dangerous properties are already permitted under the Fourth and Fourteenth Amendments.

The Ordinance required all owners of vacant property to register with the City. The registration form contained a provision permitting the City to enter the property "if it 'becomes dangerous as defined by'" the Ordinance and gave "'permission for the City, its agents, employees, or representatives, to enter and board the premises or do whatever necessary to make the property secure and safe.'"

The property owners claimed that this provision violated their constitutional right to be free from warrantless searches. The court reviewed the administrative-search exception to the warrant requirement and held that the Ordinance complied with its specifications and that the consent form did "not waive any cognizable Fourth Amendment rights."

A property must be declared unsafe according to a formal administrative process that occurs before any warrantless search. The property owner is notified of the hearing (which "has many fairness guarantees"), has further recourse to the Housing Board of Appeals, and is entitled to judicial review. "Because the registration form requires the property owner to allow entrance to his property only after a fair administrative process determines the building is dangerous, it does not require the waiver of any Fourth Amendment rights." Since the property owners' action was properly dismissed for failure to state a claim, their request for a preliminary injunction was also properly rejected. Affirmed.

Source: State Bar of Michigan *e-Journal* Number: 69749; February 14, 2019.

Full Text: http://www.michbar.org/file/opinions/us_appeals/2019/021219/69749.pdf

Appeals, Variances (use, non-use)

Authority to grant use variance in an overlay zone, unnecessary hardship, self-imposed hardship rule (Wayne County)

Case: *City of Detroit v. City of Detroit Bd. of Zoning Appeals*

Court: Michigan Court of Appeals, 326 Mich. App. 248, 2018 Mich. App. LEXIS 3383, 2018 WL 5276473 (October 23, 2018, Decided) (Published Opinion No. 339018)

Holding that the trial court did not err by affirming respondent-zoning board of appeals' decision to grant a use variance to intervenor-billboard company for the erection of a billboard, the court affirmed. On appeal, the court rejected petitioner-city's arguments that respondent did not have the authority to grant the variance in an overlay zone, and even if it did, intervenor's act of purchasing the property created the hardship at issue.

It noted that respondent "can provide relief necessary to resolve an economic hardship due to an ordinance, so long as no other permitted or conditional use is economically feasible." Further, nothing in petitioner's ordinances prohibited respondent from granting a use variance in the overlay zone. Moreover, respondent "has not usurped the power of" petitioner's city council, but rather, the city council had granted respondent "broad power through the ordinances to approve use variances when there is unnecessary hardship." It declined "to extend the self-created hardship rule to all instances where a landowner simply purchases the property with knowledge of an ordinance's applicable restriction."

The court also rejected petitioner's claim that the intervenor "created the hardship it now complains of by purchasing the property with the knowledge that off-site advertising signs were prohibited there."

It declined "to extend the self-created hardship rule to all instances where a landowner simply purchases the property with knowledge of an ordinance's applicable restriction."

It found no evidence that intervenor "did anything but purchase the property, and . . . a landowner may seek any variance the law permits and should not be limited just because they purchased the piece of property knowing the city's ordinances barred a particular use."

It noted that intervenor "simply purchased the property at a time when there was no permitted reasonable use and took a business risk that [respondent] would grant a variance to erect the billboard in the overlay zone." Further, "there was no evidence in the record that suggests a previous title owner partitioned the property at all."

Source: State Bar of Michigan *e-Journal* Number 68922: October 25, 2018

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2018/102318/68922.pdf

Court, Ripeness for Court's Jurisdiction, Aggrieved Party

Court expounds on standards for aggrieved parties for purposes of the MZEA (Berrien County)

Case: *Olsen v. Jude & Reed, LLC*

Court: Michigan Court of Appeals, 325 Mich. App. 170, 924 N.W.2d 889, 2018 Mich. App. LEXIS 2774, 2018 WL 3244150 (July 3, 2018, Decided) (Published Opinion No. 337724)

Interpreting "aggrieved party" for purposes of the Michigan Zoning Enabling Act (MZEA) (MCL 125.3101 *et seq.*) consistent with its historical meaning, the court held that appellees did not show that they were aggrieved parties who could contest the zoning board of appeals' (ZBA)'s final order in circuit court.

While the MZEA does not define the term, based on "the long and consistent interpretation of the phrase 'aggrieved party' in Michigan zoning jurisprudence," the court held that to show

> "one is an aggrieved party under MCL 125.3605, a party must 'allege and prove that he [or she] has suffered some special damages not common to other property owners similarly situated.' . . . Incidental inconveniences such as increased traffic congestion, general aesthetic and economic losses, population increases, or common environmental changes" are insufficient.

Rather a unique harm must be shown, "dissimilar from the impact that other similarly situated property owners may experience." Further, simply owning an adjoining parcel of property, or being entitled to notice, is not sufficient. Appellees asserted that they were aggrieved because (1) they relied upon the 1996 variance denial concluding that the lot was unbuildable, (2) they relied on the Chikaming Zoning ordinance (ZO) being enforced as written, (3) they were entitled to notice of the public hearing before the ZBA, and "(4) they would suffer aesthetic, ecological, practical, and other alleged harms from the grant of" the variance. However, these alleged injuries did not establish them "as aggrieved parties under MCL 125.3605. Aesthetic, ecological, and practical harms are insufficient to show 'special damages not common to other property owners similarly situated.'"

Their expectations that the 1998 ZO would be interpreted as the 1981 ZO was, "or that the ZBA would arrive at the same decision as the 1996 denial of an altogether different variance request," were also not sufficient. As they did not "show that they suffered a unique harm different from similarly situated community members, they failed to establish that they are parties aggrieved by" the ZBA's decision, and lacked the ability to invoke the jurisdiction of the circuit court, which erred in denying appellant's motion to dismiss. Reversed and remanded.

Source: State Bar of Michigan *e-Journal* Number: 68246; July 6, 2018.

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2018/070318/68246.pdf

Open Meetings Act, Freedom of Information Act

A public body must name pending litigation before going into closed session (Saginaw County)

Case: *Vermilya v. Delta Coll. Bd. or Trs.*

Court: Michigan Court of Appeals, 2017 Mich. App. LEXIS 973, 2017 WL 2607890 (June 15, 2017, Decided) (Published Opinion No. 341229)

Holding that defendant-college board of trustees violated MCL 15.267(1) and 15.269(1) by not articulating the purpose for calling a closed session when it failed to identify the specific litigation to be discussed, in accordance with MCL 15.268(e), the court affirmed the trial court's grant of summary disposition for plaintiffs.

Plaintiffs sued defendant claiming it violated the Open Meetings Act (OMA) by failing to name the pending litigation it planned to discuss in a closed session, and by failing to state the purpose for holding a closed session in its meeting minutes. The trial court agreed and granted summary disposition for plaintiffs. On appeal, the court first found that "[w]hen examining MCL 15.267(1), MCL 15.268(e), and

MCL 15.269(1) together, it is clear that the Legislature intended for public bodies to name the pending litigation before entering a closed session." It noted that "defendant's argument that the OMA requires only that there be specific pending litigation would render the word 'specific' redundant and mere surplusage . . . ."

Further, the Attorney General, in its OMA manual, "naturally read the OMA as requiring the public body to name the specific lawsuit it would be discussing in a closed session." The court concluded that "[a]llowing a public body to call for a closed session by merely reciting MCL 15.268(e)'s language does not further the purpose of government accountability because the public is given no indication of the 'issues and decisions of public concern' that will be addressed in the closed session. . . . While a case name may not provide much information, in and of itself, it alerts the public to the existence of litigation and allows for further inquiry."

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Source: State Bar of Michigan *e-Journal* Number: 68443; August 2, 2018

Full Text Opinion: http://www.michbar.org/file/opinions/appeals/2018/073118/68443.pdf

Nuisance and other police power ordinances

Abating a public nuisance and statute of limitations: hogs in a commercial zone (Bay County)

Case: *Township of Fraser v. Haney*

Court: Michigan Court of Appeals, 2019 Mich. App. LEXIS 102, 2019 WL 254523 (December 20, 2018 Decided) (Published Opinion, No. 33784)

Holding that defendants' assertion of a statute of limitations (SOL) defense would not be futile and that it did not matter that they had so far not moved to amend their affirmative defenses, as long as a proper amendment occurs, the court reversed summary disposition for plaintiff-township in this action to abate a public nuisance, and remanded.

Defendants offered "undisputed evidence that they had kept hogs on the property since 2006." Plaintiff did not file this action until 2016. Plaintiff argued that they could not prevail on any SOL defense because they did not assert it in their first responsive pleading. However, "the trial court made an express holding" as to the applicability of the asserted defense despite "defendants' untimely invocation. The parties briefed and presented their arguments" on the issue, although plaintiff did not argue that defendants failed to properly assert the defense until after the appeal was filed.

The court held that "the trial court tried the merits of" defendants' SOL defense "with plaintiff's implied consent." Thus, it may "be treated as if it had been raised in defendants' pleadings," and remand was appropriate to permit them to move to amend their responsive pleading to include the SOL in their affirmative defenses. The court held in Waterous that "an abatement of a public nuisance claim filed by a governmental entity seeking injunctive relief was subject to the six-year general period of limitations under MCL 600.5813."

This action stemmed from the piggery kept on defendants' property "in violation of a local ordinance. Thus, the wrong alleged for purposes of accrual occurred when defendants first began to keep hogs on the subject property, regardless of when it began to result in recoverable damage." The claim was "not subject to tolling simply because plaintiff may have been unaware that defendants were keeping pigs" in violation of the ordinance, and the continuing wrongs doctrine has been abrogated in Michigan. The

court also rejected plaintiff's argument that its claim was an action in rem, making the SOL inapplicable. "No Michigan court has ever held that a claim seeking an abatement of a public nuisance constitutes" an action in rem. Rather, the claim was an action *in personam* subject to the SOL.

Source: State Bar of Michigan *e-Journal* Number: 69425; December 2, 2019.

Full Text: http://www.michbar.org/file/opinions/appeals/2019/011719/69425.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

Zoning ordinance regarding home occupations preempted by the Michigan Medical Marihuana Act (MMMA) (Washtenaw County)

Case: *Charter Twp. of Ypsilanti v. Pontius*

Court: Michigan Court of Appeals, 2018 Mich. App. LEXIS 3429, 2018 WL 5629643 (October 30, 2018, Decided) (Unpublished Opinion No. 340487)

Concluding that *Deruiter* (*DeRuiter v. Township of Byron*, 325 Mich. App. 275, 2018 Mich. App. LEXIS 2812, pg. 3 of *Selected Planning and Zoning Decisions 2019*) was dispositive, the court held that the plaintiff-township's zoning ordinance was preempted by the Michigan Medical Marihuana Act (MMMA) because it directly conflicted with the rights granted by the MMMA to those engaging in MMMA-compliant activities. Thus, the court affirmed the trial court's order, which ruled that the zoning ordinance was void and unenforceable to the extent it prohibited registered primary caregivers in compliance with "the MMMA from growing medical marijuana in residential districts for their qualified patients."

Plaintiff sought declaratory and injunctive relief against defendant, "a registered medical marijuana primary caregiver and qualified patient, to abate a public nuisance at her residential property located within the township, alleging that she grew medical marijuana in her basement for her registered qualified patients. According to plaintiff, its zoning code permitted caregivers who were also patients to cultivate medical marijuana in their homes for their personal use, but they could not do so as a 'home occupation' for any of their patients."

While plaintiff argued that the MMMA did not preempt its zoning ordinance because there was no conflict with the MMMA, and that defendant was not immune under MCL 333.26424(b), the court disagreed, noting that the exact issue presented here was recently decided in *Deruiter*.

Just as the ordinance at issue there, "plaintiff's zoning code attempts to prohibit what the MMMA allows: cultivation and dispensing of medical marijuana as a 'home occupation' in a residentially zoned district, regardless of whether the caregiver's activities comply with the MMMA's requirements. Also like the

ordinance at issue in Deruiter, plaintiff's zoning code imposes fines and penalties for ordinance violations, contrary to the MMMA's immunity provisions." Thus, the court was bound by Deruiter's holding.

Source: State Bar of Michigan *e-Journal* Number: 68996; November 9, 2018.

Full text opinion: http://www.michbar.org/file/opinions/appeals/2018/103018/68996.pdf

RTFA protection does not include apartments (for people) in a horse arena building (Ingham County)

Case: *Township of Williamstown v. Sandalwood Ranch, LLC*

Court: Michigan Court of Appeals, 325 Mich. App. 541, 2018 Mich. App. LEXIS 2996 (June 19, 2018, Decided) (Unpublished Opinion No. 337469)

The court concluded that MCL 286.472(b) (not MCL 286.472(a)) section of the Right to Farm Act (RTFA) was implicated here, and held that the use of the apartment as a second dwelling on the ranch property was not necessary in connection with the boarding of horses. Further, equitable estoppel and laches did not apply because defendants failed to factually support these affirmative defenses.

Thus, the court affirmed summary disposition for plaintiff-township in this action seeking injunctive relief for an ordinance violation. The defendants-Kolenda are the principal owners of defendant-Sandalwood Ranch. "The property contains a house in which the Kolendas reside, and a building that contains a barn with 26 stalls and a riding arena." The apartment was on a second floor of that building.

Defendants argued that it was part of the arena building and that any use of the building fell within the definition of farm in MCL 286.472(a).

The Appeals Court disagreed. While the building itself was protected under this provision, that did not "mean that every activity within the building is necessarily shielded from local regulation." The correct inquiry was whether the use of the apartment in connection with the horse-boarding business was a protected "farm operation" under MCL 286.472(b). The court noted the absence of any published case interpreting "the word 'necessary' as used in the RTFA." It found that the evidentiary hearing testimony showed that "the use of the apartment as a second dwelling by a tenant, who can perform the 10 p.m. check on the horses, is not necessary to defendants' horse-boarding business."

While it did not accept "plaintiff's contention that 'necessary' should be read to mean 'absolutely necessary,'" it was clear here that "the rental of the apartment was intended to induce a third party to perform work that defendants had performed in the past and for which they could hire workers without providing a rental apartment. The fact that having a person other than themselves perform the night check was of assistance in providing the Kolendas with a desirable degree of flexibility and time off does not mean that such a tenant is 'necessary' for farm operations under the RTFA."

Source: State Bar of Michigan *e-Journal* Number: 68133; July 5, 2018.

Full text opinion: http://www.michbar.org/file/opinions/appeals/2018/061918/68133.pdf

RTFA protection does not extend to storage and use of vehicles for gravel mining (Washtenaw County)

Case: *Lima Twp. v. Gough-Bahash*

Court: Michigan Court of Appeals, 2018 Mich. App. LEXIS 3299 (October 11, 2018, Decided) (Unpublished Opinion No. 338934)

The court concluded that the trial court did not err when it determined that defendants failed to establish that the RTFA protected their storage and use of the vehicles and equipment on the property at issue, the court affirmed. The trial court enjoined defendants from using the property in violation of plaintiff's zoning ordinances.

On appeal, the court rejected their argument that the trial court erred by finding that they had not proven that they used and stored their vehicles and equipment in the operation of a farm within the meaning of the RTFA, and that it should have found that their storage and use of the vehicles and equipment complied with accepted agricultural practices.

"On the basis of the evidence that 'trucks regularly came and went from the property' and that the property was used to store 'drag lines, gravel haulers, bull dozers, road graders, semi-truck trailers, and pay loaders' as well as 'piles of dirt, steel, and asphalt millings,'" the trial court found defendants "were actually engaged in a gravel hauling" operation and not a tree farm operation, and its findings were "fully supported by the record evidence."

The trial court did not err by finding that they "did not engage in the activities about which [plaintiff] complained as part of a farm or farm operation. It follows then that it did not err when it determined that the [RTFA] did not preempt [plaintiff's] zoning ordinances." Moreover, "because the trial court did not err when it determined that [defendants] failed to establish the first element of their defense under the [RTFA], it did not err when it declined to consider the second element." Finally, the court declined to consider plaintiff's request for sanctions for filing a vexatious proceeding.

The trial court did not err by finding that they "did not engage in the activities about which [plaintiff] complained as part of a farm or farm operation. It follows then that it did not err when it determined that the [RTFA] did not preempt [plaintiff's] zoning ordinances."

Source: State Bar of Michigan *e-Journal* Number: 68841; October 19, 2018.

Full text opinion: http://www.michbar.org/file/opinions/appeals/2018/101118/68841.pdf

Substantive Due Process

Denial of rezoning application overturned by courts: City Council decision fails to advance a reasonable government interest (Ingham County)

Case: *Gamut Group, LLC v. City of Lansing*

Court: Michigan Court of Appeals, 2019 Mich. App. LEXIS 518, 2019 WL 1265161 (March 19, 2019, Decided) (Unpublished Opinion, No. 341754)

Finding no error in the trial court's determination that the defendant-city's rezoning denial warranted reversal on the basis that it was arbitrary and capricious, the court affirmed the order granting plaintiff-property owner declaratory and injunctive relief on its substantive due process claim.

Plaintiff had owned a building housing an unlicensed medical marijuana dispensary since 2011. In 2017, the city passed a revised zoning ordinance (ZO) limiting "medical marijuana dispensaries to zoning districts F, F1, G2, H, and I, and required that they be licensed." Knowing that the amendment was imminent, plaintiff sought to have its property rezoned to F. Although the city's zoning administrator and planning board recommended approval, "despite any public objection, and despite that the other three corner lots at the intersection had been rezoned to F, the city council denied" the request.

The trial court granted plaintiff summary disposition in its declaratory judgment action. The city asserted on appeal that a different standard should apply because plaintiff was not challenging the ZO's validity, but rather the denial of its rezoning request. The court noted that it "has repeatedly treated substantive due process challenges to a rezoning denial identically to challenges to an existing" ZO. The city also contended in the trial court "that the new zoning regulations were intended to take dispensaries out of neighborhoods and contain them in business corridors." *But the city council did not explain its denial at the time of its decision.*

The trial court "sagely noted that the area in question is a business corridor and not a residential area, so the belated explanation for the city council's rezoning denial could not be genuine. Moreover, the existing use would continue if the property was rezoned and there would be no change in traffic or the general character of the area. Rather, the denial of the rezoning request seemed to be political.

The trial court "sagely noted that the area in question is a business corridor and not a residential area, so the belated explanation for the city council's rezoning denial could not be genuine ..... Rather, the denial of the rezoning request seemed to be political.

As the city proffered no real explanation for why the denial of the rezoning request was necessary to preserve the public health, safety, morals, and general welfare," the trial court properly ruled "that the denial did not advance a reasonable government interest and was instead arbitrary and capricious."

Source: State Bar of Michigan *e-Journal* Number: 70057; April 3, 2019.

Full Text: http://www.michbar.org/file/opinions/appeals/2019/031919/70057.pdf

Due Process and Equal Protection

Rezoning denial affirmed for the City of the Village of Clarkston

Case: *CBC Joint Venture v. The City of the Vill. of Clarkston*

Court: Michigan Court of Appeals, 2018 Mich. App. LEXIS 3222, 2018 WL 4603858 (September 25, 2018, Decided) (Unpublished Opinion No. 337750)

The court held that the trial court erred by granting plaintiff-property owner summary disposition of its equal protection and substantive due process claims against defendant-municipality. Further, as to plaintiff's cross-claim, it declined to hold that plaintiff's takings claim should not have been dismissed with prejudice. Plaintiff sought to have property rezoned from multiple-family residential to village commercial, specifically for use as a bar and restaurant. Defendant's city council eventually denied its request. Plaintiff then sued defendant, alleging it was deprived of its constitutional rights to equal protection and due process. It also claimed the zoning constituted a governmental taking because it was denied economically viable use of the property.

On appeal, the court agreed with defendant that the trial court erred by not granting it summary disposition of plaintiff's equal protection claim, noting the properties that were granted commercial rezoning were not similarly situated to the property at issue because they were in nonconforming use.

> "Because there is not a material question of fact regarding whether the [p]roperty, and by extension plaintiff, was treated differently than similarly situated properties and their owners, defendant is entitled to summary disposition as to plaintiff's equal protection claim."

It also agreed with defendant that it was entitled to summary disposition of plaintiff's substantive due process claim, finding plaintiff "failed to show that the zoning decision 'is an arbitrary fiat, a whimsical

ipse dixit and that there is not room for legitimate difference of opinion concerning [the zoning decision's] reasonableness.'" The court found that "the rezoning denial does not shock the conscience."

It next declined to hold that plaintiff's takings claim should not have been dismissed with prejudice, noting that "because there was a final decision regarding plaintiff's rezoning request, its takings claim was ripe" for review, and it "presented no argument, other than ripeness, as to why the trial court improperly granted summary disposition on this claim." Finally, it agreed with defendant that because it was "entitled to summary disposition of all of plaintiff's constitutional claims, plaintiff may not seek relief under" § 1983. Affirmed in part, reversed in part, and remanded.

Source: State Bar of Michigan *e-Journal* Number: 68764, October 5, 2018

Full text opinion: http://www.michbar.org/file/opinions/appeals/2018/092518/68764.pdf

Appeals, Variances (use, non-use)

ZBA proceedings regarding attached garage addition is "riddled with inadequate and conclusory findings" mostly overlooked by Circuit Court (Mackinaw County)

Case: *Hiser v. Village of Mackinaw City*

Court: Michigan Court of Appeals, 2018 Mich. App. LEXIS 3499, 2018 WL 6070389 (November 20, 2018, Decided) (Unpublished Opinion No. 338175)

The court held that defendant-ZBA's proceedings were "riddled with inadequate and conclusory findings" that were mostly overlooked by the circuit court. Thus, it reversed and remanded in Docket No. 338175. In Docket No. 338843, it affirmed summary dismissal of two of the counts in the complaint, and reversed and remanded on plaintiff's dedication and nuisance per se claims.

The consolidated appeals concerned the construction of a garage addition that includes full living quarters on a lot owned by defendants-Paquet. Plaintiff, their neighbor, appealed the decision of the defendant-village's zoning administrator to issue a permit that authorized the construction. The ZBA affirmed the issuance of the permit. In addition to filing an original action against the Paquets and the village, plaintiff appealed the ZBA's decision to the circuit court. After remand for further proceedings, the ZBA again upheld the permit. Plaintiff again appealed in the circuit court, which affirmed the ZBA's approval of the permit.

The dispute involved, among other things, questions as to which MZO setback and height restrictions specifically applied to the garage addition, "a unique building to say the least." The court found problematic "the ZBA's conclusory approach, failing entirely to state why it determined that the garage addition was attached to the house; no factual basis for this conclusion was given. Moreover, the ZBA did not set forth any criteria upon which such a determination was to be made."

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The court directed that on remand, "the ZBA is to reexamine the issue of whether the buildings are attached or detached, enunciate criteria to be employed in assessing the issue, and to make particular factual findings in support of its ultimate decision, whatever that decision may be."

If the ZBA again finds that "the garage addition is attached to the Paquets' house, and assuming that the ZBA then wishes to re-invoke its earlier findings"

as to setbacks, height restrictions, and other matters that were dependent on whether the addition is attached, the court directed the ZBA to provide citation to specific subsections that support its findings, and "to explain the basis for any determination that the 21-foot height requirement in MZO, § 5-101(E)(3), and the 25-foot, front-yard setback in MZO, § 5-103(C)(1), do not apply."

The ZBA also must set forth the reasons why the addition, "if attached, should be treated under the MZO 'garage' provisions like any other normal garage that is attached to a house. The garage addition is not an ordinary garage; it is both a garage and a home."

(Source: State Bar of Michigan *e-Journal* Number: 69064; November 29, 2018.)

Full text: http://www.michbar.org/file/opinions/appeals/2018/112018/69064.pdf

Nonconforming Uses

Short-term vacation rentals did not qualify as prior nonconforming use; definitions for dwelling and dwelling-unit are central to case (Grand Traverse County).

Case: *Concerned Prop. Owners of Garfield Twp., Inc. v. Charter Twp. of Garfield*

Court: Michigan Court of Appeals, 2018 Mich. App. LEXIS 3389 (October 25, 2018, Decided) (Unpublished Opinion, No. 342831)

Holding that appellants-homeowners' prior short-term vacation rentals did not qualify as a prior nonconforming use, the court affirmed the trial court's order denying them summary disposition. They own homes around a lake in the defendant-township's R-1B District and were members of plaintiff-nonprofit corporation, which filed this suit after the township passed a new ordinance that explicitly prohibited short-term vacation rentals in the R-1B District.

To succeed on their summary disposition motion, they had to show "that the short-term rental usage of their homes was permitted under the prior Ordinance 10." The parties agreed that the interpretation of "single-family dwelling" controlled the case. Ordinance 10, § 3.2 "defined 'single-family dwelling' as a 'dwelling unit designed for exclusive occupancy by a single family which may be detached or semi-detached' and 'dwelling unit' as a 'building or portion thereof designed exclusively for residential occupancy by one (1) family, and having cooking facilities.'" In turn, § 3.2 "defined 'family' to include relationships of a 'non-transient domestic character,' but to exclude those 'whose domestic relationship [was] of a transitory or seasonable nature or for an anticipated limited duration of a school term or other similar determinable period.'

"When, as here, the ordinance includes a specific and a general provision, the specific provision controls."

Because short-term rentals are inherently transitory, by limiting the use to 'family' dwelling units, Ordinance 10 plainly prohibited short-term rentals." Appellants argued that the court should look to Ordinance 10's definition of "dwelling" rather than "dwelling unit." The court disagreed. While "dwelling" makes "up part of the term 'single-family dwelling,' the latter is explicitly defined in" § 3.2. Further, the definition given "for 'single-family dwelling' uses the term 'dwelling unit'—which is also explicitly defined—over the more general term 'dwelling.' When, as here, the ordinance includes a specific and a general provision, the specific provision controls." The court's conclusion was also supported by use of the term "residential occupancy" in Ordinance 10.

Source: State Bar of Michigan *e-Journal* Number: 68979; November 5, 2018.

Full text opinion: http://www.michbar.org/file/opinions/appeals/2018/102518/68979.pdf

Court, Ripeness for Court's Jurisdiction, Aggrieved Party

Lawsuit over Traverse City building heights proposal not ripe for court review (Grand Traverse County)

Case: *326 Land Co., LLC v. City of Traverse City*

Court: Michigan Court of Appeals, 2018 Mich. App. LEXIS 3230, 2018 WL 4658932 (September 27, 2018, Decided) (Unpublished Opinion No. 339755)

The court held that the trial court did not err by dismissing plaintiff-developer's action on the basis that it was not yet ripe for judicial review, and did abuse its discretion by allowing intervening defendant-citizens group to intervene. Plaintiff filed a declaratory action seeking to invalidate a voter proposal requiring an election before defendant-city "could approve the construction of buildings over a certain height."

The citizens group filed a motion to intervene on the ground that plaintiff's lawsuit was not ripe for review as it had not applied for anything from the city and the city had not denied any application. The trial court dismissed the action, holding it was not ripe for judicial review because neither defendants nor the public had voted on or denied plaintiff's application for a special land use permit.

On appeal, the court first found that plaintiff's "injury was merely hypothetical because it had no way to know whether the voters would reject its" proposal. It also held that the trial court did not abuse its discretion by allowing the citizens group to intervene, finding that the evidence it presented "supported a complete lack of adversarial tension between plaintiff and defendants in this suit, guaranteeing that the intervenor's interests in upholding Prop 3 would not be represented." Affirmed.

Source: State Bar of Michigan *e-Journal* Number: 68785, October 8, 2018

Full Text: http://www.michbar.org/file/opinions/appeals/2018/092718/68785.pdf

Failure to pursue all available methods of obtaining relief renders claims unripe for review (Washtenaw County)

Case: *Edgewood Holdings, LLC v. County of Otsego*

Court: Michigan Court of Appeals, 2018 Mich. App. LEXIS 3305 (October 16, 2018, Decided) (Unpublished Opinion No. 343109)

The court held that the trial court did not err in finding that plaintiff's failure to pursue alternative options of a rezoning of the property to a different zoning district or an amendment of the zoning ordinance rendered this case unripe for judicial review. Plaintiff argued that the finality requirement discussed in *Hendee v. Putman Twp. (486 Mich. 556, 786 N.W.2d 521, 2010 Mich. LEXIS 1453* (Supreme Court of Michigan) and *Braun v. Ann Arbor Charter Twp.* (262 Mich. App. 154, 683 N.W.2d 755, 2004 Mich. App. LEXIS 1274 (Court of Appeals of Michigan) only applies to cases in which a rezoning is sought, and that summary disposition was not appropriate here because plaintiff did not seek a rezoning.

It was denied a declaration by the ZBA "that its pole barn storage units would be permissible in an R-1 district as a 'comparable' use." The ZBA informed "plaintiff that it could pursue rezoning of the property to a different zoning district that would allow commercial self-storage units or could request an amendment of the zoning ordinance to allow such use in the R-1 district." However, it was undisputed that plaintiff never pursued the alternative relief suggested. Rather, it argued "at the trial court level that its claims were 'facial challenges,' and thus exempt from the finality requirement." The trial court

determined that its claims were "as applied" and that the finality requirement had to be met before they could be ripe for judicial review.

On appeal, plaintiff appeared to suggest that the trial court erred by applying what it characterized "as defendant's overly broad interpretation of *Hendee*." However, *Hendee* and *Braun* "do not apply only to rezoning, but instead to the requirement that plaintiffs must pursue every available method of obtaining relief in zoning disputes before resorting to judicial review."

> In both *Braun* and *Hendee*, "the failure of the plaintiffs to seek available alternative relief rendered their claims premature for litigation. These cases were not specifically concerned with whether a variance, use permit, or rezoning request was initially requested and denied, but rather with whether all available methods of obtaining relief had been pursued to obtain a final decision."

No definitive decision was reached here from which the trial court "could determine whether plaintiff had sustained any actual or concrete injury because the ZBA provided plaintiff with two options to pursue, and the approval of either alternative would provide plaintiff's requested relief." By bringing a claim alleging that the application of the zoning ordinance results in a taking of its property, plaintiff subjected its claims to the finality requirement established in Williamson.

Source: State Bar of Michigan *e-Journal* Number: 68890; October 23, 2018.

Full Text: http://www.michbar.org/file/opinions/appeals/2018/101618/68890.pdf

Open Meetings Act, Freedom of Information Act

Closing part of an open meeting requires giving a specific reason (Saginaw County)

Case: *Andrich v. Delta Coll. Bd. of Trs.*

Court: Michigan Court of Appeals, 2018 Mich. App. LEXIS 2574, 2018 WL 2700602 (June 5, 2018, Decided) (Unpublished Opinion No. 337711)

The court reversed in part the trial court's opinion and order granting defendant summary disposition in this case under the Open Meetings Act (OMA) (MCL 15.261 *et seq.*), holding that defendant violated MCL 15.267(1) and 15.269(1) by not identifying the specific cases to be discussed in a closed session in accordance with MCL 15.268(e).

This case arose out of "defendant's practice of calling for a closed session to discuss with its counsel 'specific pending litigation,' without identifying the specific case it would be discussing, and then returning to an open session to pass a motion to accept its counsel's recommendation," without indicating "to what that recommendation pertained." The issue was whether a public body must name the case it will be discussing before entering a closed session under MCL 15.268(e).

"the public body had to identify the exempt material and applicable statute before entering a closed session, even though such a requirement is not found in MCL 15.268(h) alone."

The court acknowledged that "MCL 15.268(e) does not expressly require a public body to identify the case name before entering a closed session to discuss trial or settlement strategy with its counsel. But statutory language cannot be read in isolation and must be construed in a way that harmonizes the entire act." Plaintiff argued that "defendant violated MCL

15.267(1) and MCL 15.269(1) when it failed to identify the 'specific pending litigation' it would be discussing." Plaintiff suggested that "if a public body is not required to identify the specific litigation it will be discussing in a closed session, then the word 'specific' in MCL 15.268(e) is effectively rendered void."

Agreeing, the Appeals Court noted it determined in *Herald Co., Inc. v. Tax Tribunal* (258 Mich. App. 78, 669 N.W.2d 862, 2003 Mich. App. LEXIS 1909) that "the public body had to identify the exempt material and applicable statute before entering a closed session, even though such a requirement is not found in MCL 15.268(h) alone." It could be argued that there was an even stronger case for reaching a similar conclusion as to "MCL 15.268(e), given that the Legislature in that subsection only exempted a closed-session discussion of 'specific pending litigation . . . .'"

Also, the Attorney General's OMA Handbook, while not binding, further supported plaintiff's position. The court concluded that allowing "a public body to call for a closed session by merely reciting the language of MCL 15.268(e) does not further the purpose of government accountability because the public is given no indication of the 'issues and decisions of public concern.'" A case name at least permits further inquiry. Remanded.

Source: State Bar of Michigan *e-Journal* Number: 68031; June 13, 2018.

Full text: http://www.michbar.org/file/opinions/appeals/2018/060518/68031.pdf

Closing part of an open meeting requires giving a specific reason, II (Jackson County)

Case: *Estate of Timothy Ader v. Delta Coll. Bd. of Trs.*

Court: Michigan Court of Appeals, 2018 Mich. App. LEXIS 2573, 2018 WL 2700453 (June 5, 2018, Decided) (Unpublished Opinion No. 337157)

Holding that the defendant-college board of trustees violated Open Meetings Act (OMA) (MCL 15.261 *et seq.*) MCL 15.267(1) and 15.269(1) by failing to identify the specific cases it was going to discuss in closed session under MCL 15.268(e), the court reversed summary disposition for defendant on this issue, and remanded for further proceedings.

The case arose from the board's "practice of calling for a closed session to discuss with its counsel 'specific pending litigation,' without identifying the specific case it would be discussing, and then returning to an open session to pass a motion to accept its counsel's recommendation" without indicating to what that recommendation pertained.

The court noted that "MCL 15.268(e) does not expressly require a public body to identify the case name before entering a closed session to discuss trial or settlement strategy with its counsel." Plaintiff's claim was that the board violated MCL 15.267(1) (requiring that the purpose of the closed session be entered into the minutes) and MCL 15.269(1) (requiring that a public body keep meeting minutes showing "the purpose or purposes for which a closed session is held") when it did not "identify the 'specific pending litigation' it would be discussing." Plaintiff suggested that "if a public body is not required to identify the specific litigation it will be discussing in a closed session, then the word 'specific' in MCL 15.268(e) is effectively rendered void."

The Appeals Court agreed. Reading the OMA broadly to further its purpose, the court concluded that "the statutory language requires the public body to identify the specific litigation it would be discussing in justifying its decision to close its meeting to the public."

It noted that it reached a somewhat similar conclusion in *Herald Co., Inc.* (on page 16), where it ruled that a "public body had to identify the exempt material and applicable statute before entering a closed session, even though" MCL 15.268(h) alone did not contain such a requirement. There was arguably an even stronger case for reaching a similar conclusion as to MCL 15.268(e), given that the Legislature "only exempted closed session discussion of 'specific pending litigation . . . .'"

Source: State Bar of Michigan *e-Journal* Number: 68030; June 13, 2018.

Full text opinion: http://www.michbar.org/file/opinions/appeals/2018/060518/68030.pdf

Zoning Administrator/Inspector, Immunity, and Enforcement Issues

Charging of escrow fees for a zoning interpretation upheld by the courts (Ottowa County)

Case: *Forner v. Allendale Charter Twp. Supervisor*

Court: Michigan Court of Appeals, 2019 Mich. App. LEXIS 576, 2019 WL 1302094 (March 21, 2019, Decided) (Unpublished Opinion No. 339072)

The court held that both the district court and the circuit court erred by not interpreting and applying MCL 125.3406(1)'s plain language. Thus, both courts incorrectly concluded that the defendant-township had statutory authority under MCL 125.3406(1) to charge the disputed escrow fee. However, the court affirmed the lower courts' rulings because they reached the right result, as the township's Resolution 2011-2 authorized the imposition of the fee upon plaintiff.

He wanted the township to "require an adjacent property owner to submit a site plan for approval of the installation by the neighbor of a fence and dumpster enclosure on the neighbor's property." When the administrator declined, "plaintiff filed an application to the township's zoning board of appeals requesting an interpretation of the township's zoning ordinance. The township required" him to pay a $1,500 escrow fee, which he paid under protest. The township used the services of a company and a law firm to review and provide opinions as to his request. "The township used the escrow funds instead of the township's general funds to pay for the services."

The parties disputed whether MCL 125.3406(1) authorized the township to charge the escrow fee. The court held that "one can easily discern from the language of the statute that the charging of reasonable fees" is a condition for issuing zoning permits. "Although the term 'zoning permits' is neither defined by MCL 125.3406 nor by any other provision in the MZEA, the term's meaning lacks ambiguity and is easily understood in the context of MCL 125.3406(1) itself. MCL 125.3406(1) indicates that zoning permits grant authorization for land uses including the erection, alteration, or location of dwellings, buildings, tents and recreational vehicles within zoning districts established under the MZEA.

Moreover, commonly, zoning permits are documents issued by a local government or authority to permit land to be used for a prescribed purpose." Thus, the township could not rely on MCL 125.3406(1) to charge the escrow fee. However, Resolution 2011-2 showed "the specified fees serve a regulatory purpose as prescribed in the MZEA and the township's zoning ordinance. The fee schedule and the escrow account fees defined in" the resolution "were proportionate to the necessary costs of the services provided. Further, the fees were voluntary and similar to user fees charged for other services provided to local citizens."

Thus, the township could not rely on MCL 125.3406(1) to charge the escrow fee. However, Resolution 2011-2 showed "the specified fees serve a regulatory purpose as prescribed in the MZEA and the township's zoning ordinance. The fee schedule and the escrow account fees defined in" the resolution "were proportionate to the necessary costs of the services provided.

Source: State Bar of Michigan *e-Journal* Number: 70094; April 8, 2019.
Full Text: http://www.michbar.org/file/opinions/appeals/2019/032119/70094.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.

in personam

Adverb or adjective

1 against a person for the purpose of imposing a liability or obligation —used especially of legal actions, judgments, or jurisdiction

inter alia

n adverb among other things.

ORIGIN from Latin

ipse dixit

n noun

a dogmatic and unproven statement.

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'.

surplusage
n noun a term used in analyzing legal documents and pleadings to refer to wording or statements which have no legal effect and, therefore, can be ignored.

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.