



FROM GARAN LUCOW MILLER'S MUNICIPAL LAW DEPARTMENT

# GOV LAW

*Monthly Publication for Michigan Cities, Townships, Villages and Schools*

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## ANNOUNCEMENTS

- ★ Michael Edmunds, of the firm's Grand Blanc office, won a no cause verdict for a City of Flint Police Officer from a federal court jury in late October. The plaintiff alleged that the officer used excessive force. The jury disagreed, finding that the force used was reasonable. Mr. Edmunds was assisted at trial by Lanta Robbins, Assistant City Attorney for the City of Flint.
- ★ Summary Judgment was granted in favor of two Petoskey Police Officers who were sued by a local bar owner who claimed that the officers harassed him and his business in connection with his political support of a candidate for Sheriff. The officers were represented by Peter Worden of the firm's Traverse City office. Jami Leach of the firm's Detroit office authored the summary judgment motion and brief.
- ★ Three Garan Lucow Miller shareholders have been selected by their industry peers as 2007 "Best Lawyers in America." From the Troy office James L. Borin was recognized for his achievements in personal injury litigation. In Detroit, Rosalind Rochkind and Daniel S. Saylor were voted best lawyers for their work in appellate and insurance law.
- ★ Two Garan Lucow Miller shareholders have been named in the inaugural national listing of "Super Lawyers". From the Troy office, Roger Smith was recognized for his achievements in government, city and municipal law. From the Grand Rapids office, Michael Wade was recognized for his achievements in personal injury defense.
- ★ Matthew LaBeau has joined the firm's Municipal Practice Group as an Associate in the Detroit office. Mr. LaBeau graduated from the Wayne State University School of Law in May 2006 and was admitted to practice in the State of Michigan on November 6, 2006.

## From the Editor

by John J. Gillooly

On July 1, 2006, the Michigan Legislature adopted the Michigan Zoning and Enabling Act which codifies the Zoning Enabling Acts for cities, townships and counties. The Michigan Legislature has gone out of its way to make sure that the zoning regulations under this Act are uniform for each class of land or buildings, dwellings, and structures within a district.

Many of the questions that I receive deal with the application of this revised statute. In the next two issues I will highlight some of the most important provisions of the Act.

### Notice (MCL 125.3103)

- A local unit of government that is required to provide notice and hearing under this Act must publish notice in a newspaper of general circulation within the local unit of government.
- Notice shall be sent by mail or personal delivery to the owners of property for which the approval is being considered. Notice shall also be sent to all persons to whom real property is assessed within 300 feet of the property and to occupants of all structures within 300 feet of the affected property. This is regardless of whether the property or occupant is located within the specific zoning jurisdiction.
- Notice must be given not less than 15 days before the application will be considered for approval.

- The notice must specifically describe the nature of the request, the address of the property that is the subject of the request, when and where the request will be considered and when and where written comments will be received.

### **Regulation of Manner in Which Boundaries of Districts or Zones are Determined or Modified (MCL 125.3202)**

A local governmental body may provide by ordinance for the manner in which the regulations and boundaries of districts or zones shall be determined, and enforced, amended, supplemented or changed.

- If an individual property or less than 10 adjacent properties are proposed for re-zoning, the Zoning Commission shall give notice of the proposed zoning as discussed immediately above.
- If 11 or more adjacent properties are proposed for re-zoning, the Zoning Commission shall give notice of the proposed re-zoning as indicated above with some minor differences.

### **Plan Governing Zoning Ordinances (MCL 125.3203)**

- Zoning ordinances shall be based upon a plan designed to promote many diverse interests such as:
  - The health, safety and general welfare of the public;
  - To encourage the use of land in accordance with its character and adaptability;
  - To limit the improper use of land;
  - To conserve natural resources and energy;
  - To meet the needs of the state's residents for food, fiber, housing, recreation, industry and other uses;
  - To ensure that the uses of the land shall be situated in appropriate locations;
  - To avoid the overcrowding of population;
  - To provide adequate light and air;
  - To lessen congestion on the public roads.
- Zoning ordinances shall be made with reasonable consideration to the character of each district, its peculiar suitability for particular uses, the conservation of property values and natural resources

and the general and appropriate trend and character of land, building and population development.

- All zoning ordinances adopted after March 28, 2001, shall take into account reasonable consideration of airport zoning regulations, airport layout plans and airport approach plans.

### **Total Prohibitions (MCL 125.3207)**

- A zoning ordinance or decision may not totally prohibit the establishment of a land use within a local unit of government when a demonstrated need for that land use has been shown unless there is not a location where the use may be appropriate or the use is unlawful.

### **Regulation of Nonconforming Uses and Structures (MCL 125.3208)**

- If the use of a dwelling or building is lawful at the time the zoning ordinance is enacted or amended, use may be continued although the use does not conform to the provisions of the new or amended zoning ordinance.
- Municipalities have the right to provide in the zoning ordinance for the completion, restoration, extension or substitution of nonconforming uses provided in the zoning ordinance.
- A municipality may acquire by purchase, condemnation or otherwise property that is non-conforming.
- The elimination of nonconforming uses and structures has been declared to be a legitimate public purpose.

Look for more information on the new zoning ordinances in next month's issue of Gov Law. In the interim, please do not hesitate to call me directly at **313.446.5501** if you have any questions.

**HAPPY THANKSGIVING!**



**MUNICIPAL LAW UPDATE**  
by Jami E. Leach

### Motor Vehicle Exception

- ◆ Loss of consortium *is* a bodily injury for purposes of the motor vehicle exception to governmental immunity according to a conflict panel of the Court of Appeals. *Kik v Sbraccia*, \_\_\_ Mich App \_\_\_ (2006).
- ◆ Defendants were entitled to summary disposition where a plaintiff was a pedestrian struck by a vehicle while crossing in front of defendant's school bus which had de-activated its warning flashers. Because there was no direct physical contact between the bus and the vehicle that hit plaintiff, nor was there direct contact between plaintiff and the bus, the motor vehicle exception did not apply. The bus driver's actions, which arguably were grossly negligent, were not the proximate cause of the plaintiff's injuries. *Helfer v Center Line Public Schools*, \_\_\_ Mich \_\_\_ (11/15/2006).

### Firefighter's Rule

- ◆ A police officer was injured by a government owned fire truck and sued under the motor vehicle exception to governmental immunity. However, the injury to the police officer occurred during the normal, inherent and foreseeable course of his job. Therefore, the police officer's lawsuit against the township was barred by the firefighter's rule (MCL 600.2966). The court also found that the statute was constitutional. *Boulton v Fenton Township*, \_\_\_ Mich App \_\_\_ (2006).

### Highway Exception

- ◆ A discontinuity defect of less than 2 inches creates a rebuttable inference that the municipal corporation maintained the sidewalk in reasonable repair. That the city engineer knew about the height differential and opined that it should be repaired is *insufficient* to rebut the inference of reasonable repair. *Ledbetter v City of Warren*, Unpublished COA #269758, October 31, 2006.
- ◆ Pictures showing the sidewalk in disrepair with defects and voids in the surface of the sidewalk, without any explanation of how these defects made

the sidewalk not reasonably safe and convenient for public travel were insufficient to rebut the presumption under the "2-inch rule". The court stated "the defects are open and obvious and do not present any readily apparent obstacle precluding any pedestrian passage over the sidewalk." *Griffin v City of Pontiac*, Unpublished COA #269988, Oct 26, 2006.

- ◆ Plaintiff was injured on a "gravel berm" that separated a private driveway from the road. The berm was the result of scraping, a road maintenance procedure, performed by defendant road commission. The Court held that the road commission was immune because the area where plaintiff was injured was part of the elevation which was structurally linked to the driveway and separated from the roadway. Therefore, the alleged defect was not part of the structure of the public roadbed surface designed for vehicular travel. *Sheldon v Little*, Unpublished COA #270399, November 7, 2006.

### Sewer Back-Up

- ◆ Plaintiffs homes were damaged as a result of flooding caused by an alleged defective sanitary sewer system. Pursuant to MCL 691.1417(2), "[a] governmental agency is immune from tort liability for the overflow or backup of a sewage disposal system unless the overflow or backup is a sewage disposal system event and the governmental agency is an appropriate governmental agency." The primary issue in this case was whether the defect was a substantial proximate cause of the event and the damage. "Defect" is defined at MCL 691.1416(e) as a "construction, design, maintenance, operation, or repair defect." "Substantial proximate cause" means a proximate cause that was 50% or more of the cause of the event and the damage. Given the evidence suggesting a known lack of capacity in the existing sewer system and employees turning off the generator before power was restored, reasonable minds could differ as to whether a defect existed and, if so, whether it was 50% or more of the cause of the sewer event. Therefore, summary disposition was properly denied. *Camarda v City of Eaton Rapids*, Unpublished COA #269046, November 7, 2006.