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REAL SOLUTIONS

Top Five 2022 Municipal Law Cases to Not Forget

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2022 Cases for Discussion

- *Long Lake Township v. Maxon*, Michigan Court of Appeals
- *Saugatuck Dunes Coastal Alliance v. Saugatuck Township*
- *Township of Rose v. Devoted Friends Animal Society*
- *Cary Investments v. City of Mount Pleasant*
- *Pinebrook Warren v. City of Warren*, Michigan Court of Appeals
- **BONUS CASE:** *Leoni Wellness, LLC v. Easton Township*, Michigan Court of Appeals





LONG LAKE TOWNSHIP V. MAXON, MI COURT OF APPEALS

- Long Lake Township used a drone to take aerial photographs of Maxon's property without permission, a warrant, or any other legal authorization.
- The Township relied on these photos to support a civil action against Maxon for violating a zoning ordinance, creating a nuisance, and breaching a previous settlement agreement.
- As the court determined, the drone surveillance in this case was a violation of the Fourth Amendment.

LONG LAKE TOWNSHIP V. MAXON,
MI COURT OF APPEALS

However, the issue before the court is whether the exclusionary rule, which causes the suppression of evidence obtained in violation of the Fourth Amendment, applies in a municipal civil infraction action?





LONG LAKE TOWNSHIP V. MAXON, MI COURT OF APPEALS

- The court held that the exclusionary rule does not apply in this civil matter. Accordingly, even if the Township violated Maxon's constitutional rights, suppression was not supported.
- A township can use evidence in a civil zoning code enforcement action that was obtained in violation of the Fourth Amendment, such evidence will not be suppressed by the exclusionary rule.
- ***BUT IS IT REALLY A GOOD IDEA?***
- Thus, drone surveillance to gather evidence for code enforcement is a valid method of collecting evidence to be used in an enforcement action.



LONG LAKE TOWNSHIP V. MAXON, MI COURT OF APPEALS



Takeaways

- Unauthorized drone use is still not proper!!
- Although the case allowed the evidence to be used for a conviction, a municipality is certainly creating other issues.
- Get an administrative warrant or have consent!!





SAUGATUCK DUNES COASTAL ALLIANCE V. SAUGATUCK TOWNSHIP

- North Shores of Saugatuck owned land within the Township that it sought to develop into 23 residential condominiums and a marina.
- Saugatuck Dunes Coastal Alliance, a private interest group, attempted to reverse the Township's decision related to approval of the development plan and special use permit.
- The ZBA affirmed the Township decision on grounds that Plaintiff lacked standing.



SAUGATUCK DUNES COASTAL ALLIANCE V. SAUGATUCK TOWNSHIP

- The main takeaway from this case would be the Michigan Supreme Court's clear articulation of the test for determining who is an "aggrieved party" under the MZEA. Notably, real-property ownership is not a requirement to be an "aggrieved party" and appeal under the MZEA. In fact, leaseholders can be an "aggrieved party" because they have "some legally protected interest or protected personal, pecuniary, or property right."
- However, under the MZEA, mere ownership of real property that is adjacent to a proposed development or that is entitled to statutory notice is not enough to show that a party is aggrieved without a showing of special damages. The special damages comparison analyzes whether there is an injury or a burden to a plaintiff "that is different in kind or more significant in degree than the effects on others in the local community."
- TAKEAWAY: The analysis for determining who is an "aggrieved party" under an applicable zoning ordinance and the MZEA, and accordingly, who can appeal a local zoning decision has been articulated in a multi-factor test.





TOWNSHIP OF ROSE V. DEVOTED FRIENDS ANIMAL SOCIETY

- This case pertains to a dog kennel/shelter that has about 60 to 75 dogs and was located within Plaintiff Rose Township. The Defendant Animal Society did not have the necessary SUP for operating a dog shelter within Township.
- Defendants bought property in the Township before checking zoning requirements. After purchasing property, the Animal Society asked the Township Zoning Administrator about the zoning requirements. The administrator said they “could apply for kennel permit with Oakland County or purchase licenses for each dog.” The Animal Society’s owner stated that she thought [the Administrator] “didn’t have a clue.” Ultimately, the County agreed to individually licensing the dogs.



TOWNSHIP OF ROSE V. DEVOTED FRIENDS ANIMAL SOCIETY

- Subsequently, the Township (not the County) received complaints about barking and filed a complaint regarding the Defendant's failure to obtain the necessary SUP. In short, the County required individual licenses, and the Township required a SUP; thus, Defendant was not compliant with Township's zoning ordinance.
- The Township sought an injunction to require compliance. But, the Defendant claimed equitable estoppel prohibited the Township from enforcing the ordinance (due to Defendant's reliance on Zoning Administrator's statements).



TOWNSHIP OF ROSE V. DEVOTED FRIENDS ANIMAL SOCIETY

- **TAKEWAY:**
 - Although municipalities generally are not estopped from enforcing zoning ordinances, there are some notable exceptions.
 - A township can be equitably estopped from enforcing a zoning ordinance when (1) a party by representation, admissions, or silence, intentionally or negligently induces another party to believe facts; (2) the other party **justifiably relies** and acts on this belief; and (3) the other party will be **prejudiced** if the first party is permitted to deny the existence of the facts.
 - Merely being misinformed about the provisions of an ordinance by a municipal official and expending some amount of money on that basis is insufficient grounds to estop the municipality from enforcing the ordinance. Also, the Defendant thought the Zoning Administrator “didn’t have a clue” and thus did not justifiably rely on the Zoning Administrator’s statements.
 - The inquiry is whether the entire circumstances, viewed together, present a compelling reason to prohibit the municipality’s enforcement of its ordinance.



CARY INVESTMENTS V. CITY OF MOUNT PLEASANT

FACTS:

- This case arises out of a dispute over the City of Mount Pleasant's recreational marijuana permit scheme.
- The City, pursuant to its ordinance, had a set of 9 factors to "score" marijuana facility applicants. The City only granted 3 permits for retailers, and the City received 10 applications.
- Defendant Cary Investments was an applicant; its score placed it in the 7th position out of 10.
- Cary sued alleging substantive and procedural due process violations.

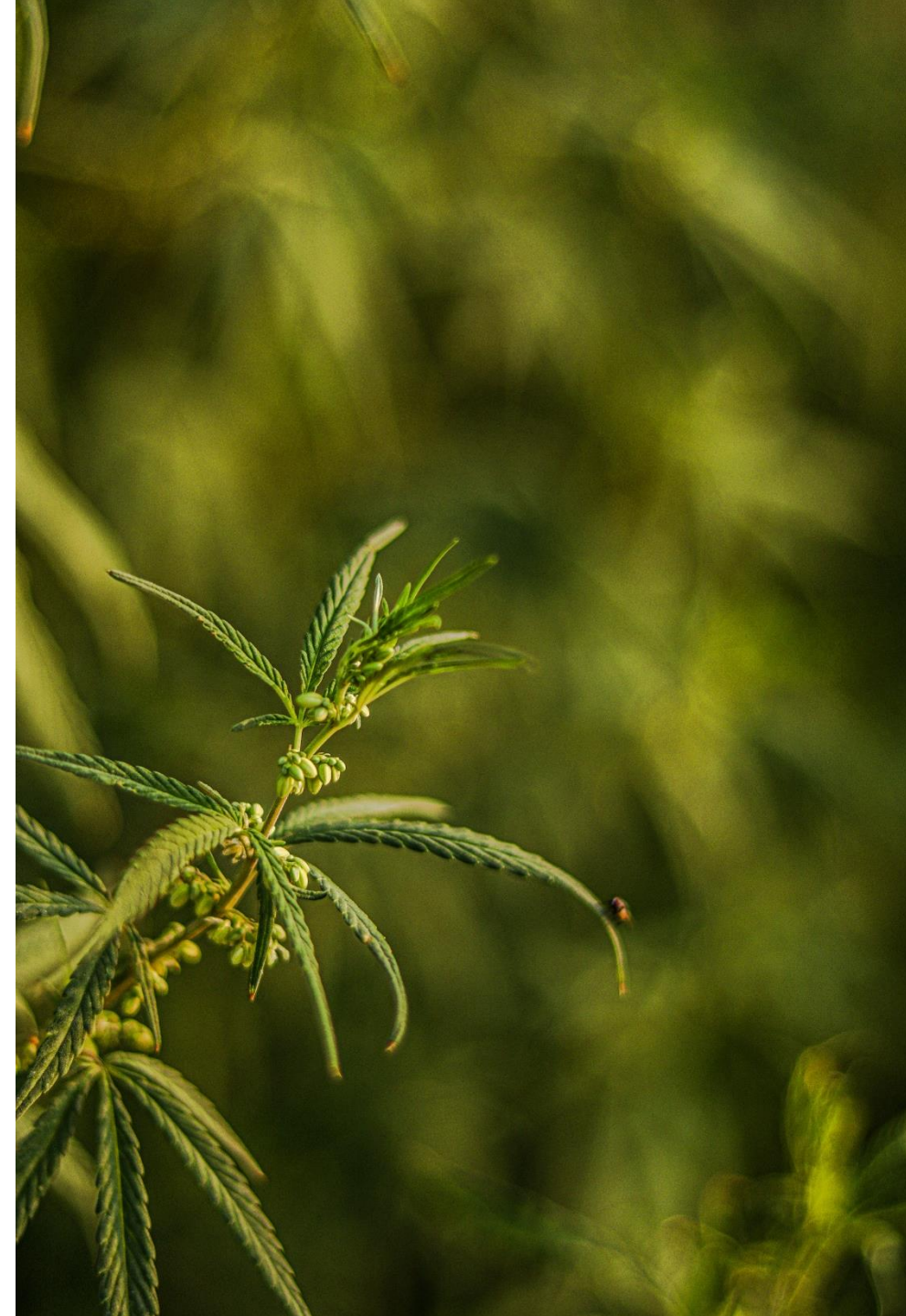
LAW:

- The court notes that when evaluating municipal conduct under a substantive due process claim, only the most egregious official conduct can be said to be arbitrary in the constitutional sense.
- Thus, to sustain a substantive due process claim against municipal factors, the governmental conduct must be so arbitrary and capricious as to shock the conscience.
- The mere refusal to issue a permit is not the sort of municipal action that constitutes a violation of substantive due process.



CARY INVESTMENTS V. CITY OF MOUNT PLEASANT

- Courts are very hesitant to disturb a local government's determination to award or deny permits for marihuana facilities. Here, the court held that the City acted within its authority in denying Cary's application.
- **BONUS TAKEAWAY:** If the local government followed the procedures outlined in the Michigan marihuana statutes, and the selection criteria and procedures are comprehensive and robust, courts will defer to a local government's decision on marihuana permits.
- Also, the court explains that being awarded a state license to operate a marihuana facility, or a local permit to operate a medical marihuana facility, does not constitute a legal entitlement to a recreational marihuana permit.



PINEBROOK WARREN V. CITY OF WARREN, MICHIGAN COURT OF APPEALS

- This case pertains to disputes over the City's denial of marijuana provisioning center permits.
- The City created a Marijuana Review Committee (Review Committee) via ordinance. This Committee was tasked with reviewing, scoring, and ranking all marijuana facility permit applicants. The Committee would then make a recommendation to the City Council, which would vote to either approve or deny the marijuana facility permit. Thus, the Review Committee did not approve or disapprove a single applicant; only the City Council could approve the issuance of a permit.
- Plaintiffs have applied for permits and been denied. Plaintiffs argued that the undisputed evidence showed that the Review Committee violated the Open Meetings Act ("OMA") by holding closed meetings that were required to be open to the public and did not otherwise comply with the requirements of the OMA.

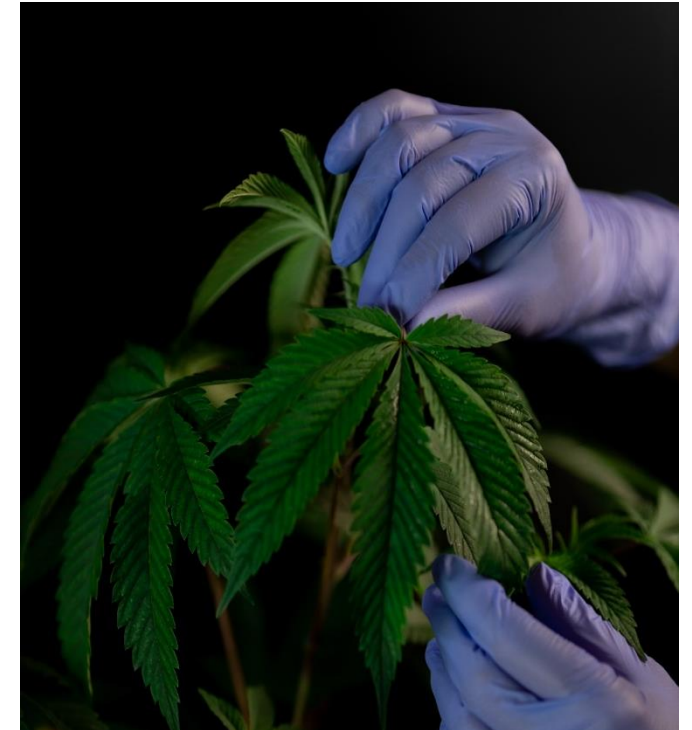


- The court held that the plain language of the Marijuana Ordinance establishes that the Review Committee is neither a legislative body nor a governing body under the OMA, and the City did not delegate decision-making authority to the Review Committee. Because the Review Committee was not a public body subject to the OMA, it did not violate the OMA.
- Only “public bodies” are subject to the requirements under the OMA. A public body is either a legislative body or a governing body that has been “empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function . . . or a person or body that has been delegated the authority to act by a public body that itself is subject to the OMA.”
- Here, the fact that the City Council retained the ultimate decision-making authority was very important. As the court notes, even if in practice the City Council just rubber stamps the Committees recommendations, the Committee would still not be a “public body” because such a status is determined by the “four corners” of the governing document—the City’s marijuana ordinance—and not the Committees “actual” authority.
- Thus, reviewing bodies, such as the Review Committee, can be insulated from the requirements of the OMA if such entities are not granted independent authority, and the governing body of the municipality retains the ultimate decision-making authority.
- **TAKEAWAY:** Marijuana cases (including application of competitive review factors) being decided before the Court of Appeals are turning out favorable!! Follow the OMA, follow your process, be transparent, and apply the standards in the ordinance for approving or denying applicable permits.



LEONI WELLNESS, LLC V. EASTON TOWNSHIP, MICHIGAN COURT OF APPEALS

- This case is another marijuana facility permit application case. In short, the Township's Ordinance 44 limited the number of marijuana retailers within its boundary to one, and it required the Township Board to score three categories of information when deciding between competing applications: the background of the applicant, human resources, and area impact.
- Notably, the initial scoring was tied between Plaintiff and the successful applicant, but the Township awarded the permit to the successful applicant, not the Plaintiff. However, because the initial scoring was done only by the Township's supervisor, the Township Board re-scored the applicants.
- After a re-scoring, the successful applicant's score was higher than the Plaintiff's score. Plaintiff's score was reduced because it no longer met the requirements for a medical-marijuana license and because its proposed building location had "poor visibility for drivers."
- Plaintiff sued the Township, alleging that Ordinance 44 violated the Michigan marijuana laws and the Board violated Due Process and Equal Protection. Trial court ruled for the Defendant Township.



LEONI WELLNESS, LLC V. EASTON TOWNSHIP

- The court affirmed the holding of the trial court, ruling in favor of the Township. The court stated that the decision to award the license was not arbitrary or capricious because the record showed that the Township Board followed the procedures from Michigan's marihuana statutes and Ordinance 44.
- The court shows strong deference to the Township's decision regarding marihuana facility permits. Like *Cary Investments*, this case illustrates that courts often defer to municipal decisions in the face of a constitutional challenge to marihuana permit application procedures, so long as those procedures are reasonable and not arbitrary.
- **Thus, it is important to have robust procedures enacted through ordinances**, both in the realm of marihuana facility permits and other discretionary administrative decisions. These procedures provide a basis to defend a municipal decision against a constitutional challenge.





Questions?

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