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REAL SOLUTIONS

Zoning Litigation Enforcement in Circuit Court

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Disclaimer

- This presentation, and the materials associated with it, are comprised of general information and not intended as legal advice related to specific questions of attorney-client privilege.
- Please contact an attorney if you need assistance related to a specific legal issue.



Zoning Enforcement Overview

- The municipal civil infraction process is usually the easier and cheaper option when it comes to zoning enforcement.
 - Must adopt a civil infractions ordinance and amend any ordinances to be enforced by civil infractions
 - Both zoning and non-zoning (police power) ordinances can be enforced through civil infractions
 - Civil infractions are processed through the district court
 - Allows municipalities to pursue violations without legal counsel
- However, civil infractions are not always the best fit for certain zoning enforcement cases due to the limited nature of proceedings before the district court.
- This presentation will explore the alternative of bringing enforcement action in the circuit court.



Jurisdiction of the Circuit Court

Michigan Zoning Enabling Act

- A use of land or a dwelling, building, or structure, including a tent or recreational vehicle, used, erected, altered, razed, or converted in violation of a zoning ordinance or regulation adopted under this act is a nuisance per se. The court shall order the nuisance abated, and the owner or agent in charge of the dwelling, building, structure, tent, recreational vehicle, or land is liable for maintaining a nuisance per se.” MCL 125.3407.



Michigan's Revised Judicature Act



- Provides that: “All claims based on or to abate nuisance may be brought in the circuit court. The circuit court may grant injunctions to stay and prevent nuisance.” MCL 600.2940(1).



Burden of Proof

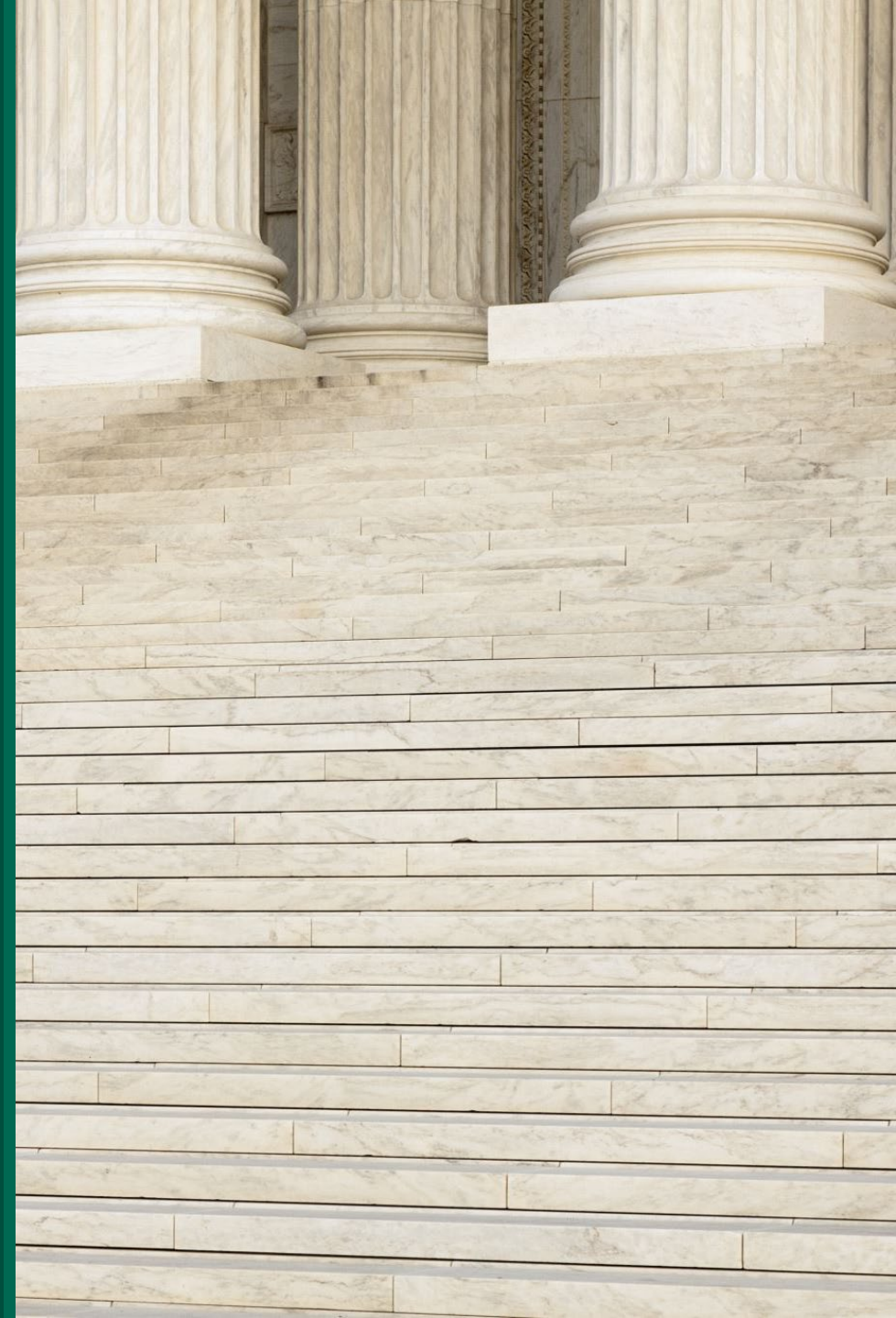
- Nuisance *per se* is something that is a nuisance at all times and under any circumstances, proven by the fact it exists
- In a zoning enforcement case, the municipality will be required to prove that the act or condition in question violates its zoning ordinance “by a preponderance of the evidence,” meaning that it must show that it is more likely than not a violation exists.



Bringing a Circuit Court Action

The Complaint

- Litigation in circuit court must be commenced by filing a complaint, which should include the following:
 - the relevant parties to the suit
 - why the circuit court has jurisdiction over the matter
 - the general allegations of fact giving rise to the complaint
 - the counts for each zoning violation at issue
 - a request for relief



Preliminary Steps



1. Complaint (if necessary, couple with motion for injunction)



2. Defendant is required to file an answer



3. If no answer is filed, the municipality may move for default judgment



4. If the defendant files a timely answer, the next step will be filing initial disclosures, typically followed by either pursuing discovery or filing dispositive motions.

Preliminary Injunctions

- Requires a showing of:
 - Likelihood of success on the merits;
 - Irreparable harm would result if the injunction is not issued;
 - Harm to municipality outweighs harm to the defendant if the injunction is issued; and
 - Public interest weighs in favor of granting the injunction.
- Could be appropriate for violations that are unreasonably harmful to residents (e.g., regular unlicensed concerts disturbing sleep), threaten the environment (e.g., unlicensed junk yard burying waste), or would otherwise cause irreparable harm to the municipality or its residents.
- Can result in a court order enjoining the defendant from engaging in behavior until the case is resolved.



Discovery

- Involves the exchange of information between the parties to the suit.
- Written discovery includes
 - Request to produce documentation or records (requests for production)
 - Questions that the receiving party must answer (interrogatories)
 - Allegations that the receiving party must admit or deny (requests for admissions)
- Useful tool in obtaining evidence of zoning violations that would be difficult to prove otherwise (not available for civil infractions).



Deposition

- Depositions are part of the discovery process that includes the questioning of key witnesses, both lay and expert.
- Throughout the discovery process, municipal officials and employees will need to work closely with their legal counsel to answer requests, locate documents, and prepare and appear for depositions.
- Remember: Municipal officials and employees can also be deposed by the counsel for the defendant.



Motions for Summary Disposition



- Dispositive motions typically ask the court to rule:
 - that a party is entitled to judgment as a matter of law on a certain issue; or
 - that there is no genuine dispute of material fact that a party is entitled to judgment on a certain issue.
- If granted, resolve issues without the involvement of a jury, with the potential to resolve the entire action.





Settlement

- At *any* point during litigation, settlement is always an option.
- Some courts require the parties to engage in alternative dispute resolution (“ADR”) such as facilitated mediation to explore potential resolution of the case without court involvement.
- The cost of protracted litigation can be a strong motivator to find compromise.
- The terms of settlement are generally limited only by the parties’ willingness to agree to them. Municipalities have additional flexibility in settling lawsuits to approve uses that would otherwise be prohibited (e.g., use variances).

The Trial and Beyond

- If the case does not settle and if dispositive motions do not resolve the suit the next step will be a pretrial conference, followed by either a jury or bench trial.
- Trial can be a complex process, but with competent legal representation and adequate preparation, a municipality can prevail at trial and obtain a favorable judgment.
- Even after the final judgment is rendered, the decision can be challenged.
 - Motions for reconsideration
 - Motions for judgments notwithstanding the verdict
 - Appeals to Michigan's Court of Appeals



Why File in Circuit Court?

1. Cases that are too complex or nuanced for a civil infraction action in district court.
2. Cases where evidence of a violation cannot be acquired through observing the property or through an administrative search warrant.
3. Resolve issues where the district court with jurisdiction has previously expressed a disinterest in adjudicating the matter.
4. Can enable interested third parties to participate in the lawsuit.
5. Obtain immediate injunctive relief for a zoning violation that poses an imminent danger to the public or the environment.
6. High-profile or high-stakes cases. More transparent, leaves less to chance.





Questions?

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