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The money is always there, but the
pockets change; it is not in the same
pockets after a change; and that is all
there is to say about money.

Gertrude Stein

TURKISH AND THE FUTURE

by

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If the delicately balanced land use system which we know as zoning and planning can be viewed as an arterial system between competing interests in society, then the recent decision of **Turkish v. City of Warren**,¹ may be viewed as near complete arterial blockage. Probably the most often forgotten component of land use regulation through zoning is the goal or objective of any land use scheme. Nowhere is this omission more apparent than in the **Turkish** decision. As a result of the **Turkish** and **Zaagman** decisions, the Michigan Supreme Court has severely tampered with the delicate balance between individual property and societal interests. What had for years been a delicately balanced battle line between private developer and municipal planner has severely crumbled. It remains to be seen whether this alteration of the natural ecology of the zoning system will still have the capability of implementing and carrying out our land use goals, as well as protecting those competing interests between public and private sectors.

The land use system in the United States was long recognized as a system of competing interests — public, private and individual. The role of government, traditionally, had been to act as the mediator between these various competing interests utilizing community goals and objectives as a determining measuring rod. An early study funded by the Urban Land Institute through the University of Pennsylvania contains the following pertinent observation of this relationship:

The legal system of the United States recognizes two basic groups of interests that are found in civil society: the interests of society as a whole, commonly referred to as the general welfare; and the interests of the individuals that make up society. Government has the responsibility to protect and further the general welfare as well as to moderate among the variety of interests represented in society. Government exercises certain powers in the implementation of its mandate to promote the general welfare; one of the most important of these powers is the police power. In order to protect the individual against the caprice of the majority and the tyranny of society, certain individual rights are recognized, among them the right to hold, use and enjoy property. Especially in the complex environment of urban society the conflicts between the welfare of society and the rights of individuals, as well as conflicts between the rights of various individuals, are frequent and perplexing. One of the most perplexing of these conflicts is the conflict between the public and private interest in the use of property. In reality, property ownership is never absolute, but rather involves a group or "bundle" of rights and privileges divided between individuals and society. Municipal zoning enacted under the police power constitutes a major redefinition of the relative share in the control of property between society and the individual.²

¹**Turkish v. City of Warren** and companion case of **Zaagman v. Kent**, reported at 406 Mich 137 (1979).

²Ukeles, **The Consequences of Municipal Zoning**, Urban Land Institute, at p. 20 (1964).

In **Turkish**, a rather conventional claim of land confiscation was made by the property owner asserting invalidity of the zoning ordinance as applied to his property.³ The Supreme Court initially, in reviewing the merits of the controversy, reaffirmed its previous positions with regard to standards for invalidity and burden of proof. The standards reaffirmed by the court require that to prove a zoning ordinance invalid, a plaintiff must show either that there is no reasonable governmental interest being advanced by the present zoning classification, or that the ordinance represents a purely arbitrary, capricious and unfounded exclusion of other types of legitimate land use in the area in question.⁴

The rules for applying these basic principles were likewise reiterated from the **Kropf** decision⁵ of 1974, as follows:

1. That the ordinance comes clothed with every presumption of validity.
2. That the burden of proof is upon the party challenging the ordinance to affirmatively show it to be an arbitrary and unreasonable restriction upon the use of property and that there is no room for a legitimate difference of opinion concerning its reasonableness.
3. That enforcement of the ordinance in question would preclude use of the property for any purpose to which it is reasonably adapted.
4. That the supreme court will give great weight to the findings of the Chancellor in an equity case.

Still, through the various rules of law which have governed land use decisions in Michigan over the recent decade, the delicate balance between private developer and municipal planner had not been significantly altered. Since the 1957 decision in **Brae Burn, Inc., v. Bloomfield Hills**⁶ and through the changes invoked by the preferred use doctrine of **Bristow v. City of Woodhaven**,⁷ developers and municipalities had been able to make the necessary adjustments to preserve their relative interests in a fairly competitive manner. This, of course, was due in no small part to the usually fair-handed judicial treatment such controversies received by courts usually familiar with the geographic area and applying the historic good sense and fair play of the chancellor. Even after

³For a discussion of distinctions between challenge to an ordinance applied or on the face of the ordinance, see Feiler, **Zoning, A Guide to Judicial Review**, 47 *Journal of Urban Law* 319 (1964).

⁴406 Mich at 153.

⁵**Kropf v. Sterling Hts.**, 391 Mich 139 (1974).

⁶350 Mich 425 (1957).

⁷35 Mich App 205 (1971).

the short-lived administrative rules of **Sabo v. Monroe Twp.**⁸ and the retrenching decision of **Kirk v. Tyrone Twp.**,⁹ the public and private sectors could still hope to prevail in their judicial contests. The burden of proof imposed in the **Kropf** and **Kirk** decisions were not essentially different from that set forth in the earlier **Brae Burn** decision and did not present insurmountable obstacles in the proper case. The zoning controversies were at least uncertain enough as to generally require municipalities to seriously consider challenges to a zoning ordinance and to take a hard look at the outset of such proceeding.

Perhaps the single great tempering influence in maintaining the private-public balance through the myriad of decisions of recent years has been the decision of the Michigan Supreme Court in **Daraban v. Redford Twp.**¹⁰ In **Daraban** the Court stated expressly for the first time that in an equitable zoning dispute the court is empowered to enjoin municipal interference with a particular proposed use.¹¹ In **Daraban**, the defendant township had conceded the invalidity of the ordinance but maintained that it should have an opportunity to rezone to what the municipality considered was the best use of the property for office use. The plaintiff sought injunctive relief compelling allowance of his use of the property as multi-family residential. The grant of injunction by the lower court was affirmed by the Supreme Court.

The importance of the **Daraban** decision in modern zoning litigation was most significant. It allowed a developer at least some measure of assurance that if he did overcome the burden of proof as to the invalidity of the ordinance, he could at least expect the desired relief or some form of the desired relief. It often required the litigating developer to undertake extensive planning prior to litigation. Likewise, it usually required the municipality to take a preliminary hard look at its present zoning classification and to make a determination at the outset of the controversy whether there was a more suitable zoning classification to which the property could be restricted. In many situations the mere application for rezoning or initiation of suit caused the municipality to re-examine present restrictions and explore other alternatives.

One of the most significant changes in zoning litigation brought about by the **Turkish** decision is that the municipal "hard look" may be postponed until after the zoning ordinance has been proven invalid through the litigation process. The extraordinary nature of the **Turkish** rule was to engraft upon the litigation process a mandatory post-judgment opportunity for the zoning authorities to escape an unwanted use. In one sense, it serves to limit the courts to a strictly legal function (a position rejected by the **Daraban** court) and likewise serves to postpone any hard look by the

⁸394 Mich 531 (1975).

⁹398 Mich 429 (1976).

¹⁰383 Mich 497 (1970).

¹¹Some of these earlier decisions in which municipal injunctive relief was contained include: **Long v. City of Highland Park**, 329 Mich 146 (1950); **Industrial Land Co. v. City of Birmingham**, 346 Mich 667 (1956); **Redford Moving & Storage Co. v. City of Detroit**, 336 Mich 702 (1953); **Dequindre Development Co. v. City of Warren**, 359 Mich 634 (1960); **Lacey v. City of Warren**, 7 Mich App 105 (1967).

municipality until after it is sure that it has lost the case for preservation of then existing restrictions. This so-called midsatisfactory use rule of the **Turkish** court is fraught with implications for both private developers and municipal zoning authorities. The **Turkish** rule of midsatisfactory use in essence allows a municipal zoning authority an opportunity, should the present restriction be found invalid or unconstitutional, to devise an amendatory ordinance which might be capable of passing constitutional muster. The rule, stated simply by the court as follows:

...[W]e rule that subsequent to a judicial declaration of invalidity the matter should be remanded to the appropriate municipal zoning authority to present, for the chancellor's consideration within sixty days of this Court's or the appropriate reviewing court's order of unconstitutionality, an adopted amendatory ordinance comporting with the dictates of equity as well as the requirements of constitutional reasonableness as applied to plaintiff's parcel...¹²

At first blush, one may question whether the second round of reasonableness determination is, in fact, any different than the consideration of the first round determination. The court, unfortunately, does not define the role of the trial court upon presentation of the amendatory ordinance after remand other than a determination of what is equitable. The five-fold procedure after a finding of unconstitutionality or invalidity of present zoning is set forth by the court in **Turkish** as the mandatory controlling rule for all zoning cases. The five-fold post-judgment procedure is, of course, only applicable upon a finding of invalidity by the trial court on the first round. Therefore, a finding of legality of present zoning classification will invoke none of these procedures. The situation is well pointed out in the recent Court of Appeals decision in **Schwartz v. City of Flint**.¹³ In **Schwartz**, the Court of Appeals, in a most unusual opinion upon *de novo* review, reversed the ruling of the trial court and found the ordinance invalid. Thereafter, the Court of Appeals quoted the applicable rules governing the relief to be afforded to the now successful litigant:

We are now convinced, upon review of the evidence, that had we heard the evidence in the first instance we would have been compelled to rule contrary to the ruling actually made by the trial court. Therefore, we are constrained to reverse, enjoin defendant from enforcing the unconstitutional classification, and remand the matter to the appropriate municipal zoning authority with instructions to present for the chancellor's consideration, within 60 days of this Court's or the appropriate reviewing court's order of unconstitutionality, an adopted amendatory ordinance comporting with the dictates of equity as well as the requirements of constitutional reasonableness as applied to the aggrieved landowner's parcel.

Specifically, upon the expiration of or within this 60-day period, the chancellor shall enter one of the following orders:

¹²406 Mich at p. 161.

¹³92 Mich App 495 (1979). See also, **Hagelstein v. City of Troy**, 93 Mich App 677 (1979).

(i) If, after remand to the city council, plaintiffs and defendant city find the city's amendatory ordinance mutually acceptable, the chancellor shall order the implementation of such "midsatisfactory" amendatory ordinance.

(ii) If, after remand to the city council, defendant city submits an amendatory ordinance unacceptable to plaintiffs but embodying Justice Black's "midsatisfactory use" as determined by the chancellor through a balancing of equitable considerations, the chancellor shall order the implementation of such "midsatisfactory" amendatory ordinance.

(iii) If, after remand to the city council, defendant city submits an amendatory ordinance unacceptable to plaintiffs and plaintiffs submit a proposed use embodying Justice Black's "midsatisfactory use" as determined by the chancellor through a balancing of equitable considerations, the chancellor shall order the implementation of plaintiffs' proposed "midsatisfactory use."

(iv) If, after remand to the city council, neither plaintiffs nor defendant city can agree upon the other's amendatory ordinance or proposed use and the chancellor determines that neither party's proposal embodies Justice Black's "midsatisfactory use," the chancellor shall order the implementation of a "midsatisfactory use" after both plaintiffs and defendant city, as well as other affected parties, have had the benefit of a hearing and the submission of proofs to determine the most equitable or "midsatisfactory use" to be made of plaintiffs' parcel.

(v) If, after remand to the city council, defendant city does not submit an adopted amendatory ordinance to the chancellor, the chancellor is to conduct a hearing, supplemented by the submission of proofs by all affected parties, to determine and implement the most equitable or "midsatisfactory use" to be made of plaintiffs' parcel.

No costs. A public question being involved.¹⁴

Although one may theorize endlessly with regard to the post-judgment rules governing such disputes as set forth in **Turkish**, the tactical implications cannot be ignored. The decision raises a serious question as to when rights of appeal will accrue to either litigant. For instance, if the plaintiff landowner is successful on the first round and the court enters a judgment of unconstitutionality or invalidity, does the municipality thereby gain a right of appeal on this determination? On the one hand, this would interpose substantial delay in the proceedings, yet on the other hand, should a municipality be forced to actually adopt an amendatory ordinance if indeed its original ordinance will be found valid? One can imagine the potential for disarray of local ordinance books should this occur. The court makes clear that appeal does lie subsequent to the post-judgment proceedings by the trial court.

¹⁴92 Mich App at 540-541.

In addition, if the role of the court upon disagreement of the parties as to a mid-satisfactory use is to balance the equities, then is a subsequent trial with witnesses and proofs called for? It would seem to raise the potential that, after adoption of an amendatory ordinance by the municipality which is unsatisfactory to the property owner, an entirely new trial together with new witnesses and proofs may well be necessary in order to overturn the amendatory ordinance. In this case, the municipality, of course, has two ordinances on its books held invalid, while perhaps having to adopt yet a third ordinance governing the subject property to conform to a potential ruling of the court in favor of plaintiff's proposed use. In addition, there would appear to be no "default" provision on the part of the municipal authorities. Should the municipal authorities fail to adopt an amendatory ordinance within the required sixty days, then the trial court simply conducts further proceedings to determine the appropriate mid-satisfactory use. Inherently problematical in this kind of process is the timing for the mid-satisfactory use hearing. If such a hearing is to include testimonial proofs and exhibits, then the matter of scheduling the second round trial does not appear to be much different than scheduling the first round trial.

The practical implications are not necessarily apparent. The major practical consideration is the loss of the delicate balance between developer and municipality by the court's inability to offer specific relief to the plaintiff landowner. A developer seeking a determination of invalidity of single family zoning to allow the construction of multi-family, office or similar uses may well wind up with an economically viable mid-satisfactory use of cluster or higher density single family use. This, after perhaps two full trials and years of litigation, is very little enticement indeed to attempt to upset what may even be a patently invalid zoning restriction. Often, of course, a landowner may well be simply unable to challenge such restrictions.¹⁵

The **Turkish** decision likewise raises the question of whether such rules are a planning inducement or indeed tend to dissuade a municipality from master or comprehensive planning? One may well speculate on the municipal comprehensive planning position in view of **Turkish** and to what extent the **Turkish** decision serves to foster and create vast holding zones awaiting litigation. Holding zones have been generally prohibited in Michigan under the rule of present conditions. That is, a restriction to be valid must be related to present and not simply future conditions. This rule has been well settled through numerous cases in Michigan and reaffirmed by the court as late as **Kropf v. Sterling Hts.** Through the municipal advantage, even in the event of loss at the first round trial, of proffering a second round amendatory ordinance, such holding patterns may well become the usual, rather than the extraordinary.

The second nature of any rule of law governing land use and resources, is the change or flexibility of such rule to meet society's needs and changing conditions. This is especially true today where the **Turkish** pronouncement would appear to run headlong into three major areas of concern to the people of the State of Michigan. These include the present economic conditions within the State of Michigan; the State and Federal Environmental Protection Acts; and the fast developing changes in standards and liability under the Federal Civil Rights laws.

¹⁵Such considerations have been part of the rationale for the rule of this State allowing even a conditional purchaser with knowledge of existing restrictions to challenge a zoning classification. See **Robyns v. City of Dearborn**, 341 Mich 495 (1954); **Sturdy Homes v. Redford Township**, 30 Mich App 53 (1971).

The economic implications, although beyond the purview of this writing, are all too clear and manifest. Beyond the readily apparent need for employment and development stimuli in this state, such rules for land use appear to have a positively dissuasive effect on the establishment of new commerce, industry and indeed upon all construction other than single family residential. Ultimately, cognizance must be taken of the apparent conflict between the expensive and earnest efforts on the part of state government to encourage and foster new industrial development and the right of local government under the **Turkish** standards to limit and restrict such new development under the mantle of single family residential areas. Similarly, conflict between local zoning and state¹⁶ and federal¹⁷ environmental legislation will eventually surface as if from a bubbling cauldron. Can a local zoning scheme with the attendant costs upon services such as water and sewer be reconciled with various state and federal environmental legislation protecting the air, water, and natural resources of the state?

Recent Civil Rights Act decisions represent a major force for change on the horizon. Although obviously initially conceived as protecting the personal rights of minorities, the impact of the Civil Rights Act has recently been greatly expanded. In 1972 the United States Supreme Court held that the act protects property as well as personal rights¹⁸ and in 1978 further held that a municipality may be a "person" within the meaning of the Act.¹⁹ These decisions left open the question of immunity of municipalities and their officials from damage or other claims under the Civil Rights Act. In **Owen v. City of Independence**, the U.S. Court held that although municipal officials may still enjoy immunity from action under the Civil Rights Act for good faith actions, that no such immunity exists on the part of the municipality itself.²⁰ Such strict liability under the Act on the part of the municipality may well yield to some alteration of current land use thinking and programs.

Other doctrines are likewise available to assist trial courts in restoring delicate public-private balance in proper cases. Although not new, these legal rules may well take on a new significance in future adjudication of land use disputes. Chief among these is the doctrine of conflict and pre-emption — a transplant from the law of municipal corporations to land use control. It is settled law of municipal corporations in Michigan that a municipality may not permit what the state prohibits, nor prohibit what the state permits.²¹ The land use implications and potentialities for application of this doctrine are too significant to be ignored. Even a cursory glance at the Michigan statutory scheme regarding many types of housing, commerce, economic development, resource

¹⁶**E.q.:** Anderson-Rockwell Environmental Protection Act of 1970; M.C.L.A. §691.1201 et. seq.

¹⁷**E.q.:** National Environmental Policy Act of 1969; 42 U.S.C. §4321 et. seq.

¹⁸**Lynch v. Household Finance Co.**, 405 US 538 (1972).

¹⁹**Monell v. New York**, 435 US 658 (1978).

²⁰100 S. Ct. 1398 (1980) at 1401 (syllabus): "Held: A municipality has no immunity from liability under §1983 flowing from its constitutional violations and may not assert the good faith of its officers as a defense to such liability."

²¹**Walsh v. City of River Rouge**, 385 Mich 623 (1971).

development, and the like will reveal a myriad of complex state legislation often involving a state administrative agency or a state permit requirement. An early application of this doctrine to land use controls was in **Richards v. Pontiac**,²² wherein the court determined that the Michigan Trailer Coach Park Act superseded a local ordinance limiting the stay of trailers. The potential application of this doctrine is limited only by the imagination — for instance in **Walsh**, preemption was found through legislative silence, while in **Miller v. Fabius Township**,²³ a state statute expressly regulating water skiing on inland lakes was held not to preempt local legislation which appeared to have gone somewhat further in regulating such uses. Since such implied conflict cases involve the traditional judicial role of statutory construction, the courts are virtually free to fashion their own rules resolving such issues. Therefore, similar statutory schemes may often meet with substantial differences of judicial interpretation.²⁴ Such a search for the legislative intent was the basis of the recent decision in **Dearden v. City of Detroit**,²⁵ wherein the court held that property to be used as a rehabilitation center by the State Correction Department did not come within the purview of local Detroit zoning restrictions by reason of preemption by the legislative statutory scheme.

The **Dearden** decision raises another significant potential argument which may well be urged upon the courts in deciding land use decisions. In **Dearden** the court determined that the zoning restrictions applied to the **user** of the land rather than the **owner** of the land and that the ownership (in this case a lessor to the Corrections Department) is immaterial. Many municipal zoning ordinances often attempt a myriad of distinctions between profit and non-profit corporations as well as municipal and non-municipal uses. If, indeed, the use is the same regardless of ownership, such distinction may well give rise to a claim for denial of equal protection and the possibility of an allegation being sustained under the Civil Rights Act.²⁶ As the range of protectable civil rights expands to property rights to an even greater extent, the courts may well take a harder look at efforts at classifications. This is especially true with regard to allegations of economic or racial discrimination, or even attempted distinctions between various kinds of uses.

Other doctrines are also available to the courts. These include the very basic concept of when a zoning ordinance may not be a zoning ordinance within the meaning of **Turkish**. The definition of a zoning ordinance is not often found in the decisions, but would appear to include the organization of land uses within a municipality into districts.²⁷ Various aspects of many zoning

²²305 Mich 666 (1943).

²³366 Mich 250 (1962).

²⁴Compare for instance, **Detroit Edison Co. v. City of Wixom**, 382 Mich 659 (1969) and **Dearden v. City of Detroit**, 403 Mich 357 (1978).

²⁵**Ibid.**

²⁶See especially: 42 USC §1983.

²⁷See the Court of Appeals decision in **Central Advertising v. City of Ann Arbor**, 42 Mich App 59 (1972); reversed on other grounds.

ordinances may well be construed to fall outside the purview of the definition of a “zoning” ordinance.²⁸ These may include such matters as performance standards within a particular district, environmental controls, open space requirements, and the like. Estoppel may also be found against a municipality enforcing its ordinances where it has lulled a landowner into a substantial change of position. In **Cross v. Whedon**,²⁹ the court appeared to take a somewhat more logical view of estoppel against a municipality where the positive acts of municipal officials caused a party to act in reliance and incur a change of position or make expenditures. The caveat, of course, is that the actions of the officials relied upon would have to have been legal actions of the municipality.³⁰

CONCLUSION

Although **Turkish** represents a thwarting of the traditional battleground between private landowners and municipal zoning authorities, and in spite of its unfortunate implications for land use in the State of Michigan, the bar and bench have many resources left to reestablish a harmonious co-existence. Zoning cases can no longer be approached in the time-honored traditional fashion either by private developer’s counsel or by municipal counsel. Developer’s counsel must take into account the all important time factors involved and the lack of site specific relief available. In addition, municipal counsel must take into account the time and litigation expenses involved through perhaps a two round trial procedure, as well as being subjected to judicial acceptance of new legal theories to combat what may indeed be a patently unfair situation. The economic chaos that potentially follows from the present **Turkish** rule must be met head on by all segments of the legal and planning profession.

²⁸See, for example, **Adrian Mobile Home v. Adrian**, 94 Mich App 194 (1979). (Special use permit treated as general police power ordinance).

²⁹93 Mich App 13 (1979).

³⁰**Ibid**, at p. 19.

THE LEGISLATIVE SCENE
Committee on Legislation
Mary P. Levine, Chairperson

The Legislature was briefly in session after coming back from summer recess. Fortunately, the lawmakers were able to take up some important pieces of legislation before leaving for its pre-election recess. The condominium conversion bill package was acted upon quite quickly, much to the surprise of this writer and other people closely watching these bills. The bills (HB 5227 and HB 5580) were passed with amendments by the Senate and sent back to the House where they were concurred in and enrolled. The bills should find their way to the Governor's desk sometime in November. The House also acted on the Construction Lien Bill. It is expected that the Senate will also act on the bill by November with final passage expected before the end of the year.

Other bills of interest which were signed into law in the past two months are: HB 4858 (P.A. 238) which authorizes the use of graduated payment mortgages (GPM's) by lending institutions and SB 487 (P.A. 227) which grants an additional tax credit to renters.

ACTION ON PREVIOUSLY REPORTED LEGISLATION

- HB 4114 9/22/80 general orders with substitute; 9/25/80 third reading with substitute as amended; 9/26/80 amended; 9/29/80 amended, passed, I.E.
- HB 4858 7/16/80 presented to Governor; 7/24/80 approved by Governor, P.A. 238, I.E.
- HB 5227 9/26/80 third reading with substitute; 9/29/80 passed, I.E.
- HB 5257 9/4/80 third reading with amendments; 9/22/80 passed, I.E.; 9/24/80 Senate amendments concurred in, I.E.; ordered enrolled; 9/26/80 presented to Governor.
- HB 5580 9/26/80 third reading with substitute; 9/29/80 passed, I.E.
- HB 5863 9/15/80 general orders; 9/18/80 third reading; 9/22/80 passed, I.E.; 9/23/80 ordered enrolled; 9/25/80 presented to Governor.
- HB 5923 9/18/80 third reading; 9/22/80 passed, I.E.; 9/23/80 Com. of Finance.
- HB 5924 9/23/80 second reading; 9/24/80 third reading.
- SB 487 7/10/80 presented to Governor; 7/18/80 approved by Governor, P.A. 227, I.E.
- SB 551 7/17/80 presented to Governor; 7/20/80 approved by Governor, P.A. 228, I.E.
- SB 684 9/17/80 second reading with amendments; 9/18/80 third reading with amendments; 9/24/80 passed, I.E.; 9/26/80 House amendments concurred in, I.E., ordered enrolled.
- SB 685 9/17/80 House amendments nonconcurred in; 9/24/80 referred to conference committee.

- SB 1117 9/24/80 second reading with amendments.
- SB 1159 7/10/80 presented to Governor; 7/18/80 approved by Governor, P.A. 226, I.E.
- SB 1169 7/17/80 presented to Governor; 7/29/80 approved by Governor, P.A. 252, I.E.
- SB 1170 7/17/80 presented to Governor; 7/29/80 approved by Governor, P.A. 253, I.E.

NEWLY INTRODUCED LEGISLATION

- HB 6010 The bill would amend section 510 of P.A. 281 of 1967 to exclude from income credits granted under the Farmland and Open Space Preservation Act. (Introduced by Reps. Dodak, et al on 9/4/80 and referred to the Com. on Taxation)
- HB 6018 The bill would amend P.A. 59 of 1979 by adding section 122a which would require a 1-year notice to tenants of mobile home conversion condominium. (Introduced by Rep. T. Brown on 9/4/80 and referred to the Com. on Urban Affairs)
- HB 6019 The bill would amend sections 9, 10, 24b, 27, 34, 34a, 34b, 37, 43, 44, 131e and 152 of P.A. 206 of 1893 to change the term state equalized value to economic equalization value in the Property Tax Act. (Introduced by Rep. T. Brown on 9/4/80 and referred to the Com. on Taxation)
- HB 6025 The bill would amend P.A. 306 of 1919 by adding section 13a which would require a real estate broker to pay to his or her real estate salesperson a commission within one week of the closing. (Introduced by Reps. R. Hood, et al on 9/4/80 and referred to the Com. on State Affairs)
- HB 6039 The bill would amend section 7a of P.A. 206 of 1893 to define homestead to exclude households with income over \$50,000.00. (Introduced by Rep. V. Smith on 9/11/80 and referred to the Com. on Taxation)
- HB 6046 The bill would amend P.A. 266 of 1929 by adding section 11a which would revoke a plumber's license for causing a homeowner a construction lien recovery fund payment. (Introduced by Reps. Dillingham, et al on 9/16/80 and referred to the Com. on Consumers; 9/17/80 second reading; 9/18/80 third reading; 9/26/80 passed, I.E.; 9/29/80 Com. on State and Veterans' Affairs)
- HB 6047 The bill would amend P.A. 217 of 1956 by adding section 8c which would revoke an electrician's license for causing a homeowner a construction lien recovery fund payment. (Introduced by Reps. Allbritten, et al on 9/16/80 and referred to the Com. on Consumers; 9/17/80 second reading; 9/18/80 third reading; 9/26/80 passed, I.E.; 9/29/80 Com. on State & Veterans' Affairs)
- HB 6048 The bill would amend section 16 of P.A. 383 of 1965 to allow a residential builder's license to be revoked for causing a homeowner a construction lien recovery fund payment and remove the right to a construction lien of a person supplying material or performing labor for an unlicensed builder. (Introduced by Reps. Ciaramitaro,

et al on 9/16/80 and referred to the Com. on Consumers; 9/17/80 second reading; 9/18/80 third reading; 9/26/80 passed, I.E.; 9/29/80 Com. on State and Veterans' Affairs)

- HB 6081** The bill would require certain standards for awarding capital outlay contracts by the State. (Introduced by Reps. J. Young, et al on 9/25/80 and referred to the Com. on Appropriations)
- HB 6087** The bill would amend section 27 of P.A. 206 of 1893 to exclude from property tax assessments true cash value the commission earned on a sale of real property. (Introduced by Reps. Allen, et al on 9/26/80 and referred to the Com. on Taxation)
- HB 6088** The bill would amend section 9 of P.A. 206 of 1893 to exempt property used in or for the production of methanol and ethanol from property taxation. (Introduced by Reps. Gnodtke et al on 9/26/80 and referred to the Com. on Taxation)
- HB 6089** The bill would provide that commercial farms not be declared public or private nuisances under certain circumstances. (Introduced by Reps. Dodak, et al on 9/26/80 and referred to the Com. on Agriculture)
- SB 1223** The bill would amend sections 3 & 4 of P.A. 204 of 1976 to provide for purchase of landfills for counties and townships from the Recreational Land Acquisition Trust Fund. (Introduced by Sen. Mack on 9/3/80 and referred to the Com. on Environmental and Agricultural Affairs)
- SB 1259** The bill would amend the title and section 4 of P.A. 286 of 1972 to provide an exemption from the Land Sales Act for certain subdivisions. (Introduced by Sen. Ross & Gast on 9/18/80 and referred to the Com. on State and Veterans' Affairs)
- SB 1260** The bill would amend the title and section 3 of P.A. 383 of 1965 to exempt a developer of a condominium project from state licensure requirement. (Introduced by Sen. Ross on 9/17/80 and referred to the Com. on State and Veterans' Affairs)
- SB 1261** The bill would amend section 5005 of P.A. 236 of 1961 to remove prohibition against arbitration of condominium disputes. (Introduced by Sen. Ross on 9/17/80 and referred to the Com. on State and Veterans' Affairs)
- SB 1268** The bill would amend sections 7n and 7o of P.A. 206 of 1893 to provide for meeting halls of certain non-profit organizations to be exempt from property taxation. (Introduced by Sens. Young, et al on 9/18/80 and referred to the Com. on Finance)
- SB 1297** The bill would amend the title and section 16a of P.A. 184 of 1943 to prohibit locating a licensed residential facility within 2,500 of an existing facility in a township. (Introduced by Sens. Bishop, et al on 9/29/80 and referred to the Com. on Health & Social Services)

- SB 1298 The bill would amend the title and section 3b of P.A. 207 of 1921 which defines a licensed residential facility. (Introduced by Sens. Bishop, et al on 9/29/80 and referred to the Com. on Health & Social Services)
- SB 1299 The bill would amend the title and section 16a of P.A. 183 of 1943 to prohibit locating a licensed residential facility within 2,500 of an existing facility in a county. (Introduced by Sens. Bishop, et al on 9/29/80 and referred to the Com. on Health & Social Services)
- SB 1300 The bill would provide general amendments to the Adult Foster Care Facilities Act, P.A. 218 of 1979. (Introduced by Sens. Bishop, et al on 9/29/80 and referred to the Com. on Health & Social Services)

RECENT DECISIONS

by

**Joseph A. Lloyd
Lloyd, Rutzky & Dodge**

As of this issue, after a hiatus of several months, this column appears under new management. We will try to present in this space news about recent court decisions in Michigan, in both the State and Federal courts. We will also try to present recent annotations covering decisions in other states which may be of interest to the Section membership. If any Section members are involved in pending appeals which will be of interest to the rest of the Section, we would be pleased to publish progress reports on the status of the appeal. To this end, we solicit your questions and comments. They may be sent to Joe Lloyd, 618 S. Ashley, Ann Arbor, Michigan 48103.

**PINE-WOOD LIMITED v DETROIT MORTGAGE AND REALTY CO, _____ Mich App
_____, 290 NW2d 86 (1980)**

Statute of Frauds, full performance exception, mortgage brokers.

A binding written agreement existed between the mortgage applicant and mortgage broker, and the applicant had paid the application fee. The Broker was able to obtain for him a commitment for less than promised amount, and demanded to be paid a commission pursuant to an alleged oral modification of the agreement. The Applicant sued for refund of the application fee, and claimed no oral modification could be valid under the Statute of Frauds. The Broker argued quantum meruit and the full performance exception to the Statute of Frauds. It was held that, while a contract to obtain a mortgage must be in writing, oral modification thereof would be binding where the application fee was already in the Broker's hands. The court distinguished cases where a broker sought to collect an unpaid commission on quantum meruit, on the grounds that there is little opportunity for abuse in a case where the commission has already been paid. Query whether in a different case, earnest money held by a broker in escrow would be treated similarly.

UNITED LISTING SERVICE v SHEPHERD, _____ Mich App _____, 293 NW2d 625 (1980)

Brokers, commissions, Statute of Frauds, signature of only one spouse on listing.

The Broker had a listing agreement signed only by the Husband. The Wife, however, had signed a counter-offer to one prospective purchaser. That counter-offer was rejected. The Broker obtained an offer allegedly equivalent to the rejected counter-offer from a new prospective purchaser. When this new offer was rejected, the Broker commenced an action seeking a commission. The court affirmed judgment for the homeowner. It was found, on the facts of the case, that the signature of the husband was not equivalent to a promise to obtain his wife's acceptance of an offer. The court further held that signature on a specific counter-offer is not equivalent to signing a listing agreement.

CHRISTY v PRESTIGE BUILDERS, _____ Mich App _____, 290 NW2d 395 (1980)

Negligence and Implied Warranties in new residential properties.

The water supply in a newly constructed residence was unfit for normal residential use. The court held that a subdivision proprietor has a duty of care to the ultimate purchasers of homes therein, and should have warned them of possible problems with their water supply. The court rejected the claim that there was an implied warranty of habitability running with the land. Such warranty exists as regards new construction, but does not extend to sale of the land itself.

CORRIGAN v MILLER, _____ Mich App _____, 292 NW2d 181 (1980)

Boundary disputes, acquiescence.

The parties and their predecessors in title had treated a fence as the boundary between them for more than 15 years. The court observed that the doctrine of acquiescence was different than that of adverse possession and did not require a dispute or hostile act to signal commencement of the statutory period.

RECENT ANNOTATIONS

The following annotations have been recently published dealing with real property questions, and may be of interest to Michigan practitioners. It has been attempted to select those Annotations which present questions of interest to the Michigan bar on which the courts of other states have split, or annotations which suggest factual distinctions that may qualify existing Michigan authority.

Anno: "Unsightliness of power line or other wire, or related structure, as element of damages in easement condemnation proceedings," 97 ALR 3d 587 (1980). The question is whether the aesthetic loss inherent in power lines crossing property is an element of compensable damages in condemnation proceedings. The annotation discusses both farm and residential property and shows an interesting development of authority and distinctions in other jurisdictions. No Michigan authority is cited.

Anno: "Measure of Damages where vendor, after execution of contract of sale, but before conveyance of property, removes part of property contracted for," 97 ALR 3d 1220 (1980). Discusses several different theories of damages: (1) value of property removed; (2) diminution in fair market value of property, and (3) cost of restoration of property removed. One Michigan case is cited in which, on the facts of the case, the third measure of damages was used.

SECTION NEWS

About the authors:

Michael H. Feiler is the Senior Partner in the firm of Feiler and Glass, P.C. A graduate of the Detroit College of Law (J.D., 1968), where he has served as Adjunct Professor of Law, Mr. Feiler holds an LL.M. degree from Harvard University. His article was prepared at the request of the Section Committee on the Governmental Regulation of Land Use and Land Sales, which is chaired by Stephen A. Bromberg.

* * *

The new Case Editor of the *Review* is Joseph A. Lloyd. A graduate of the University of Michigan (B.A., 1970; J.D., 1975), Mr. Lloyd teaches real estate law in the University of Michigan Real Estate Extension Program and practices in Ann Arbor as a partner in the firm of Lloyd, Rutzky & Dodge.

* * *

The following news release is from the American Institute of Real Estate Appraisers:

WARREN—A two-day business valuation (going concern) seminar designed for real estate appraisers, consultants, public accountants, banker-financiers, and investors will be held on October 24-25 at the Management Education Center in Troy, MI from 8 a.m. to 5 p.m.

This seminar, sponsored by the Michigan Chapter of the American Institute of Real Estate Appraisers, has been developed to provide each participant with basic information and appraisal techniques for valuing closely held (privately owned) businesses. Although the main thrust of the seminar is on the valuation of smaller businesses, techniques for valuing large enterprises are included.

The instructor is Glenn M. Desmond, MAI, SRPA, ASA, Marina Del Ray, CA. Mr. Desmond is a professional appraiser, author, and lecturer on business valuation.

The seminar fee is \$100 and includes two lunches, refreshment breaks, and the student workbook. Brochure and registration form may be obtained by contacting Connie Vickroy, Executive Secretary, 28057 Palomino, Warren, MI 48093, or by phoning the chapter office (313) 573-6987.

The Appraisal Institute is the nation's oldest appraisal organization, and the only one affiliated with the National Association of REALTORS®. It awards its professional designations, MAI (Member, Appraisal Institute) and RM (Residential Member) upon completion of educational and demonstration requirements. Institute members subscribe to a strict Code of Ethics and Standards of Professional Conduct, rigidly enforced, to assure the public of appraisal reports which are as accurate as possible.



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STATE BAR OF MICHIGAN**

1980 - 1981

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