

A BALANCING OF TRADITIONAL AND MODERN APPROACHES TO
STRENGTHENING MICHIGAN'S ECONOMY

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I. INTRODUCTION

In his book, *Reimagining Detroit*, John Gallagher passionately states that “[c]hange, even change we at first perceive to be negative, brings opportunity. The challenge is to see beyond the heartache and grasp the opportunity.”¹ Although he is solely referring to the resurgence of Detroit, this idea can be applied across the entire state of Michigan. In order to optimize the investments the state makes to improve its economic state, there must also be a willingness to change. The change can be implemented through utilization of long-standing methods of strengthening the state’s economy. Additionally, new and inventive methods of raising funds for areas of Michigan, both large and small, urban and rural, can be capitalized upon. It is ultimately the blending of both of these efforts that can allow for the most success, and those in the legal field will be able to provide expertise and assistance in these collaborative efforts.

In terms of traditional methods, the Judiciary and attorneys in relevant areas of practice can offer their expertise in zoning, financial and tax resources, and urban planning acts to subsequently raise revenue in the state and support various investments. When one looks to modern approaches to strengthening the economy, it is important to emphasize the support of entrepreneurs, partnerships and collaborations. Finally, the city of Detroit provides an opportunistic example of a myriad of new ways to reinvent a major city. Essentially, the efforts and knowledge of the legal field can be applied to both the traditional and modern approaches while always focusing on the resources available for economic growth throughout the state.

II. CAPITALIZING ON TRADITIONAL APPROACHES TO ECONOMIC GROWTH

a. Legal Role in Zoning Efforts

¹ John Gallagher, *Reimagining Detroit: Opportunities for Redefining an American City*, 3 (2010).

The concept of zoning in relation to land use planning refers to how real property can and cannot be used in specifically defined areas. Historically, this has been the longstanding method to determine how best to develop the land in counties, townships, cities and villages. Through proper zoning, one can capitalize on the economic advantages of each defined area. Whether urban, rural or vacant, if the land is zoned in a way that best utilizes the area to offer investment opportunities and potential economic growth, one adheres to this overarching reasoning behind zoning. The governance of the concept can be seen in the Michigan Zoning Enabling Act, which defines how units shall regulate the zoning of areas throughout the state.² The Act establishes how to develop and use the land, provide for adopting ordinances, establish various zoning districts, lay forth powers and duties of respective officials, and assess and collect fees, penalties and remedies. The question therein is how the legal system can be used to take advantage of zoning throughout the state in order to grow Michigan's economy. In order to determine the proper legal role, one must look to the various zoning ordinances, the Zoning Enabling Act itself and background case law to see the helpful impact attorneys can have while still respecting the powers designated for each branch of government and relevant agencies.

At the basis of all zoning is the ordinance that defines how the tracts of land are and are not to be used. A zoning ordinance shall be based upon a plan designed to "meet the needs of the state's citizens" for food, energy, and natural resources, places of residence, recreation, industry, trade, service, and other uses of land. Furthermore, it is intended to ensure that use of the land is situated in appropriate locations and relationships, limits the inappropriate overcrowding and congestion of the population, transportation systems, and other public facilities, and facilitates adequate and efficient provision of transportation systems, water, energy, education, recreation,

² Michigan Zoning Enabling Act, Act 110 of 2006.

and other public services and facility requirements. Most importantly, it must promote public health, safety, and welfare.³ Special programs can even be developed in order to “achieve specific land management objectives and avert or solve specific land use problems.”⁴ Thus, it is apparent that in putting together these ordinances, the best interests of the area being developed are at the forefront of discussion. Further, a zoning ordinance shall be made with “reasonable consideration of the character of 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.”⁵ By properly taking into consideration the resources available for each parcel of land being looked at, the economy can be strengthened by utilizing what the area in question offers to interested investors and developers.

Zoning cannot be looked at as a stagnant designation. As time passes, new trends emerge, municipalities experience decline and growth, and resources can likewise come and go. Zoning ordinances must always be looked at through an opportunistic lens to ensure proper use of the land. This can lead to areas around the state continuing to develop and the economy continuing to grow. Change, therefore, is inherent. Adjustments to existing zoning as well as violations of specific zoning already in place often occur. “The elimination of the nonconforming uses and structures in a zoning district declared to be for a public purpose and for a public use”⁶ is an example of such change. For those instances where new zoning is proposed, the legislative body of government plays the primary role by referring to proposed amendments, considering

³ *Id.* at 125.3201 (1), *Regulation of land development and establishment of districts; provisions; uniformity of regulations; designations; limitations.*

⁴ *Id.* at (3).

⁵ *Id.*

⁶ *Id.* at 125.3208 (4), *Nonconforming uses or structures.* See also 1911 PA 149, MCL 213.21 to 213.25 for legislative proceedings for condemnation of nonconforming uses and structures.

comments from public hearings and voting on adoption.⁷ Additionally, a new ordinance or rezoning proposal “shall not have the effect of totally prohibiting the establishment of a land use within a local unit of government in the presence of a demonstrated need for that land use.”⁸ It is evident that there are many moving parts to this concept, and where the legal tools can first most usefully be applied in order to use zoning as a tool to grow the economy rests in the assessment of the proper application of the Michigan Zoning Enabling Act.

i. Michigan Zoning Enabling Act

The enforcement of the Michigan Zoning Enabling Act is granted to the Legislature. For instance, the Legislative body has the power to establish planned unit development requirements. These are meant to “encourage innovation in land use and variety in design, layout, and type of structures constructed, achieve economy and efficiency in the use of land . . . suited to the needs of the residents of this state.”⁹ However, the legal field can play a role in the various processes as well, while not overstepping boundaries that may threaten the separation of powers. This respect of powers likewise allows for the influence of local units of government. Examples of the law’s role can be found in the Judiciary. For example, “[a]ny party aggrieved by a decision of the zoning board of appeals may appeal to the circuit court for the county in which the property is located.”¹⁰ The circuit court shall review the record and decision to ensure that it complies with the constitution and state laws, is based on proper procedure, is supported by competent, material and substantial evidence on the record, and represents the reasonable exercise of discretion granted by law to the zoning board of appeals.¹¹ If the court finds the record inadequate to review

⁷ *Id.* at 125.3401, *Public hearing to be held by legislative body; conditions; notice; approval of zoning ordinance and amendments by legislative body; filing; notice of ordinance adoption; notice mailed to airport manager; information to be included in notice; other statutory requirements superseded.*

⁸ *Id.* at 125.307, *Zoning ordinance or decision; effect as prohibiting establishment of land use.*

⁹ Michigan Zoning Enabling Act, Act 110 of 2006, 125.3503 (2), *Planned unit development.*

¹⁰ *Id.* at 125.3606 (1), *Circuit court; review; duties.*

¹¹ *Id.*

the decision or finds that additional material evidence exists that with good reason was not presented, the court shall order further zoning board of appeals proceedings on “conditions that the court considers proper.”¹² The zoning board of appeals may modify the findings and decision as a result of the new proceedings or may affirm the original decision. The court may then affirm, reverse, or modify the decision of the board of appeals.¹³ The court may also determine whether a decision was authorized by law and findings were supported by “competent, material, and substantial evidence.”¹⁴ By the courts playing an active role here, ensuring proper application of the Zoning Act, the efforts of both branches of government combined can lead to zoning that enhances economic growth in areas around the state. In addition to the tasks granted to the courts through this Act, various cases illustrate the additional ways legal tools are capitalized upon for proper zoning enforcement.

ii. Court Cases

Moving away from simply focusing on the Michigan Zoning Enabling Act, where it is clear that the courts play a role specifically through appeals to the circuit court from a determination under a zoning ordinance,¹⁵ the additional roles of the courts can be seen in a number of Michigan cases. Still, “[t]he role of the Court is not to control the direction of zoning. It is not to determine what is the best use of the land. [Their] role is to prevent the abuse of the zoning power – as when the ordinance in question so restricts the use of land that it amounts to confiscation by the local government.”¹⁶ Additionally, it is important to note once more that “[z]oning is a legislative function that cannot constitutionally be performed by a court, either

¹² *Id.* at (G) (b). See also MCL 125.3606.

¹³ *Id.* at (G) (c).

¹⁴ *Id.*

¹⁵ Mich. Ct. R. 7.122 (A) (1).

¹⁶ *Daraban v. Redford Twp.*, 383 Mich. 497, 501-506, 176 N.W.2d 598 (1970).

directly or indirectly – in law or in equity.”¹⁷ Nevertheless, cases pertaining to zoning draw the expertise of the legal field in order to properly interpret language, determine due process and reasonableness owed to parties, assess ripeness and damages owed, and always take into consideration proper uses of the land in question.

In *City of Detroit v City of Detroit Board of Zoning Appeals and International Outdoor, Inc.*, the court faced the question of whether a use variance should have been granted to a parcel of land on Grand Boulevard designated as an overlay zone, which prohibits off-site advertising signs (i.e. placements of a billboard). The court had to assess whether the Board of Zoning Appeals (“BZA”) had the authority to grant the variance based on unnecessary hardship. Furthermore, there was a question of whether there was any feasible, economic or functional use of the property and if the hardship in question was or was not created by the current owner or his predecessor. For that exact reason, namely that the hardship was not created by the current owner, the court affirmed the BZA’s decision to grant the variance,¹⁸ illustrating the court’s role in assessing the proper granting of land uses outside of the zoning. It was stated that, “[t]he decision of a zoning board of appeals should be affirmed unless it is contrary to law, based on improper procedure, not supported by competent, material, and substantial evidence on the record, or is an abuse of discretion.”¹⁹ This demonstrated the standard of review for courts to turn to for zoning issues. For the particular case at hand, the court determined that “[n]othing in Detroit’s ordinances prohibits the BZA from granting a use variance in the Grand Boulevard overlay zone, and . . . a board has the authority to vary or modify any zoning ordinance to

¹⁷ *Id.*, pp. 502-503, 176 N.W.2d 598.

¹⁸ *City of Detroit v. City of Detroit Zoning Bd of Appeals and Intl. Outdoor, Inc.*, opinion of the Court of Appeals of Michigan issued October 23, 2018 (Docket No. 339018).

¹⁹ *Janssen v Holland Charter Twp Zoning Bd of Appeals*, 252 Mich.App. 197, 201; 651 N.W.2d 464 (2002).

prevent unnecessary hardship.”²⁰ As previously stated in the overview of zoning as a whole, the purpose and intent of Detroit’s zoning code is to guide and regulate the appropriate use or development of all land in a manner which will promote and protect the public health, safety, and general welfare,²¹ which the granting of this use variance properly falls under. Finally, to prove hardship, the BZA had to find on the basis of substantial evidence the following:

(1) the property cannot reasonably be used in a manner consistent with existing zoning, (2) the landowner’s plight is due to unique circumstances and not to general conditions in the neighborhood that may reflect the unreasonableness of the zoning, (3) a use authorized by the variance will not alter the essential character of a locality, and (4) the hardship is not the result of the applicant’s own actions.²²

Because the court determined that the BZA was unable to prove these elements, the use variance was granted. Thus, the case illustrates the court’s key role in interpreting proper granting and denial of land uses that waver from zoning. This interpretation focuses on the benefits that can come from proper zoning, which can be a tool to lead to the bettering of the economy around the state.

Kayser v. Kasson Twp. involved assessing whether a zoning ordinance was unreasonable based upon if extracting natural resources, specifically gravel mining, from the area would have “no very serious consequences.” Additionally, the court was tasked with looking at whether the rule in question violated separation of powers as well as if the rule was superseded by the enactment of the exclusionary zoning provision, MCL 125.297(a) of the Township Zoning Act.²³ Because plaintiffs’ rezoning applications were continually denied, the individuals asserted that their due process rights had been violated. This case demonstrates additional ways the courts can play an active role in the proper use of zoning regulations, uses of which can continue to have

²⁰ *Janssen*, 252 Mich.App. at 201.

²¹ Detroit Zoning Code, § 61-1-4

²² *Janssen*, 252 Mich.App. at 201.

²³ *Kyser v. Kasson Twp.*, 486 Mich. 514, 517 (2010).

positive impacts on the state's economy. In *Kayser*, it is once again pointed out that the Legislature has empowered local governments to zone for broad purposes identified in MCL 125.3201(1).²⁴ However, this court has also recognized zoning as a reasonable exercise of the police power that not only protects the integrity of a community's current structure, but also plans and controls a community's future development.²⁵ This recognition that zoning is a legislative function is echoed in the Court's statement that it "does not sit as a super-zoning commission."²⁶ However, the local power to zone is not absolute. When the government exercises its police power in a way that affects individual constitutional rights, a citizen is entitled to due process of law, as the court determined here. Furthermore, a zoning ordinance must be reasonably necessary for the promotion of public health, morals or safety . . . where such necessity appears either from existing conditions or reasonable anticipation of future growth and development.²⁷ There is no mandatory provision governing zoning ordinance establishment that prohibits one activity over another simply because of profitability. Likewise, there is "no basis in the zoning laws of our state, or in our constitution, for judicially adopting such a distinction."²⁸ Therefore, while the assessment of meeting public interests is best left to the Legislature and local communities rather than the Judiciary, the courts are still tasked with interpreting the rule application and ensuring due process is owed.

Lastly, *Hendee v. Putnam Twp.* involved the owners of a parcel of land who applied for rezoning, but were continuously denied. The case essentially illustrates the court's role in assessing damages and the proper ripeness of claims related to zoning issues.²⁹ It is noted that the

²⁴ *Id.* at 520.

²⁵ *Id.*

²⁶ *Brae Burn, Inc. v. Bloomfield Hills*, 350 Mich. 425, 431 (1957).

²⁷ *Kyser*, 486 Mich. at 523.

²⁸ *Id.* at 531.

²⁹ *Hendee v. Putnam Twp.*, 486 Mich. 556 (Mich. 2010).

landowner had failed to first seek alternative relief by requesting a land use variance, and therefore, the landowner's claim was not ripe for judicial review.³⁰ In assessing the ripeness of a claim, under the Futility Doctrine, the court will look to see if a plaintiff can show that it would be "futile to first exhaust all administrative appeals, because it can be established that the zoning authority's decision would remain the same on appeal."³¹ This concept was highlighted in the ultimate decision of the Judiciary. The landowner must have submitted at least one "meaningful application" for a variance from the challenged zoning regulations.³² However, the importance of respecting proper allocation of powers pertaining to zoning was emphasized:

We hold only that a plaintiff who seeks to challenge exclusionary zoning practices must allege specific, concrete facts demonstrating that the challenged practices harm him, and that he personally would benefit in a tangible way from the court's intervention. Absent the necessary allegations of demonstrable, particularized injury, there can be no confidence of 'a real need to exercise the power of judicial review.'³³

In summary, while it is imperative to honor the authority held by the Legislature and local governments in relation to zoning, the legal field still plays an important role in assessing proper application of the governing Acts of zoning as well as in granting or denying rezoning efforts. Each respective group's dedicated efforts can, in turn, lead to proper utilization of resources around the state to take advantage of economic opportunities.

b. Legal Role with Financial Resources for Economic Advancement

It is important to shift from the discussion of land use planning to the impact that financial and tax efforts by governmental parties can have on improving the economy and success of investments around the state. Proper utilization of financial and tax resources available can allow for increased economic growth, which is highlighted here by tax increment

³⁰ *Id.* at 572.

³¹ *Id.* at 574.

³² *Kinzli v. City of Santa Cruz*, 818 F.2d 1449, 1454-55 (9th Cir. 1987).

³³ *Warth v. Seldin*, 422 U.S. 490, 508, 95 S.Ct. 2197, L.Ed.2d 343 (1975).

financing, availability of tax exemptions and how the proper establishment of non-profits can still provide for investment opportunities and a stronger economy.

i. Tax Increment Financing

The concept of tax increment financing (TIF) has historically been used as a way to raise revenue in areas in most need of assistance, namely those experiencing blight. It involves establishing an arrangement in the specified area where the revenues generated from applying the property tax to any increased property value within the district are set aside and paid to the municipality or an economic development agency to be used for public improvements and other economic development programs.³⁴ Over time, however, the original intention of focusing on areas of blight has become much more relaxed in terms of requirements for adopting TIFs. It has evolved from “urban renewal program[s] targeted at depressed central city areas to a more general public investment and infrastructure financing scheme[s].”³⁵

Through the years of utilizing TIFs, legal questions of public purpose, tax implications and requirements have been presented, offering a first look at the role the legal field plays with this method of raising revenue. Although arguments that TIFs merely benefit private investors, “[s]tate courts have repeatedly held that TIF spending to promote economic development is consistent with public purpose requirements. The finding of a public purpose is generally unaffected by the fact that private interests may benefit.”³⁶ Additionally, tax increment financing adoption in Michigan found that cities with growing populations and growing property values, rather than shrinking cities, were actually more likely to adopt a TIF plan because “TIF provides

³⁴ Richard Briffault, *The Most Popular Tool: Tax Increment Financing and the Political Economy of Local Government*, Univ. of Chicago Law Rev., Vol. 77, Art. 65, 67 (2010).

³⁵ *Id.* at 71.

³⁶ *Id.* at 74. See also *In re Request for Advisory Opinion on Constitutionality of 1986 PA 281*, 422 N.W.2d 186, 202-03 (Mich. 1988).

a tool for financing the infrastructure required by growth.”³⁷ Furthermore, vacant land in less developed areas of a city or on the urban periphery is far more likely to yield a dramatic increase in value and, thus, in tax base growth.³⁸ This shows the public purpose achieved through the concept of TIF, a finding attributable to legal expertise. Furthermore, the legality of tax increment financing has been questioned because “it can take away from local governments and tax collecting authorities that receive a share of taxpayer dollars.”³⁹ However, the Michigan Supreme Court issued an Advisory Opinion in 1988 stating that TIF plans only capture tax revenue attributable to increased value that is assumed to result from the TIF plan itself, therefore not diverting from other tax collecting units’ revenue.⁴⁰ The Supreme Court’s Opinion here illustrates yet another instance where the legal tools are used to ensure proper implementation and assessment of TIFs.

Transitioning to applicable Legislative efforts, the Local Community Stabilization Authority Act provides an overview of Acts that are used to create tax increment finance authorities.⁴¹ Various TIF Statutes in Michigan include, for instance, the Neighborhood Improvement Authority Act, which promotes residential growth in designated neighborhoods, Private Investment Infrastructure Act, which focuses on economic development and public infrastructure improvement, and the Corridor Improvement Authority Act, which redevelops commercial corridors.⁴² While the creation of these Acts rests primarily with the Legislature, the legal field continues to possess the tasks of language interpretation and proper enforcement of the Act’s provisions pertaining to TIF creation.

³⁷ *Id.* at 80. See also John E. Anderson, *Tax Increment Financing: Municipal Adoption and Growth*, 43 Nat’l Tax J 155, 160 (1990).

³⁸ *Id.* at 87. See also *Pippin*, 37 Ga J Int’l & Comp L at 596.

³⁹ *Id.* at 5.

⁴⁰ *Id.*

⁴¹ MCL 123.1345 (bb).

⁴² Drew Krogulecki, *State Notes*, Tax Increment Financing in Michigan (2016).

Through its evolution, tax increment financing’s flexibility, widespread authorizations, relaxed condition requirements and degree of judicial deference to local judgments concerning public purpose, but-for causation and blight show the degree of decentralization in a local planning and economic development system.⁴³ Nonetheless, the legal field can still offer its expertise in utilizing this concept by continuing to ensure proper application of relevant laws associated with the designation of TIFs and any subsequent legal matters - public purpose, language interpretation and otherwise - that may arise. “[G]iven the close fit between TIF and the structure of the local government system it seems unlikely that more substantial changes in the purposes, structure or scope of TIF will occur unless they are a part of a broader rethinking of the state and local rules in economic development.”⁴⁴

ii. Tax Exemptions and Applicable Case Law

Another financial resource available to grow the state’s economy and promote investment opportunities are tax exemptions. The courts play a significant role in cases involving proper allocation and granting of tax exemptions through their interpretation of language and assessing the proper establishment of burdens of proof.

Daimler Chrysler Corp. v. State Tax Commission and Dept. of Environmental Quality involved whether a specific tax exemption aimed at improving Michigan’s environment by encouraging entities to reduce air pollution they create was properly granted. The discussion centered primarily around the definition of “facility” as provided for in the exemption.⁴⁵ An illustration of the court’s role in determining the plain and intended meaning of language in the exemption can be seen in the analysis. Essentially, the equipment must meet the requirements of

⁴³ *Id.* at 86.

⁴⁴ *Id.* at 95.

⁴⁵ *Daimler Chrysler Corp. v. State Tax Commission and Dept. of Environmental Quality*, 482 Mich. 220, 753 N.W.2d 605 (Mich. 2008).

both §§5901 and 5903 to qualify. §5901’s definition of facility expressly requires that the equipment be “installed or acquired for the primary purpose of controlling or disposing of air pollution.”⁴⁶

An additional example of the court’s role in tax exemption interpretation is evident in *Andrie Inc. v. Dept. of Treasury*. This case addressed issues around Michigan’s Use Tax Act and whether there was proper granting of the exemption when purchasers claiming the Use Tax exemption were unable to prove payment of sales tax. The court ultimately ruled the exemption was improperly granted. “When interpreting a statute, courts must ascertain the legislative intent that may reasonably be inferred from the words expressed in the statute. This requires use to consider the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme.”⁴⁷

Finally, the court’s role in statute interpretation can be seen in *Henderson v. Mich. Dept. of Treasury*, where the Michigan Tax Tribunal offered its opinion on application of Michigan’s single business tax (SBT). The court specifically looked at whether SBT liability was properly discharged in bankruptcy as a “non-excise tax,” a stance which was ultimately affirmed by the court.⁴⁸

Thus, as seen in the aforementioned cases, the court’s role in language interpretation and proper application of tax exemptions continues to be illustrated, for the “words of a statute provide the most reliable evidence of [the Legislature’s] intent.”⁴⁹ In applying the concept of tax exemptions to strengthening Michigan’s economy, it is yet another available resource to

⁴⁶ *Id.* at 609.

⁴⁷ *Andrie Inc. v. Dept. of Treasury*, 496 Mich. 161, 853 N.W.2d 310, 313 (Mich. 2014).

⁴⁸ *Henderson v. Mich. Dept. of Treasury*, 307 Mich.App. 1, 858 N.W.2d 733, 737 (Mich.App. 2014).

⁴⁹ *Id.* at 749; see also *Sun Valley Foods Co. v. Ward*, 460 Mich. 230, 236; 596 N.W.2d 119 (1999).

encourage investments around the state. By ensuring compliance with Michigan’s tax laws, attorneys and the courts help in utilizing this method of economic growth.

iii. Non-Profit Pros and Cons

The role of non-profits, and the associated tax exemptions offered to those non-profits, presents a set of pros and cons when viewed as a means of improving investments in areas throughout the state. Daphne Kenyon and Adam Langley’s study, “The Property Tax Exemption for Nonprofits and Revenue Implications for Cities,” looked at the impact of charitable property tax exemptions on municipal revenues.⁵⁰ It was found that results varied widely, with some areas experiencing significant revenue growth while others were largely unaffected.⁵¹ At times, the city governments experience negative impacts due to the exemptions non-profits are granted. However, there are ways for municipalities to still collect some portion of payments, given the discrepancy of revenue growth that results from the lack of receiving property taxes. Here, the application of Payments in Lieu of Taxes (PILOTs) pertaining to non-profits offers an example of how to capitalize on non-profit establishment as a method of supporting investments.

PILOTs are payments made voluntarily by tax-exempt entities as a substitute to property taxes.⁵² While PILOTs have their own set of pros and cons, by working collaboratively, it can potentially be a source of revenue growth. The city of Boston provides a successful example of this through the “task force” that was established. Essentially, municipalities should adopt a goal for contributions based upon a percentage of what property taxes would have otherwise been owed, a basis should be set to calculate suggested PILOTs, community service credits should offset target cash PILOTs, and multi-year agreements should be entered into to allow for reliable

⁵⁰ Daphne Kenyon and Adam Langley, “The Property Tax Exemption for Nonprofits and Revenue Implications for Cities,” The Lincoln Institute of Land Policy (November 2011).

⁵¹ *Id.* at 4.

⁵² *Id.* at 6.

revenue growth.⁵³ What the legal field can offer in this method of strengthening the economy is to assist in the drafting of such agreements and compile creative PILOT set-ups in order to have all parties benefit from them. Whether the non-profits are organizations, schools, hospitals or the like, innovative thinking will allow for taking advantage of investments in areas throughout the state, while still offering the tax exemption as a way to encourage more of these developments.

c. Legal Role with Land Development Acts

The Legislature is tasked with the important governmental role of drafting various Acts for the state, while the Judiciary is charged with interpretation and enforcement of the plain language of such Acts. It is in that interpretation and enforcement that the legal field can play an active role in utilizing these Acts to better the state's economy and structure new ways to capitalize on investments in Michigan. A number of Acts primarily focus on different uses of land and on the importance of promoting economic incentives throughout Michigan. Specifically highlighted below, the Urban Cooperation Act of 1967, Next Michigan Development Act and Michigan Economic Growth Authority Act are three primary examples.

The Urban Cooperation Act of 1967 seeks to provide for interlocal public agency agreements that allow for revenue growth through the allocation of taxes or money received from tax increment financing plans as well as to permit tax sharing.⁵⁴ These specific uses of monetary resources by the agencies that are created provides methods for urban areas to take advantage of alternative financial resources. For instance, the "sharing of all or a portion of revenue derived by and for the benefit of a local governmental unit entering into that agreement, which revenue results from the levy of general ad valorem property taxes or specific taxes levied in lieu of

⁵³ *Id.* at 7, see also Boston Mayor's PILOT Task Force's Final Report and Recommendations (December 2010).

⁵⁴ Urban Cooperation Act of 1967, Act 7 of 1967 (Ex. Sess., Eff. March 22, 1968).

general ad valorem taxes upon any property”⁵⁵ allows for parties to the interlocal agreements to raise revenue and prosper. The question then turns to how the legal field can use their own expertise and tools to contribute to this prosperity. Attorneys can act as a primary resource to actually draft the interlocal agreements, which would include the duration of the agreement, description of the property upon which the taxes would be levied, the formula for calculating tax revenue sharing, and a schedule and method of distribution for the shared tax revenue.⁵⁶ Additionally, the interlocal agreements create separate legal entities that possess the common powers specified in the agreement itself. The entity can make and enter into contracts, employ agencies or employees, and acquire, hold or dispose of property all to further the purpose of the interlocal agreement.⁵⁷ Finally, the legal field is tasked with ensuring compliance with the terms of the Act and with the laws of the state. It is aptly stated that if the funds are to be allocated to carry out an agreement under the Act, the use of these funds must comply with the laws of the state.⁵⁸ Thus, the Urban Cooperation Act is just one example of a method of raising additional revenue in the state and the law’s role in ensuring proper drafting, compliance and enforcement of the interlocal agreements the Act provides for.

The Next Michigan Development Act is more focused on economic development incentives for the state. It is primarily intended to encourage the creation of Next Michigan

⁵⁵ Urban Cooperation Act of 1967, 124.505 (1)(a), *Interlocal agreement for sharing of revenue; contents; decision to enter into agreement; public hearing; referendum; petition; assessment, levy, collection and distribution of taxes; public policy.*

⁵⁶ *Id.* at (2)(a)-(e).

⁵⁷ *Id.* at 124.507 (2), *Separate legal entity; commission, board, or counsel; public body, corporate or politic; appointment and removal of members; operation for profit prohibited; earnings; title to property; powers; limitation; bonds or notes.*

⁵⁸ *Id.* at 124.510 (1), *Approval of certain agreements by governor; exclusions from funds of state; filing of interlocal agreement.*

Development Corporations by interlocal agreements, which foster economic growth in the state, prevent unemployment and provide for Next Michigan Development districts and businesses.⁵⁹

A Next Michigan Development Corporation shall “seek to attract eligible next Michigan businesses to its Next Michigan Development district and may exercise all of the powers, privileges, and responsibilities granted to it under state law.”⁶⁰ This Act, drafted relatively recently within the last decade, is a prime example of the importance of placing the strength of the state’s economy at the forefront by creating opportunities and incentives for investors to choose Michigan for their endeavors. Attorneys can, once again, play a role in the corporate governance efforts of any interested parties that are to take advantage of this Act. Furthermore, compliance with state laws and proper interpretation and enforcement of its provisions remains an important legal task.

Very similar to the Next Michigan Development Act, and drafted prior, chronologically, to the aforementioned Act, is the Michigan Economic Growth Authority Act. This Act seeks to promote economic growth and job creation within the state through the approval of certain plans intended to provide qualifications for and determine eligibility for tax credits in addition to other incentives for authorized businesses and qualified taxpayers.⁶¹ The main intention with this Act, once again, is to grow Michigan’s economy. Specifically, here the companies are required to bring in a certain number of new jobs depending on the area of development, the industry, and any applicable tax exemption zones the district may contain. Certificate issuance and agreement drafting are both functions that the legal field can offer their expertise in as well as always ensuring compliance with applicable tax laws, either for the authority or the new businesses.

⁵⁹ Next Michigan Development Act, Act 275 of 2010 (Eff. Dec. 15, 2010).

⁶⁰ *Id.* at 125.2956 (1), *Next Michigan development corporation; powers, duties and responsibilities.*

⁶¹ Michigan Economic Growth Authority Act, Act 24 of 1995 (Eff. Apr. 18, 1995).

Thus, although remaining an important role of the Legislature, the legal field can still provide significant assistance to Acts pertaining to economic growth and support of investments throughout Michigan.

II. INTEGRATING MODERN APPROACHES TO ECONOMIC GROWTH

The traditional approaches to strengthening Michigan's economy, namely efficient zoning, utilization of financial and tax resources, and integrating various land planning acts, play a significant role in growth around the state. However, in order to continue to grow, one must also think outside of the box. This can be seen through the passions and energy of small businesses, grant money allocated to start-ups, inventive collaborations, and the significant amount of progress Detroit has made in the recent decade. The legal field can also have an important hand in all of these efforts in order to not only ensure proper implementation of all of the traditional concepts, but also in creatively structuring new businesses and partnerships to attract more investments to the state, promote economic growth and set examples for other states.

a. The Benefits of the Entrepreneurial Spirit

The entrepreneur brings an energy and drive that is not always seen in large corporations from top to bottom. He or she has taken it upon themselves to pursue what fuels them, and, as such, brings a level of hard work to the new business that has been created. Two illustrations of how the state continues to assist these small businesses in securing funding and real estate and applying creative concepts of land utilization are Motor City Match⁶² and ZoneDetroit.⁶³

Motor City Match pairs small business owners around metro Detroit with available real estate within the city. The program is run by the Economic Development Corporation of the City

⁶² <http://www.motorcitymatch.com/> (visited May 12, 2019).

⁶³ <https://zonedetroit.com/> (visited May 12, 2019).

of Detroit on behalf of the city and the funding comes from the US Department of Housing and Urban Development - Community Development Block Grants, Detroit Development Fund, Invest Detroit, and additional philanthropic partners, illustrating the unprecedented partnership behind small business support in the city. Competitive grants, loans and business counseling are offered through the program so the owners of both the new business and building can thrive in their endeavors. This program is a prime example of properly utilizing the resources available – specifically, all of the open and, occasionally, previously abandoned, buildings as well as the dedication of entrepreneurs dedicated to building their own brand, which, in turn, also builds the city and its economy. It may not be as significant of an impact monetarily as major corporations, but the positive energy they bring to a developing neighborhood or established pocket within Detroit speaks volumes. The legal field can also play a significant role in these efforts. The corporate governance issues that arise, various real estate legal questions the business and building owners may face, and even the application process itself are all areas that attorneys can contribute their expertise to.

In addition to supporting small businesses, the city of Detroit has also created a new and innovative project known as ZoneDetroit. Led by City Planning Commission staff and expert consultants, the existing Zoning Ordinance is being modernized, “providing an opportunity to refresh and rethink the existing regulations,”⁶⁴ while engaging those in Detroit’s communities to be part of the process and offer what they envision their future to be like in Detroit. An article highlighting the new project in *Curbed Detroit* pointed out that the “[zoning] ordinance has been updated and overhauled several times throughout the years,” and many feel as though it is

⁶⁴ <https://zonedetroit.com/about/> (visited May 12, 2019).

“cumbersome and not intuitive.”⁶⁵ The project itself will look to improve zoning graphics and mapping, take into consideration new zoning concepts such as urban agriculture, solar and wind farms and innovative, environmentally-conscious and affordable mixed-use arrangements. Throughout the process, the key advisory groups will also include the interests of local community representatives. The legal field can, once again, offer their expertise not only in reworking the current zoning throughout the city, but also in brainstorming innovative ways to utilize all of the available land resources throughout Detroit to strengthen the economy and continue to draw more investors to the city. Both of these efforts, if proven successful, can be used as examples for other areas around the state and developing cities around the country.

b. Creative Collaborations and Partnerships

In addition to supporting small business efforts to strengthen the economy, collaborations can also positively impact the growth of the state. When drafting agreements involving two or more entities, authorities and the like, the legal field’s expertise can be utilized to properly draft the arrangements and creatively think of the optimal way to structure these efforts to accomplish the tasks at hand. Two examples of this can be seen in the I-69 International Trade Corridor, designated as a Next Michigan Development Corporation,⁶⁶ and Connect Detroit.⁶⁷

Back in 2012, Michigan’s Economic Development Corporation Strategic Fund Board approved the interlocal agreement for the I-69 International Trade Corridor as the state’s largest Next Michigan Development Corporation, covering Genesee, Lapeer, St. Clair and Shiawassee counties. The primary focus of this corridor is transportation via air, freight, rail and water. The

⁶⁵ Aaron Mondry, “Detroit’s rezoning process, explained” (May 1, 2019), <https://detroit.curbed.com/2019/5/1/18525270/detroit-rezoning-ordinance-zonedetroit-planning-commission> (visited May 12, 2019).

⁶⁶ https://www.mlive.com/swartzcreek/2012/02/i-69_international_trade_corri.html (visited May 12, 2019).

⁶⁷ <https://connectdetroit.org/> (visited May 12, 2019).

efforts of this collaboration intend to bring more jobs to the area, thus strengthening the economy in a large geographic region. Throughout the approval process, attorneys have been able to work with governments and business groups in order to properly lay out the strategies of the corridor that was envisioned. From focusing on increasing trade and taking advantage of zoning and tax exemption opportunities in the trade corridor to drafting the actual interlocal agreement with all pertinent parties, legal resources played a key part in the collaboration's success. Specifically, the I-69 Corridor offers economic incentives to businesses that utilize multiple forms of transportation listed above. When the corridor was granted NMDC status, it was provided with an "incredible opportunity to grow the region and create jobs . . . poised and ready to make things happen in the region."⁶⁸ The success of this collaborative effort can be used as an example for future endeavors to strengthen the economy in the state with those within the legal field continuing to play an active role in their creation.

Connect Detroit shifts the focus from business development to neighborhood development. The foundation was founded as a non-profit organization to help solve local problems around the city in order to create better communities outside of simply concentrating efforts on the booming Downtown area. Partnerships have been formed to tackle issues of community health, business development, safety and education, and improving the lives of children and families in more impoverished areas. While this form of collaboration may not strengthen the economy directly, by giving back to the communities in Detroit, as well as to other areas around the state, this greater good will benefit in the long run and allow for continued growth economically in the future. Attorneys can, again, offer advising in various areas of

⁶⁸ Quoting Janice Karcher, "I-69 International Trade Corridor Designated as a Next Michigan Development Corporation," https://www.mlive.com/swartzcreek/2012/02/i-69_international_trade_corri.html (visited May 12, 2019).

community development and initiative structuring, although, here, in more of a pro bono capacity.

c. All Eyes on Detroit and the City's Resurgence

When one looks to innovative ways in which to grow the state's economy, the city of Detroit offers a prime example. Because of the efforts of large corporations, start-ups, non-profits, small businesses and every structure in between, the once-desolate metropolis, is "rising from the ashes." The legal field has been able to play a role in Detroit's continued development and subsequent strengthening of the state's economy. Through efforts of corporate governance, drafting and negotiating of agreements, land and building purchases, zoning throughout the downtown area and assisting with collaborative initiatives, lawyers' expertise helps fuel the resurgence in Detroit.

In John Gallagher's book, *Reimagining Detroit*,⁶⁹ he takes a deep dive into the ways that Detroit can continue to develop into a version of the major American city it was in its past. Even since his publication in 2010, the city has seen significant growth, and his ideas and concepts are still relevant today, both in legal and non-legal perspectives. First, his research discusses various uses of the land itself. He emphasizes the importance of thinking on a smaller scale. By developers choosing to focus on more manageably-sized areas, "more affordable, community-minded, Earth-friendly environment[s] with shorter commute times and a healthier atmosphere in which to raise families"⁷⁰ can be created. The legal field can play a role here by assisting with small businesses looking to leave their footprint on the niche neighborhoods around Detroit, for the "measure of a community's quality or success is not the population figure, but rather quality

⁶⁹ John Gallagher, *Reimagining Detroit: Opportunities for Redefining an American City* (2010).

⁷⁰ *Id.* at 9.

of life for those that live there.”⁷¹ Another growing concept Gallagher touches on that continues to gain popularity around metropolitan areas is urban farming. He so aptly points out that “Detroit’s significant amount of free land could be farmed in urban gardens for fruits and vegetables, creating an advantage in meeting any food-supply disruption that might occur, and its network of greenways could help residents get by without their cars.”⁷² Urban agriculture is an innovative way that attorneys can play a role in expanding this concept around Detroit, from assessing zoning regulations to ensuring compliance with relevant city codes. While it may not raise the greatest amount of monetary funds, it is a method to positively influence communities around the city. This positive influence draws more individuals to the areas experiencing growth. As a result, more opportunities to then focus on economic growth come to fruition. As Gallagher points out, “a city with significant open spaces like Detroit can think about reshaping its urban fabric – building up the stronger districts to be even healthier, and encouraging people to abandon the dying districts so the land there can be used for greenways or community gardens or other innovations.”⁷³

While uses of the land are important in encouraging investments in the city, “finding new, health uses for these spaces will not, by itself, remedy all of a city’s problems. A city without jobs is a city that will lack the resources to undertake these and other self-help measures. [One] also must heal the wounded economy.”⁷⁴ Therefore, the research shifts to growing the job market in order to also strengthen the economy in Detroit. Historically and still much so today viewed as the automotive capital of the world, Detroit can also begin to expand the industries it attracts to the city. For example, by encouraging technology-based companies to invest in

⁷¹ *Id.*

⁷² *Id.* at 11.

⁷³ *Id.*

⁷⁴ *Id.* at 117.

Detroit, the city can continue to move upward with its resurgence. Additionally, Gallagher suggests the importance of employee-owned cooperatives, stating that there is a certain “focus on working together and being rooted”⁷⁵ with this structure. No matter the industry or corporate structure encouraged to invest in the city of Detroit, attorneys can offer their expertise to advise on such corporate governance matters.

Gallagher also highlights the concept of land banks as a method to grow the economy in the city. The establishment of land banks can involve the legal field in that it creates a “legal authority that can take ownership of a municipality’s abandoned land and deal with it in some productive way. It can assemble land for redevelopment or sell it off to people.”⁷⁶ He views this way of addressing the issue of the vast amounts of open land in the city as “turning worthless, abandoned vacancy into redevelopment gold.” However, given the complications that arise from who purchases the property to lacking those interested in investing in areas with low property values, he presents Genessee County Land Bank as an example of success. In this particular instance, 80% of all properties sold through the county’s tax foreclosure auction slipped into foreclosure again within a few years, whereas their Land Bank sold off about 1,500 properties for more than \$6MM and fewer than 100 have come back through subsequent tax foreclosure. If Detroit can take the successful methods from Genessee County, they can likewise experience success in this outlet for “it is an economic model as much as it is a land-use model.”⁷⁷ Further, it is important to note that with Detroit being on the rise, vacant land can be seen as more valuable now than perhaps five or ten years ago, making investments in the city much more attractive for growth opportunities.

⁷⁵ *Id.* at 130.

⁷⁶ *Id.* at 136.

⁷⁷ *Id.* at 140.

Essentially, urban planners have envisioned a “gradual rewriting of the city’s genetic code: a large-scale, unplanned re-platting of the city that will happen through the bottom-up actions of thousands of individual homeowners.”⁷⁸ The future of the city of Detroit is bright, and the story of its resurgence provides a perfect illustration of the innovative ways in which to strengthen the state’s economy. The efforts and energy of the entrepreneurs can further inspire other developing cities to do the same. “If we see the opening up of Detroit’s landscape as an opportunity and not a calamity – or, perhaps, as an opportunity wrapped within a calamity – we may achieve some good from it yet.”⁷⁹

III. CONCLUSION

In conclusion, the blending of traditional and modern approaches to the strengthening of Michigan’s economy and support of investments throughout the state can lead to both positive and innovative change. Proper zoning, efficient use of financial and tax resources and proper application of urban planning-related acts can be viewed as the traditional methods while focus on the entrepreneur and inventive collaborations can be offered as the modern methods. As Gallagher stated about Detroit’s resurgence, “[a] crisis can be an extraordinary opportunity for change and innovation. Paradoxically, the deeper the crisis, the bigger the chance to change and innovate.”⁸⁰ This idea is not immune solely to Detroit. The opportunities for growth exist throughout the entire state of Michigan, and by taking advantage of each and every resource available, areas around the state can continue to prosper with the efforts of the legal field promoting and supporting this growth along the way.

⁷⁸ *Id.* at 31.

⁷⁹ *Id.* at 150.

⁸⁰ John Gallagher, “Fortunes Can Look Up After Auto Losses, Detroit Told,” *Detroit Free Press*, September 19, 2009.