



## Municipal Zoning Prohibiting Rental Property Upheld – But Stay Tuned

Administrative & Municipal Practice Group

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**PRACTICE AREAS**

Zoning & Land Use

The Michigan Court of Appeals very recently issued a perhaps-controversial opinion that highlights the importance of municipalities identifying sound rationales when enacting new zoning ordinances so as to avoid infringing citizens' Constitutional rights. *Pavlovskis v City of East Lansing*, unpublished per curiam opinion of the Court of Appeals (Docket No. 275236, dec'd 12/20/07). In *Pavlovskis*, the plaintiff owns residential property in the defendant city of East Lansing's Bailey-Strathmore neighborhood, located in the city's downtown. The city adopted an ordinance (City Ordinance) creating three "Residential Rental Overlay Districts." Under the City Ordinance, residents in those overlay districts could bar rental properties from a given district by petitioning to adopt an overlay district and having the city council approve it. Shortly after the city adopted the City Ordinance, residents of the overlay district in which the plaintiff owned residential property petitioned to create an overlay district, and the city council approved the petition (the Bailey-Strathmore Ordinance). The Bailey-Strathmore Ordinance thus created a Residential Rental Overlay District, barring the plaintiff from renting his property.

The plaintiff sued the city. The plaintiff challenged both the City Ordinance and the Bailey-Strathmore Ordinance. The trial court dismissed the case in favor of the city.

The Court of Appeals affirmed, and upheld the City Ordinance and Bailey-Strathmore Ordinance. The Court first rejected the plaintiff's claim that the City Ordinance and the Bailey-Strathmore Ordinance did not advance a reasonable governmental interest. The Court opined that those ordinances did advance a reasonable governmental interest, relying on the City Ordinance language identifying the City Ordinance's goal, among other things, as to "allow owners of property within residential neighborhoods to control the types of rental properties...that are permitted in one-family dwellings within their neighborhood." The Court also found that the city's apparent attempt to limit college students from renting houses in a particular city area to

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be legitimate based on, as the Court stated (perhaps controversially), the substantial differences between renters in the city who are a "family" and those who are college students. The Court determined that preserving the residential character of a neighborhood by limiting the number of transient college students who can live in single-family housing is a legitimate and reasonable government interest. For those reasons, the Court upheld the City Ordinance and the Bailey-Strathmore Ordinance.

Following the Court of Appeals decision, the plaintiff filed an application for leave to appeal to the Michigan Supreme Court. Joining his efforts was the Real Property Law Section of the State Bar, which sought to file an amicus curiae brief supporting the conclusion that the city's ordinances are invalid. Together, the *Pavlovskis* plaintiff and the Real Property Law Section argue that (1) the Court of Appeals erred in finding that avoiding purported problems of transient students permits the city to bar non-owners altogether from a particular area of the city; and (2) limiting single-family housing to owner-occupied housing is not a legitimate governmental interest.

It remains to be seen how *Pavlovskis* will play out. Regardless of the outcome, however, *Pavlovskis* highlights some important aspects of land use regulation: (1) municipalities must be sure to adopt ordinances that serve governmental interests that are legitimate; (2) those same municipalities must act within the confines of citizens' Constitutional rights.