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May an ordinance be repealed by a resolution?

FACTS:

Brookfield Township in Huron County adopted a zoning ordinance in 1968 which was updated in 2008 to be consistent with Michigan Zoning Enabling Act (ZEA), MCL 125.3101 et seq. In 2012, the township board adopted an ordinance that would have repealed the then-current zoning ordinance. In November 2012, the township's electors rejected the repealing ordinance by referendum. At the board's January 2013 meeting, it adopted a resolution repealing the zoning ordinance.

Michael Lorencz filed a declaratory action, seeking a declaration that the ordinance could not be repealed by a resolution.

QUESTION:

May an ordinance be repealed by a resolution?

ANSWER ACCORDING TO THE TRIAL COURT:

Court: Yes. The trial court held that because MCL 125.3202 was silent regarding the procedure to be followed for repealing an ordinance, the zoning ordinance was properly repealed by the resolution.

ANSWER ACCORDING TO THE COURT OF APPEALS:

No. The Michigan court of appeals reversed the trial court, noting that the Michigan Supreme Court has consistently held that an ordinance may not be repealed or amended "without action of equal dignity to that required in its enactment." (*Saginaw v Consumers Power Co*, 213 Mich 460, 469) The court also quoted the Supreme Court: [W]here the substance of City action requires the adoption of an ordinance, a resolution cannot operate as a de facto ordinance. The attempt to legislate by resolution is simply a nullity." There "may be small ordinances and big resolutions: the difference lies in the nature of the

act, not its impact." (*Rollingwood Homeowners Corp v Flint*, 386 Mich 258, 267) The court of appeals held that the resolution purporting to repeal the zoning ordinance was void and that the zoning ordinance remains in effect.

Lorencz v Brookfield Township, No. 319235 (April 28, 2015) (unpublished).

This column highlights a recent judicial decision or Michigan Municipal League Legal Defense Fund case that impacts municipalities. The information in this column should not be considered a legal opinion or to constitute legal advice.

17TH ANNUAL MAMA/PCLS SUMMER EDUCATION CONFERENCE JUNE 19-20 IN ST. JOSEPH.



left to right, top to bottom: Supreme Court Justice Bridget Mary McCormack; Lori Grigg-Bluhm, MAMA President; Kester So, PCLS Chair; Harbor Inn marina; speaker Richard Broughton, University of Detroit Mercy.

UPCOMING MAMA EVENTS:

September 25, Education Seminar, Marquette

October 9, Municipal Law Conference and Annual Meeting, Grand Rapids

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