



Report on Public Policy Position

Name of Section:

Real Property Law Section

Contact Person:

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Other:

1st Rural Housing Partnership, LLP v City of Howell, Michigan

Date position was adopted:

March 4, 2004

Process used to take the ideological position:

Electronic Vote of Council

Number of members in the decision-making body:

19

Number who voted in favor and opposed to the position:

17-0

FOR SECTIONS ONLY:

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.

Position:

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STATE BAR OF MICHIGAN



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March 8, 2004

Court Clerk
Court of Appeals
Hall of Justice
925 W. Ottawa Street
P.O. Box 30022
Lansing, MI 48909-7522

RE: **1st Rural Housing Partnership, LLP v City of Howell; Michigan
Court of Appeals Docket No. 241192
REQUEST FOR PUBLICATION PURSUANT TO MCR 7.215(D)**

Ladies and Gentlemen:

This is a policy position taken by the Council of the Real Property Law Section (RPLS) of the State Bar of Michigan. This Section is not a member of the State Bar of Michigan. The Section is a non-profit voluntary association of Michigan attorneys who are interested in real estate law. The Section has approximately 3500 members. The position expressed is that of the Section only. The State Bar of Michigan has no position on the matter.

This policy position was approved by an electronic vote of the Council of the RPLS on February 24-25, 2004 by a 17 to 0 vote of the Council, with no member abstaining. Written notice of the policy position was given to council members in the manner required by the Section bylaws prior to the adoption of the policy position.

The RPLS of the State Bar of Michigan requests that the unpublished opinion issued in the above-captioned case on February 5, 2004 be published pursuant to MCR 7.215. The opinion clarifies and extends the principles of *Paragon Properties Co v Novi*, 452 Mich 568; 550 NW2d 772 (1996) to a new factual context (MCR 7.215(B) (3), and involves a legal issue of continuing public interest [MCR 7.215(B)(3)].

Court Clerk
Court of Appeals
March 8, 2004
Page 2

In Paragon, the Supreme Court held that a property owner who challenges a zoning ordinance as being confiscatory as applied, must seek alternate relief such as a variance, before the matter is ripe for judicial review.

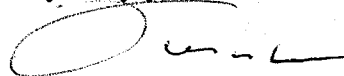
The application of the holding of Paragon has presented an issue of continuing interest. Municipal defendants have contended that its effect is to require a plaintiff, as in the present case, to appeal from the legislative act of denying a rezoning or to challenge the constitutionality of the zoning applicable to its property by filing an administrative appeal with the circuit court.

In its unpublished opinion in this case, the Court of Appeals clarified the application of Paragon, and extended the holding in Sun Communities v Leroy Twp, 241 Mich App 665; 617 NW2d 42 (2000). In Sun Communities, this Court held that a property owner who seeks to challenge the constitutionality of a municipal zoning ordinance as applied to its property need not do so by filing an appeal with the circuit court. The defendant here attempted to distinguish this case from Sun Communities, where no variance proceedings were involved. This Court found no reason to distinguish the principle enunciated in Sun Communities.

In short, the issue has been of continuing interest as zoning plaintiffs and defendants have faced variations on this theme. This Court's straightforward application of the rule in Sun Communities to the facts and procedural posture presented in this case substantially clarifies the application of the rule in Paragon to a broad range of procedural variations.

For these reasons, the Real Property Law Section requests publication of the opinion.

Very truly yours,



Lawrence M. Dudek
Chairperson

cc: Mark Makower
David Charron
David Pierson
John T. Berry