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STATE OF MICHIGAN
COURT OF APPEALS

PINEBROOK WARREN, LLC, GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

and

ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, KAPP WALLED LAKE, LLC, and PURE ROOTS, LLC,

Plaintiffs-Appellees/Cross-Appellants,

v

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, and ETHAN VINSON,

Defendants/Cross-Defendants-Appellees,

and

ROBERT BOCCOMINO and KEITH SADOWKSI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,

FOR PUBLICATION
August 25, 2022

No. 355989
Macomb Circuit Court
LC No. 2019-004059-CZ

Defendant,

and

LIVWELL MICHIGAN, LLC, LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, VENDCO MICHIGAN, INC., LEVEL UP GARDEN, LLC, and 8TH STREET WELLNESS, PC, LLC,

Intervening Defendants/Cross-Plaintiffs,

and

SOZO HEALTH, INC.,

Intervening Defendant/Cross-Plaintiff-Appellant/Cross-Appellee,

and

989 VENTURES, LLC, doing business as NORTHERN ROOTS,

Intervening Defendant/Cross-Plaintiff-Cross-Appellee,

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC, DNVK 4, LLC, MDMS GROUP, LLC, WARREN CAPITAL HOLDINGS, LLC, WEST FORT HOLDINGS, LLC, and FRAZHO PROVISIONING, LLC

Intervening Defendants.

PINEBROOK WARREN, LLC, GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

and

ALTERNATIVE RX, LLC, HCM WARREN, LLC,
JAR CAPITAL OF WARREN, LLC, PURE GREEN
WARREN, LLC, PURE WARREN, LLC, KAPP
WALLED LAKE, LLC, and PURE ROOTS, LLC,

Plaintiffs-Appellees/Cross-Appellants,

v

CITY OF WARREN, CECIL ST. PIERRE,
RONALD PAPANDREA, STEVEN WARNER,
RICHARD SABAUGH, and ETHAN VINSON,

Defendants/Cross-Defendants-
Appellees,

and

ROBERT BOCCOMINO and KEITH SADOWSKI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA
REVIEW COMMITTEE,

Defendant,

and

LIVWELL MICHIGAN, LLC,

Intervening Defendant/Cross-Plaintiff-
Appellant/Cross-Appellee,

and

SOZO HEALTH, INC., LE BATTLE CREEK, INC.,
WEISBERGER VENTURES II, LLC, VENDCO

No. 355994

Macomb Circuit Court

LC No. 2019-004059-CZ

MICHIGAN, INC., LEVEL UP GARDEN, LLC,
and 8TH STREET WELLNESS, PC, LLC,

Intervening Defendants/Cross-
Plaintiffs,

and

989 VENTURES, LLC, doing business as
NORTHERN ROOTS,

Intervening Defendant/Cross-Plaintiff-
Cross-Appellee,

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC,
DNVK 4, LLC, MDMS GROUP, LLC, WARREN
CAPITAL HOLDINGS, LLC, WEST FORT
HOLDINGS, LLC, and FRAZHO PROVISIONING,
LLC,

Intervening Defendants.

PINEBROOK WARREN, LLC, GREENHOUSE
FARMS WARREN, LLC, HAPPY TRAILS
GROUP, INC., AUBREY VENTURES, LLC, BLUE
SPRUCE VENTURES, EMERALD BUSINESS
PARK, PC, LLC, DKB2, LLC, MPM-R WARREN,
LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

and

ALTERNATIVE RX, LLC, HCM WARREN, LLC,
JAR CAPITAL OF WARREN, LLC, PURE GREEN
WARREN, LLC, PURE WARREN, LLC, KAPP
WALLED LAKE, LLC, and PURE ROOTS, LLC,

Plaintiffs-Appellees/Cross-Appellants,

v

No. 355995
Macomb Circuit Court

CITY OF WARREN, CECIL ST. PIERRE,
RONALD PAPANDREA, STEVEN WARNER,
RICHARD SABAUGH, and ETHAN VINSON,

LC No. 2019-004059-CZ

Defendants/Cross-Defendants-
Appellees,

and

ROBERT BOCCOMINO and KEITH SADOWSKI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA
REVIEW COMMITTEE,

Defendant,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH,
INC., LE BATTLE CREEK, INC., WEISBERGER
VENTURES II, LLC, and VENDCO MICHIGAN,
INC.,

Intervening Defendants/Cross-
Plaintiffs,

and

LEVEL UP GARDEN, LLC, and 8TH STREET
WELLNESS, PC, LLC,

Intervening Defendants/Cross-
Plaintiffs-Appellants/Cross-Appellees,

and

989 VENTURES, LLC, doing business as
NORTHERN ROOTS,

Intervening Defendant/Cross-Plaintiff-
Cross-Appellee,

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC,
DNVK 4, LLC, WARREN CAPITAL HOLDINGS,
LLC, WEST FORT HOLDINGS, LLC, and
FRAZHO PROVISIONING, LLC,

Intervening Defendants-
Appellants/Cross-Appellees,

and

MDMS GROUP, LLC,

Intervening Defendant.

PINEBROOK WARREN, LLC, GREENHOUSE
FARMS WARREN, LLC, HAPPY TRAILS
GROUP, INC., AUBREY VENTURES, LLC, BLUE
SPRUCE VENTURES, EMERALD BUSINESS
PARK, PC, LLC, DKB2, LLC, MPM-R WARREN,
LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

and

ALTERNATIVE RX, LLC, HCM WARREN, LLC,
JAR CAPITAL OF WARREN, LLC, PURE GREEN
WARREN, LLC, PURE WARREN, LLC, KAPP
WALLED LAKE, LLC, and PURE ROOTS, LLC,

Plaintiffs-Appellees/Cross-Appellants

v

CITY OF WARREN, CECIL ST. PIERRE,
RONALD PAPANDREA, STEVEN WARNER,
RICHARD SABAUGH, and ETHAN VINSON,

Defendants/Cross-Defendants-
Appellees,

and

No. 356005
Macomb Circuit Court
LC No. 2019-004059-CZ

ROBERT BOCCOMINO and KEITH SADOWSKI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA
REVIEW COMMITTEE,

Defendant,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH,
INC., LE BATTLE CREEK, INC., WEISBERGER
VENTURES II, LLC, VENDCO MICHIGAN, INC.,
LEVEL UP GARDEN, LLC, and 8TH STREET
WELLNESS, PC, LLC,

Intervening Defendants/Cross-
Plaintiffs,

and

989 VENTURES, LLC, doing business as
NORTHERN ROOTS,

Intervening Defendant/Cross-Plaintiff-
Cross-Appellee,

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC,
DNVK 4, LLC, WARREN CAPITAL HOLDINGS,
LLC, WEST FORT HOLDINGS, LLC, and
FRAZHO PROVISIONING, LLC,

Intervening Defendants,

and

MDMS GROUP, LLC,

Intervening Defendant-
Appellant/Cross-Appellee.

PINEBROOK WARREN, LLC, GREENHOUSE FARMS WARREN, LLC, HAPPY TRAILS GROUP, INC., AUBREY VENTURES, LLC, BLUE SPRUCE VENTURES, EMERALD BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R WARREN, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

and

ALTERNATIVE RX, LLC, HCM WARREN, LLC, JAR CAPITAL OF WARREN, LLC, PURE GREEN WARREN, LLC, PURE WARREN, LLC, KAPP WALLED LAKE, LLC, and PURE ROOTS, LLC,

Plaintiffs-Appellees/Cross-Appellants,

v

CITY OF WARREN, CECIL ST. PIERRE, RONALD PAPANDREA, STEVEN WARNER, RICHARD SABAUGH, and ETHAN VINSON,

Defendants/Cross-Defendants-Appellees,

and

ROBERT BOCCOMINO and KEITH SADOWSKI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA REVIEW COMMITTEE,

Defendant,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH, INC., LE BATTLE CREEK, INC., WEISBERGER VENTURES II, LLC, VENDCO MICHIGAN, INC.,

No. 356011
Macomb Circuit Court
LC No. 2019-004059-CZ

LEVEL UP GARDEN, LLC, and 8TH STREET
WELLNESS, PC, LLC,

Intervening Defendants/Cross-
Plaintiffs

and

989 VENTURES, LLC, doing business as
NORTHERN ROOTS,

Intervening Defendant/Cross-Plaintiff-
Appellant/Cross-Appellee,

and

AE&K, LLC, BDECO I, INC., BDECO II, INC.,
DNVK 4, LLC, MDMS GROUP, LLC, WARREN
CAPITAL HOLDINGS, LLC, WEST FORT
HOLDINGS, LLC, and FRAZHO PROVISIONING,
LLC,

Intervening Defendants.

PINEBROOK WARREN, LLC, and HRS RETAIL,
LLC,

Plaintiffs-Appellees,

and

GREENHOUSE FARMS WARREN, LLC, HAPPY
TRAILS GROUP, INC., AUBREY VENTURES,
LLC, BLUE SPRUCE VENTURES,
ALTERNATIVE RX, LLC, HCM WARREN, LLC,
JAR CAPITAL OF WARREN, LLC, PURE GREEN
WARREN, LLC, PURE WARREN, LLC,
EMERALD BUSINESS PARK, PC, LLC, DKB2,
LLC, MPM-R WARREN, LLC, KAPP WALLED
LAKE, LLC, and PURE ROOTS, LLC,

Plaintiffs-Appellees/Cross-Appellants,

v

No. 356017
Macomb Circuit Court

CITY OF WARREN, CECIL ST. PIERRE,
RONALD PAPANDREA, STEVEN WARNER,
RICHARD SABAUGH, ETHAN VINSON,

Defendants/Cross-Defendants-
Appellants/Cross-Appellees,

and

ROBERT BOCCOMINO, KEITH SADOWSKI, and
CITY OF WARREN MEDICAL MARIHUANA
REVIEW COMMITTEE,

Defendants-Appellants/Cross-
Appellees,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH,
INC., LE BATTLE CREEK, INC., WEISBERGER
VENTURES II, LLC, VENDCO MICHIGAN, INC.,
LEVEL UP GARDEN, LLC, 8TH STREET
WELLNESS, PC, LLC,

Intervening Defendants/Cross-
Plaintiffs,

and

989 VENTURES, LLC, doing business as
NORTHERN ROOTS,

Intervening Defendant/Cross-Plaintiff-
Cross-Appellee,

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC,
DNVK 4, LLC, MDMS GROUP, LLC, WARREN
CAPITAL HOLDINGS, LLC, WEST FORT
HOLDINGS, LLC, and FRAZHO PROVISIONING,
LLC,

Intervening Defendants,

and

JOHN LAYTON.

PINEBROOK WARREN, LLC, ALTERNATIVE
RX, LLC, HCM WARREN, LLC, JAR CAPITAL
OF WARREN, LLC, PURE GREEN WARREN,
LLC, PURE WARREN, LLC, KAPP WALLED
LAKE, LLC, and PURE ROOTS, LLC,

Plaintiffs-Appellees/Cross-Appellants,

and

GREENHOUSE FARMS WARREN, LLC, HAPPY
TRAILS GROUP, INC., AUBREY VENTURES,
LLC, BLUE SPRUCE VENTURES, EMERALD
BUSINESS PARK, PC, LLC, DKB2, LLC, MPM-R
WARREN, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

v

CITY OF WARREN, CECIL ST. PIERRE,
RONALD PAPANDREA, STEVEN WARNER,
RICHARD SABAUGH, and ETHAN VINSON,

Defendants/Cross Defendants-
Appellees,

and

ROBERT BOCCOMINO and KEITH SADOWSKI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA
REVIEW COMMITTEE,

Defendant,

and

No. 356023
Macomb Circuit Court
LC No. 2019-004059-CZ

LIVWELL MICHIGAN, LLC, SOZO HEALTH,
INC., LEVEL UP GARDEN, LLC, and 8TH
STREET WELLNESS, PC, LLC,

Intervening Defendants/Cross-
Plaintiffs,

and

LE BATTLE CREEK, INC., WEISBERGER
VENTURES II, LLC, and VENDCO MICHIGAN,
INC.,

Intervening Defendants/Cross-
Plaintiffs-Appellants/Cross-Appellees,

and

989 VENTURES, LLC, doing business as
NORTHERN ROOTS,

Intervening Defendant/Cross-Plaintiff-
Cross-Appellee,

and

AE&K, LLC, BDECO I, INC., BDECO II, LLC,
DNVK 4, LLC, MDMS GROUP, LLC, WARREN
CAPITAL HOLDINGS, LLC, WEST FORT
HOLDINGS, LLC, and FRAZHO PROVISIONING,
LLC,

Intervening Defendants.

PINEBROOK WARREN, LLC, GREENHOUSE
FARMS WARREN, LLC, HAPPY TRAILS
GROUP, INC., AUBREY VENTURES, LLC, BLUE
SPRUCE VENTURES, ALTERNATIVE RX, LLC,
HCM WARREN, LLC, JAR CAPITAL OF
WARREN, LLC, PURE GREEN WARREN, LLC,
PURE WARREN, LLC, EMERALD BUSINESS
PARK, PC, LLC, DKB2, LLC, MPM-R WARREN,
LLC, KAPP WALLED LAKE, LLC, PURE
ROOTS, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

v

CITY OF WARREN, CECIL ST. PIERRE,
RONALD PAPANDREA, STEVEN WARNER,
RICHARD SABAUGH, ETHAN VINSON,
ROBERT BOCCOMINO, and KEITH SADOWSKI,

Defendants-Appellees,

and

CITY OF WARREN MEDICAL MARIHUANA
REVIEW COMMITTEE,

Defendant,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH,
INC., LE BATTLE CREEK, INC., WEISBERGER
VENTURES II, LLC, VENDCO MICHIGAN, INC.,
LEVEL UP GARDEN, LLC, 8TH STREET
WELLNESS, PC, LLC, 989 VENTURES, LLC,
doing business as NORTHERN ROOTS, AE&K,
LLC, BDECO I, INC., DNVK 4, LLC, MDMS
GROUP, LLC, WARREN CAPITAL HOLDINGS,
LLC, WEST FORT HOLDINGS, LLC, and
FRAZHO PROVISIONING, LLC,

Intervening Defendants-Appellants,

and

BDECO II, LLC,

Intervening Defendant.

PINEBROOK WARREN, LLC, GREENHOUSE
FARMS WARREN, LLC, HAPPY TRAILS
GROUP, INC., AUBREY VENTURES, LLC, BLUE
SPRUCE VENTURES, ALTERNATIVE RX, LLC,
HCM WARREN, LLC, JAR CAPITAL OF
WARREN, LLC, PURE GREEN WARREN, LLC,

No. 359269
Macomb Circuit Court
LC No. 2019-004059-CZ

PURE WARREN, LLC, EMERALD BUSINESS
PARK, PC, LLC, DKB2, LLC, MPM-R WARREN,
LLC, KAPP WALLED LAKE, LLC, PURE
ROOTS, LLC, and HRS RETAIL, LLC,

Plaintiffs-Appellees,

v

No. 359285
Macomb Circuit Court
LC No. 2019-004059-CZ

CITY OF WARREN, CECIL ST. PIERRE,
RONALD PAPANDREA, STEVEN WARNER,
RICHARD SABAUGH, ETHAN VINSON,
ROBERT BOCCOMINO, KEITH SADOWSKI, and
CITY OF WARREN MEDICAL MARIHUANA
REVIEW COMMITTEE,

Defendants-Appellants,

and

LIVWELL MICHIGAN, LLC, SOZO HEALTH,
INC., LE BATTLE CREEK, INC., WEISBERGER
VENTURES II, LLC, VENDCO MICHIGAN, INC.,
LEVEL UP GARDEN, LLC, 8TH STREET
WELLNESS, PC, LLC, 989 VENTURES, LLC,
doing business as NORTHERN ROOTS, AE&K,
LLC, BDECO I, INC., BDECO II, LLC, DNVK 4,
LLC, MDMS GROUP, LLC, WARREN CAPITAL
HOLDINGS, LLC, WEST FORT HOLDINGS,
LLC, and FRAZHO PROVISIONING, LLC,

Intervening Defendants.

Before: SAWYER, P.J., and SHAPIRO and REDFORD, JJ.

SHAPIRO, J. (*concurring in part and dissenting in part*).

I respectfully dissent. Though I concur in the majority's treatment of the due process claim, I would affirm the trial court's ruling that the Open Meetings Act (OMA) was violated.

Any analysis of the OMA's applicability should begin with the premise that "[t]o further the OMA's legislative purposes, the Court of Appeals has historically interpreted the statute broadly, while strictly construing its exemptions and imposing on public bodies the burden of proving that an exemption exists." *Booth Newspapers, Inc v Univ of Mich Bd of Regents*, 444 Mich 211, 223; 507 NW2d 422 (1993). See also *Wexford Co Prosecuting Attorney v Pranger*, 83 Mich App 197, 201; 268 NW2d 344 (1978) (interpreting the OMA liberally in favor of openness).

As the majority points out, our decision regarding the applicability of the OMA must be based on the language of the City’s Marijuana Ordinance. The ordinance states that after the applications have been approved by the Chief Zoning Inspector, they “shall be transmitted to the Review Committee *for approval*.” Marijuana Ordinance, § 19.5-13(4)(a) (emphasis added). The majority discounts this plain language, noting that a reading of the phrase in the context of the entire ordinance indicates that the word “approval” does not actually mean “approval” because only the City Council had authority to grant a license. I agree that the Council had final authority to grant the license, but the “approval” language in the ordinance demonstrates that the Review Committee was not merely advisory.

Moreover, this reading of the ordinance is consistent with the actual practice of the application process. The Review Committee, after approximately 13 meetings closed to the public, selected the 15 applicants it concluded should be granted licenses. And the City Council—with apparently no debate on the merits of the applications and no public comment—granted licenses to those applicants.¹ Moreover, the Council did not undertake any ranking of the applicants as required by the ordinance, which provided that “the Council shall rank the applicants in order, considering the factors outlined above.”

The majority relies heavily on *Davis v Detroit Fin Review Team*, 296 Mich App 568; 821 NW2d 896 (2012), as a particularly helpful guide in this case. *Davis* involved the unique question of the role of a financial review team established by the governor that advised the emergency financial manager during the Detroit fiscal crisis. Accordingly, I view that case as *sui generis* and do not agree that it provides substantial guidance here where the Review Committee was formed by ordinance and designated the selected applicants directly to the Council.

Far more helpful in my view is *Herald Co v Bay City*, 463 Mich 111; 614 NW2d 873 (2000). In that case, the job of fire commissioner had to be filled. The city charter stated that such a decision was to be made by the city commission “on the recommendation of the city manager.” *Id.* at 115. The Supreme Court first held that the city manager could not be a public body because he was a single individual. *Id.* at 129-130. The Court then held that the committee formed by the city manager was not a public body because it was not provided for in the charter. Rather, the city manager chose to have a committee assist him and selected its members. See *id.* at 135-136. By contrast, in the instant case, the Review Committee was formed pursuant to ordinance,² determined

¹ As stated in *Booth*, 444 Mich at 223, “[t]he deliberation of public policy in the public forum is an important check and balance on self-government.” Given the absence of any public deliberation by the Council after months of private deliberation by the Review Committee, the “check and balance” role intended to be served by the OMA could only have been provided by public access to the Review Committee’s meetings.

² As noted by this Court in *Morrison v East Lansing*, 255 Mich App 505, 519-520; 660 NW2d 395 (2003), abrogated on other grounds by *Speicher v Columbia Twp Bd of Trustees*, 255 Mich App 505; 660 NW2d 395 (2014), the *Herald* Court “focused on the source of the committee’s power, which was its formation by the city manager.” In *Morrison*, this Court distinguished *Herald Co* on those grounds in holding that a building committee was a public body when it was created by

the ranking without any input from the public or the City Council, and provided its ranked list directly to Council, not merely to a third person who had been designated to make the recommendation. And unlike the city manager's committee in *Herald*, the Review Committee was empowered to "approve" applications.

This is a close case, but I conclude that fidelity to the ordinance's terms, as well as the policy-making work of the Review Committee, weighs heavily in favor of transparency and public access to the process. Therefore, I would affirm the trial court's ruling that the Review Committee constitutes a public body under the OMA and its decision to invalidate the 15 licenses that were a product of the Review Committee's closed meetings.

/s/ Douglas B. Shapiro

the city counsel through resolution. *Id.* at 520. This Court concluded that "[t]he city council effectively authorized the [building committee] to perform a governmental function." *Id.* Notably, the committee in *Morrison* was appointed only "to make recommendations concerning the development of the community center." *Id.* at 507.