

# THE RISK JOURNAL

A PUBLICATION FOR MMRMA MEMBERS

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## Net Asset Policy Provides Key Member Benefits

by Michael Rhyner,  
MMRMA Executive Director

AT ITS SEPTEMBER MEETING, the Board of Directors conducted its annual strategic planning session and review of MMRMA's Governance Manual. One of the key policies that fuels MMRMA's strategic direction is our Net Asset Policy.

The Net Asset Policy requires MMRMA to hold adequate capital to meet its current and future obligations and protect MMRMA from various business risks.

MMRMA's current net asset balance is the result of more than 15 years of investment gains. Our investment guidelines allow for up to 60 percent of assets to be invested in equities—and since the early 1990s, investment income has accounted for 90 percent of our current net asset balance.

It is important to recognize the fundamental reasons why MMRMA, as a "risk taking" entity, must build and hold capital. These include:

- Financing MMRMA's retained risks
- Stabilizing member contributions



*In addition to more than \$37 million in distributions, MMRMA's net asset policy has paid for more than \$20 million in vehicle assessments and enhanced no-fault auto coverage.*

- Covering any reserve shortfalls or adverse losses
- Acting as a contingency for uncollectible reinsurance
- Protecting against investment volatility (unrealized gains and losses)
- Funding unexpected or unforeseen claims.

It is our policy to maintain sufficient capital comparable to high-quality insurance and reinsurance companies with an AM Best rating of A or higher. We use the expertise of Towers Watson, a nationally recognized casualty actuarial firm, to develop and implement the technical methods to determine our appropriate net asset balance.

MMRMA members benefit from the Net Asset Policy in many ways:

1. **Direct Distributions.** Since 2006, more than \$37 million has been distributed to MMRMA members.
2. **Michigan Vehicle Assessments.** Net assets pay for members' Michigan Catastrophic Claims Association vehicle assessments, which increased to \$143.09 per vehicle in July. Over the past five years, MMRMA has paid more than \$20 million in assessments for members.
3. **No-Fault Automobile Coverage.** Net assets provide members with enhanced no-fault automobile coverage. With Michigan having one of the most costly no-fault statutes in the nation, this is a significant benefit.
4. **Coverage for Volunteers.** Net assets are used to underwrite liability coverage for volunteers.
5. **Risk Avoidance Program (RAP) Grants.** Each year, \$750,000 is allocated for direct grants to members for various risk management and loss control programs. RAP Grants are awarded by MMRMA's Membership Committee. To date, members have received more than \$7.4 million in RAP awards.

In these difficult economic times, the Board of Directors has acted to increase the amount of excess net assets distributed to the membership above the amounts recommended by management and the Finance Committee, but within the ranges determined by the actuary.

We carefully balance our investment policy based on total returns, retention of risk financing, stability of member contributions, protection from reserve deficiency, and systematic return of excess net assets to members. This strategic approach, we believe, will provide long-term benefits well into the future.

# MMRMA's New Website Went Live in September

ONE OF MMRMA'S TOP strategic priorities is the effective use of technology in providing member service. At the 2010 Annual Meeting, we previewed our new website as a significant enhancement to our communication programs.

In September, we retired our old site and officially launched the brand new [mmrma.org](http://mmrma.org). In addition to imparting a professional image and serving as a marketing vehicle, the new site provides a sophisticated intranet with a host of functions for membership services and operations.

The site represents an ongoing migration from printed and mailed communications to electronic formats. Members will receive a wealth of information in an even more timely, concise, and cost-effective manner.

The site was developed by wedü, a New Hampshire-based marketing firm with experience in creating and maintaining websites specifically for public entity pools, including the New Hampshire Public Risk Management Exchange (PRIMEX). In addition, wedü built the site for Government Entities Mutual (GEM) and is working with other GEM member pools to enhance website functionality in our industry.



## Login to [mmrma.org](http://mmrma.org)

We encourage all Member Representatives to request a login if they don't already have an online account. Please contact Tamara Christie at [tchristie@mmrma.org](mailto:tchristie@mmrma.org) if you need help logging in. We welcome your feedback, so please check out the site and let us know what you think!



Click on "I Want To" for a menu of handy shortcuts.



Click on the "Training" tab to see a monthly calendar of events, for which you can register online.

## Members-Only Content

The site features a Members Only area that provides users with access to forms, content, and communication targeted to the membership, including model policy brochures.

There, member representatives can access financial information including loss data, reports, and statements of funds on deposit. MMRMA committee members will find announcements, agendas, supporting material, and meeting minutes.

Member employees can click on the "Training" tab to register online for MMRMA's risk control training courses, or click on "Subscribe" to request e-mail subscriptions

to upcoming training bulletins, the biweekly *National News Roundup* (formerly *Risk Update* e-newsletter), and receive alerts when new issues of the *Risk Journal* and annual reports are available.

MMRMA members will also receive occasional e-mail notifications of special announcements as well as updated website content.

The key to Member Only access is an authorized login account that users sign into with their e-mail address and an assigned password. If you do not already have an [mmrma.org](http://mmrma.org) account, you may request one at the site by clicking the "Member Login" link at the top right.

Please be assured that MMRMA respects your privacy and will not distribute your e-mail address to any third parties. Your e-mail address will only be used to provide you with enhanced website access and to distribute MMRMA's own communications.

We are extremely proud of the new site, which reflects our ongoing commitment to excellence in communications and technology.

Tamara Christie, MMRMA's communications specialist, has lead responsibility for management of the website. Feel free to contact her at [tchristie@mmrma.org](mailto:tchristie@mmrma.org) with any questions or comments.

[www.mmrma.org](http://www.mmrma.org) is your online resource

# Land Use: Exclusionary Zoning and the "Ripeness Doctrine"

by Carol A. Rosati,  
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ON JULY 15, THE MICHIGAN Supreme Court ruled in *Hendee v Township of Putnam*, recording a significant victory for municipal entities.

The Hendee family, the plaintiffs, asked Putnam Township (in Livingston County) to rezone their AO (Agricultural/ Open Space) farm to R1B and approve a Planned Unit Development (PUD) of 95 single-family homes on one-acre lots. When the township denied both requests, the Hendees asked for a variance, which was also denied. At first glance, it seemed as if the Hendees had gone through the appropriate procedures to get their case into court.

The Hendees filed a complaint in court, challenging the AO zoning and asking the court to allow a manufactured housing community (MHC), a use for which they had never applied. The owners asserted that the current zoning denied any economically viable use of the land, resulting in a taking of property without just compensation, and also claimed that the current zoning was not based on legitimate governmental interests, violating the owners' due process and equal protection rights. They also claimed the zoning ordinance was exclusionary because it prohibited development of "affordable housing" in the form of an MHC.

As the case proceeded, the Hendees decided to waive all damage claims and sought only injunctive relief to allow them to develop the MHC. The township filed a motion to dismiss the case on the basis that the plaintiffs'



*The Hendees filed to rezone their 144-acre farm for single-family residential, but then sued in court, asking for a manufactured housing community.*

claims were not "ripe" because they had never applied for MHC rezoning and hadn't received any decision, much less a final one. The ripeness doctrine requires that a landowner obtain a final decision from a municipality as to the development that will be permitted on the property.

## Previous Court Rulings

In May 2006, the trial court ruled in favor of the Hendees, holding that the township's AO zoning was unconstitutional "as applied" to the property under all constitutional theories advanced by the plaintiffs. The court found that the township's total exclusion of manufactured housing constituted exclusionary zoning in violation of substantive due process and equal protection, and rendered the zoning "facially" invalid.

The court also determined that the Hendees' proposed use of the property for a 498-unit MHC was reasonable, and entered an **injunction permanently enjoining the township from interfering with the development.**

In August 2008, the Court of Appeals reversed in part and affirmed in part in a 2-1 decision. The court unanimously reversed the trial court's findings of a violation of equal protection, substantive due process, and a taking. The majority found those claims ripe for review, but reversed on the actual merits of the claims because the AO zoning

was based on legitimate governmental interests and the property could be used as zoned.

Regarding the exclusionary zoning claim, the majority did not address whether that claim was ripe for review, finding that the "futility exception" applied. The majority wrote that since the township had rejected a 95-unit development, it was reasonable to conclude that applying for an even greater number of units would likewise be denied. Despite the fact that the Hendees had alleged a violation of the exclusionary zoning statute, the majority believed that there was no obligation to apply the conditions in that statute because plaintiffs had alleged a "constitutional" exclusionary zoning claim.

While noting that the township argued that it did not exclude mobile homes, that there was no total prohibition in the surrounding area (mobile home parks were near the plaintiff's property), and that there was no demonstrated public need for another mobile home park, the majority disregarded those arguments as not applicable to the constitutional exclusionary zoning claim. **The appeals court affirmed the injunction against the township.**

## Supreme Court Reverses

In July of this year, the Michigan Supreme Court unanimously reversed the lower court rulings

The decision is a significant victory for municipalities because it confirms that landowners must apply for an intended use of property before suing in court.

and ruled in favor of the township. Although the decision was unanimous, three separate opinions were written in the case. The three opinions all represent the conclusion that the lower court decisions holding the township's zoning ordinance unconstitutional on exclusionary zoning grounds should be reversed because the Hendees' claim was not ripe for judicial review.

The lead opinion, authored by Justice Weaver and joined by Justice Hathaway, and the concurring opinion authored by Justice Corrigan and joined by Justices Young and Markman, together represent the opinion of five justices that the ripeness defect arose from the Hendees' failure to submit a rezoning application for an MHC, which would have allowed the township to exercise its discretion to decide whether to approve or deny the proposed classification. The opinion of Justice Cavanaugh, joined by Chief Justice Kelly, agreed that the Hendees had not presented an exclusionary zoning claim that was ripe for review.

Other than the consensus, which can be gathered from a review of all the opinions, each opinion also expressed additional but varied reasons as to why the decisions of the lower courts should be reversed. The lead opinion began with a discussion of the zoning powers and the

*continued on back page*



White-tail deer are found in every Michigan county. Their numbers have fluctuated between 1 and 2 million over the last two decades.

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The *Risk Journal* is published six times a year for members of the Michigan Municipal Risk Management Authority. We welcome your feedback. To comment or suggest story ideas, please contact Tamara Christie, communications specialist, at 734 513-0300, 800 243-1324, or tchristie@mmrma.org.

Carol A. Rosati is managing shareholder of Johnson, Rosati, LaBarge, Aselytne & Field, PC, a principal defense firm for MMRMA. Recognized in the area of land use law, she is among the Top 50 Women Lawyers in Michigan and recipient of the Distinguished Municipal Attorney Award from the Michigan Association of Municipal Attorneys.

## Rhyner Plays "Regis" at MMRMA Annual Meeting

AT THE AUGUST ANNUAL meeting, Executive Director Michael Rhyner debuted *Turning Point*, MMRMA's newest presentation tool.

*Turning Point* is like "Ask the Audience" on Regis Philbin's "Who Wants To Be A Millionaire"—and, in both cases, you need fast fingers to get your answers counted.

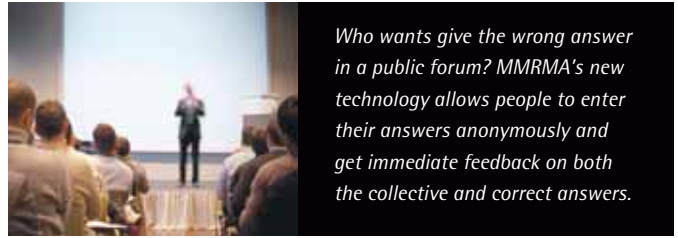
The audience enters responses to true/false or multiple choice questions on a keypad, which transmits their answers to a receiver that tabulates their responses.

Using MMRMA's 30th anniversary as his theme, emcee Michael Rhyner posed history questions to our members, who responded enthusiastically and proved quite astute in their responses.

## Land Use Ruling, continued from page 1

recognition that the pressures of competing land uses require the segregation of incompatible uses to protect the public interest.

The lead opinion found that the Hendees' failure to make a meaningful application for an MHC deprived the township of the ability to determine whether there was a demonstrated need for that use, stating that a municipality need not provide for every conceivable use within its boundaries. As the claims were not ripe, the lead opinion found it unnecessary to decide the exclusionary zoning claim. The futility exception relied on by the Court of Appeals was rejected on the basis that, since no rezoning application had been filed and no evaluation of an MHC rezoning had been done by the township, it was impossible to determine whether the township would have granted the rezoning to



Who wants give the wrong answer in a public forum? MMRMA's new technology allows people to enter their answers anonymously and get immediate feedback on both the collective and correct answers.

The new technology was quickly put to use at the Great Lakes Rural Community Mental Health conference, where CMH representatives answered questions about the Freedom of Information Act (FOIA). In answer to the true/false question, "FOIA requests sent by email are valid," 6 of 10 respondents correctly answered "True." In response to "Do FOIA requests have to be signed by the requester to be valid?" the group didn't fare as well: 68 percent said "Yes," which is incorrect.

"It's not a matter of the number of right or wrong answers, but

rather the opportunity to engage the collective brains of the audience," says Chuck Schwab, Director of Risk Management.

"*Turning Point* energizes the audience and takes away the fear factor," Schwab adds.

"To aid the presenter, the system measures the audience's previous knowledge as well as each person's attention and comprehension. With this information, the presenter gets feedback on each person's learning and can review key points, which strengthens the effectiveness of training."

MHC or whether a denial would be reasonable in light of the township's governmental interests.

On the other hand, Justice Cavanaugh wrote that the case was not ripe because the Hendees had neither pleaded nor shown that the township had made decisions excluding mobile home communities to an impermissible degree or that the zoning ordinance or a zoning decision had totally excluded the use from the township. Justice Cavanaugh wrote that the lead opinion's reasoning would exacerbate the errors in the broad finality rule previously adopted by the Michigan Supreme Court. He felt the same analysis as to whether a final decision existed for all challenges, regardless of whether the decision actually served the purpose of the doctrine, was imprecise. The focus of Justice Corrigan's opinion was

whether an exclusionary zoning claim was a facial of as-applied challenge to the ordinance. Justice Corrigan felt the lead opinion had sidestepped the issue, and concluded that the exclusionary zoning challenge was an as-applied challenge. The ripeness doctrine barred that claim because the township had not been given the opportunity to react to and decide a request for rezoning for an MHC.

The Supreme Court rejected the game that the Hendees had attempted to play. The Hendees' attempts to ripen their claims by applying for one use and then requesting another use that the township and public had never been given the opportunity to consider was soundly rejected. The Supreme Court's decision clarifies a landowner's obligation to go through the proper processes to obtain a final decision from the community for a land use before running off to court.