

FISHER CONSULTING

Gerald A. Fisher
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Consulting

LOCAL GOVERNMENT AND LAND USE LAW
6745 PARKE LAKE DRIVE
CLARKSTON, MICHIGAN 48346
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February 28, 2025

Jonathan Smith, City Manager
City of the Village of Clarkston
375 Depot Road
Clarkston, MI 48346

SUBJECT: Follow up on Discussion Regarding the Anticipated Opening
For the Position of City Attorney

Dear Jonathan,

Thank you for the opportunity to discuss the anticipated opening in the position of City Attorney for Clarkston. This will confirm my statement in our discussion that I would be interested in the position if, after reviewing all other available candidates, it is determined by the City Council that my involvement has the potential of making a positive contribution to the City.

If selected, my plan would be to bring to this assignment an Assistant City Attorney who is experienced in the practice of local government law. I would be available to handle the issues deemed by the City to need my experience and attention, and on other matters provide appropriate backing for the Assistant. By operating with an Assistant, two things would be accomplished: first, the hourly rate of the Assistant would be lower, and thus create the opportunity to fulfil the duties of the City Attorney at a more moderate rate; second, assuming things were working well, this arrangement would provide for the succession in the City Attorney position by a professional already familiar with the City, its officials, and its legal needs.

I am enclosing with this letter an updated bio which is fairly detailed. As for the qualifications of an Assistant, I would be guided by the City's preference of either presenting for your consideration a specific candidate immediately, or identifying a

proposed Assistant for your review and approval if and when the Council determined to retain my services.

I look forward to the opportunity to be considered for the position of City Attorney for the City of the Village of Clarkston.

Respectfully,

Gerald A. Fisher

Gerald A. Fisher

BIO FOR GERALD A. FISHER

February 2025
6745 Parke Lake Drive
Clarkston, MI 48346
(248) 514-9814
fisherg@cooley.edu

CURRENT PROFESSIONAL POSITION – LOCAL GOVERNMENT CONSULTANT

Gerald A. Fisher is a local government and land use law consultant, and an Emeritus Professor of Law at the Western Michigan University Cooley Law School, where he taught full time for fifteen years (2004-2019), with courses including Property Law, Constitutional Law, Secured Transactions, Zoning and Land Use Law, and State and Local Government Law. Currently serving as general counsel for the City of Lake Angelus and the Township of Metamora, Lapeer County, MI, and serving as special counsel involving land use and infrastructure finance for City of Algonac, Salem Township, Sharon Township, and Tyrone Township; generally represents cities, counties, townships, private groups and individuals on single issue assignments; and provides mediation/facilitation services involving local government issues.

RECENT INTERIM POSITION – TOWNSHIP SUPERVISOR

In October, 2021, appointed to serve for one year as Township Supervisor in the Charter Township of Independence, Oakland County, a local government with a population of nearly 40,000. This position included: Serving as chairperson of Township Board, Economic Development leader, Oversight for department heads, including Departments of Public Works, Building Department, Planning Department, Assessor, and Fire Department. Such oversight also included service as the local representative and coordinator with the Oakland County Sheriff.

PRIOR LONG-TERM POSITION – MUNICIPAL ATTORNEY AND PRACTICE GROUP MANAGER

Prior to joining the Cooley faculty, Fisher served as Senior Partner and Manager of the Municipal Practice Group at Secrest Wardle, a mid-sized Michigan law firm then headquartered in Farmington Hills, Michigan. As an active attorney, specialized in local government and land use regulation law, real estate law, and general counsel for cities, villages and townships, primarily in Southeast Michigan, including the City of Novi, Township of Bloomfield, Township of West Bloomfield, Township of Independence, Township of Oakland, and Township of Orion. This service included attorney for the legislative body and planning commission, advising boards, commissions and department personnel, preparation of ordinances, contracts, and other documents, litigation defending the local governments and officials, and initiating suit to enforce ordinances. Also served as Special Counsel for governmental entities throughout the State, including litigation defense, zoning and land use planning and regulation, the establishment and maintenance of inter-government relations with the state, county, and other local governments, and periodically the assistance in the preparation and advocacy of state law.

EXPERIENCE IN SPECIAL AREAS OF INTEREST TO CLARKSTON

- **Historic Preservation:**
 - Established historic reservation regime in Oakland Township
 - Special assignments, including the negotiation and establishment of a covenant for the preservation of the historic façade of a bank in downtown Royal Oak.
 - Represented the property owner in working through the preservation/renovation of the historic Methodist Church in the Village.
- **Representation of Smaller Local Governments:** Currently serving as General Counsel for the City of Lake Angelus, which has a population of approximately 290. Before joining the full-time teaching faculty at Cooley Law School in 2004, service was provided as General Counsel for the Village of Bingham Farms, Village of Goodrich, Village of Ortonville, and Village of Lake Orion. Also served as Special Counsel for the Village of Beverly Hills.

GENERAL EXPERIENCE IN LOCAL GOVERNMENT LAW

A list of general and special counsel assignments can be found on the attachment to this bio. In addition, service has been provided on behalf of property owners in connection with land use matters.

EDUCATIONAL BACKGROUND

B.S., Michigan State University, 1967

Varsity Hockey Team (1964 – 1967, NCAA Team Title in 1966, and Big Ten Team Title in 1967)

M.A., Michigan State University, 1969

J.D., Detroit College of Law [now Michigan State University College of Law], 1972

L.L.M., Wayne State University (Thesis in financing public infrastructure improvements in Michigan), 1989

PROFESSIONAL AFFILIATIONS, ACTIVITIES AND AWARDS

State Bar of Michigan: Member and past Chairperson of the Public Corporation Law Section (now the Government Law Section), with membership on the council dating from 1984; Current chair of Zoning, Land Use and Local Control Committee of the Government Law Section; and, past Co-Chair of Court of Appeals Committee, and Fellow of the State Bar.

Oakland County Bar Association: Founder and first Chairperson of the Municipal Law Committee; past Chairperson of Legislative Committee; past member of Public Advisory Committee.

Oakland County Bar Foundation: Past President of the Foundation Board of Trustees; now Emeritus Trustee; Life Fellow of the Foundation.

Past Member, Michigan Municipal League Professionalism and Education Committee.

Chairperson and legal counsel for Intergovernmental Growth Management Consortium, (1988-1990) [consortium of several Michigan governmental entities which published a two-part document explaining growth management techniques and proposing a number of legislative bills to facilitate growth management.

Member of Michigan Supreme Court Historical Society and Advocates' Guild.

Recipient of the State Bar of Michigan Roberts P. Hudson Award, 1979

Recipient of the Cooley Law Review Michigan Supreme Court Distinguished Brief Award, 2001

Lawyer of the Year in Michigan (one of ten), 2001, recognized and awarded by Michigan Lawyers Weekly

Best Lawyers in America, selected by peers in Municipal Law for 2007.

Named a Michigan "Super Lawyer" for 2007 and 2009.

Given the Award for Exceptional Contributions for 2007 by the Michigan Association of Planning.

Environmental Trailblazer award from North Oakland Headwaters Land Conservancy, 2012

Recipient of Oakland County Bar Association Distinguished Service Award, 2014.

Named to Who's Who in America, 2019-2020.

NOTEWORTHY LITIGATION

Michigan Supreme Court Appearances

Schwartz v City of Flint, Michigan Supreme Court (*amicus curiae* on behalf of the Real Property Law Section – case precedent for standard of review for court consideration of zoning challenges).

Edward Rose Building Company v Independence Township, Michigan Supreme Court (counsel for Township – uniformity of valuation of property for tax assessment).

Square Lake Hills Condominium Association v Bloomfield Township, Michigan Supreme Court (counsel for Township – case precedent for authority to regulate boat docking on inland lakes under general police power authority).

Bevan v Brandon Township, Michigan Supreme Court (*amicus curiae* on behalf of the Michigan Municipal League – land use regulation and taking).

Hess v West Bloomfield Township, Michigan Supreme Court (counsel on behalf of Township – case precedent for authority to regulate boat docking on inland lakes under zoning power; and, legislative intent that environmental protection may be undertaken under the zoning power).

Paragon v City of Novi, Michigan Supreme Court (*amicus curiae* on behalf of the Public Corporation Law Section – case precedent establishing critical condition for commencing zoning ordinance challenge).

Williams v Redford Township, Michigan Supreme Court (*amicus curiae* on behalf of the Oakland County Township Supervisors – immunity).

K & K construction, Inc., v MDNR, Michigan Supreme Court (*amicus curiae* on behalf of Michigan Municipal League, Michigan Townships' Association and Public Corporation Law Section of State Bar of Michigan – Brief adopted by American Planning Association – case precedent for the review of wetland regulations under attack as being a taking of property rights).

Spiek v MDOT, Michigan Supreme Court (*amicus curiae* on behalf of Michigan Municipal League and Michigan Townships' Association, inverse condemnation).

Burt Township v MDNR, Michigan Supreme Court (counsel on behalf of Township – State Agency Zoning Ordinance compliance requirement).

Adams Outdoor Advertising v City of Holland, Michigan Court of Appeals (*amicus curiae* on behalf of Michigan Municipal League – case precedent for the authority to limit the number of billboards within a city).

Adams Outdoor Advertising v City of East Lansing, Michigan Supreme Court (*amicus curiae* on behalf of Michigan Municipal League – taking case involving the amortization of rights for the removal of non-conforming billboards).

Wayne County v Hathcock, Michigan Supreme Court (*amicus curiae* on behalf of the Public Corporation Law Section of the State Bar of Michigan – appeal testing and establishing case precedent for the Michigan “public use” requirement for the exercise of eminent domain).

City of Novi v Robert Adell Childrens Funded Trust, Michigan Supreme Court (counsel for City – appeal further exploring and defining “public use” issue, sequel to *Hathcock* case).

Coblentz v City of Novi, Michigan Supreme Court (counsel on behalf of the City of Novi, Freedom of Information).

Greater Bible Way v City of Jackson, Michigan Supreme Court (counsel for the City of Jackson, interpretation of the Religious Land Use and Institutionalized Persons Act [RLUIPA]).

Kyser v Kasson Township, Michigan Supreme Court (counsel on behalf of the Township of Kasson, zoning planning, and exclusionary zoning, involving gravel mining).

State v McQueen, Michigan Supreme Court (*amicus curiae* on behalf of Michigan Municipal League, Michigan Townships Association and Public Corporation Law Section of State Bar of Michigan, involving the interpretation of the Michigan Medical Marihuana Act).

The People Should Decide, a Michigan Ballot Question Committee v State Board of Canvassers (Counsel for The People Should Decide, involving mandamus to place on the general election ballot a proposed amendment to the Michigan Constitution).

People v Bylsma, Michigan Supreme Court (*amicus curiae* on behalf of Michigan Municipal League and Public Corporation Law Section of State Bar of Michigan, involving the interpretation of the Michigan Medical Marihuana Act on the scope of the affirmative defense provided in the law and whether caregivers may cultivate marihuana in cooperatives).

People v ter Beek, Michigan Supreme Court (*amicus curiae* on behalf of Public Corporation Law Section of State Bar of Michigan, involving issue of state and federal preemption of the Michigan Medical Marihuana Act).

Township of Fraser v Haney, Michigan Supreme Court (*amicus curiae* on behalf of the State Bar Government Law Section and Michigan Municipal League, involving time limit for enforcement of zoning ordinance to prohibit nuisance *per se*).

Peterson Financial v City of Kentwood, Michigan Supreme Court *amicus curiae* on behalf of the State Bar Government Law Section and Michigan Municipal League, involving city authority to take certain actions in connection with a contracted special assessment district.

Jostock v Mayfield Township (2024), Michigan Supreme Court *amicus curiae* on behalf of the State Bar Government Law Section and Michigan Municipal League, involving an interpretation and application of the section of the Michigan Zoning Enabling Act providing for the submission and approval of *conditional rezonings*.

United States Court of Appeals for the Sixth Circuit Appearances

Hubert Garner v Township of Independence, Sixth Circuit, United States Court of Appeals (counsel for Independence Township – very early case filed under 42 USC, §1983, alleged civil rights violation in connection with zoning denial).

Rzadkowolski v Village of Lake Orion, Sixth Circuit, United States Court of Appeals (counsel on behalf of Village – First Amendment; billboard regulation).

Omnipoint Holdings v City of Southfield, Sixth Circuit United States Circuit Court of Appeals, (attorney on behalf of the City of Southfield - successful defense of cellular tower denial).

Karkoukli's Incorporated v C. Hugh Dohaney and Charter Township of Waterford, Sixth Circuit, United States Court of Appeals (counsel on behalf of Waterford Township; property tax foreclosure).

EXPERT TESTIMONY

Qualified as expert in the Wayne County Circuit Court for testimony on behalf of the City of Inkster. The purpose of the testimony related to the reasonableness of an attorney fee in a right-of-way condemnation case.

Qualified as expert in the Oakland County Circuit Court for testimony on behalf of the City of Orchard Lake Village. The purpose of the testimony related to the zoning authority of the City.

Qualified as expert in the Michigan Employment Relations Commission for testimony on behalf of Oakland County. The purpose of the testimony related to the nature of county government in relation to other forms of local government.

Qualified as expert in the Oakland County Circuit Court for testimony on behalf of the Michigan Department of Transportation. The purpose of the testimony related to the reasonableness of attorneys fees in condemnation cases.

Expert Witness for the City of Sterling Heights in *Sterling Heights v United National Insurance, et al.* The purpose of the testimony related to the issue of the reasonableness of the City's settlement with Defendants. United States District Court ruling in favor of City affirmed in the United States Circuit Court of Appeals.

Qualified as expert in United States District Court for the Eastern District of Michigan in *Amber Reineck House v. City of Howell*, for testimony on behalf of the City relating to the lawfulness of the City's response to a request for a reasonable accommodation for a land use under the Federal Fair Housing Act.

PROFESSIONAL PUBLICATIONS & SPEAKING ENGAGEMENTS

Books

Author, *Local Government Law, A Practical Guidebook for Public Officials on City Councils, Community Boards, and Planning Commissions*, published in May, 2021 by Routledge.

Co-author (three chapters) *Michigan Zoning, Planning, and Land Use*, initially published in 2008, published by the Michigan Institute of Continuing Legal Education.

Contributing co-editor, *Michigan Municipal Law*, initially published in 2012 by the Michigan Institute of Continuing Legal Education.

Contributed two segments for a book entitled *Lawyers as Economic Drivers, The Business Case for Legal Services*, edited by Nelson P. Miller, James D. Robb, and John D. Crane, 2012, Vandepas Publishing.

Other Publications

The General Public Interest vs. The Presumption of Zoning Ordinance Validity: A Debatable Question, 50 Journal of Urban Law 129 (1972).

Michigan Zoning Needs Legislative Guidance, 55 Michigan Bar Journal 873 (1976).

Recent Zoning Enabling Legislation: A Beginning with Promise, Michigan Real Property Review, October, 1979.

Commending the Planned Unit Development, Michigan Real Property Review, Summer 1983.

Michigan Courts Paint with a Broad Brush in Recent Zoning Cases, Michigan Real Property Review, Summer 1986.

Schwartz v City of Flint: A "New" Zoning Remedy, Public Corporation Law Quarterly, February, 1987.

Land Use Regulation Scorecard, 67 Michigan Bar Journal 13 (1988).

The Need for Growth Management in Michigan Has Arrived, Public Corporation Law Quarterly, January 1990.

Existing Growth Management Techniques and Proposed Legislation for Michigan, Phase One Report of the Intergovernmental Growth Management Consortium, May, 1990.

Regulating Keyhole Development, Carrying Capacity Analysis (co-author), Prepared for State of Michigan Dept of Natural Resources, and others, November, 1994.

Paragon is a "Win-Win" Case, Michigan Planning and Zoning News, February, 1997

The Michigan Supreme Court Maintains the Critical Balance Between Prosperity and Preservation: the K & K Case, (co-author) Laches (Oakland County Bar Association) Magazine, October 1998.

Maintaining the Equilibrium of Fairness by Transferring Development Rights, Planning and Zoning News, March, 2003.

The Subtle Erosion of Local Control Without a Public Dialogue, Michigan Municipal Review, Jan/Feb 2004.

Contract Zoning: An Historical Prologue and Early Analysis, Laches (Oakland County Bar Association) Magazine, June, 2005.

U.S. Supreme Court Withdraws Two Welcome Mats it Had Previously Rolled Out for "Takings" Cases, Michigan Planning and Zoning News, August, 2005.

Religious Land Uses and Government's Authority to Control Them: A Play in Three Acts, with the United States Supreme Court and the Congress Playing Lead Roles, and the Michigan Supreme Court Making a Virtuoso Special Appearance, Public Corporation Law Quarterly, Fall, 2007.

The Comprehensive Plan is an Indispensable Compass for Navigating Mixed-Use Zoning Decisions through the Precepts of the Due Process, Takings, and Equal Protection Clauses, 40 Urban Lawyer, 831 (Fall, 2008).

The "Finality Rule" of Paragon v City of Novi: The Achievement of Fairness in Land Use Jurisprudence, Public Corporation Law Quarterly, Winter 2010, No. 1.

Author of a White Paper, commissioned by the Michigan Municipal League and Michigan Townships Association, entitled *A Local Government View of the Michigan Medical Marihuana law*, dated October 5, 2010.

What Process is Due an Applicant for a Local Government Permit or Approval?" September 2015 edition of the Michigan Bar Journal.

Ditching the 'F-Word' in the Michigan Public Square to Enrich Public Expression and Promote Education, Laches (Oakland County Bar Association) Magazine, January 2018.

Michigan Has a Deep-Rooted Public Policy of Strong Local Control . . . If We Can Keep It, July, 2020 edition of the Michigan Bar Journal.

Billboard Cases in the Sixth Circuit Raise Questions on the Application of Reed v Town of Gilbert, January, 2021, BRIEFLY, a Publication of the Government Law Section of the State Bar of Michigan.

Speaking

Frequent speaker on governmental regulation issues for: Institute of Continuing Legal Education; State Bar Real Property Law Section; State Bar Public Corporation Law Section; Michigan Municipal League; Michigan Townships' Association; Michigan Association of Planning; Michigan Association of Counties; Michigan State University Extension Service; Michigan Department of Environmental Quality; Michigan Department of Commerce; Michigan Department of Transportation; Michigan Attorney General.

PUBLIC SERVICE ACTIVITIES

Board member, Scenic Michigan, a non-profit dedicated to enhancing the scenic beauty of Michigan's rural and urban landscapes.

Chairperson of Advisor Committee for the preparation of 2021 edition of the Scenic Michigan, Michigan Sign Guidebook, a comprehensive analysis to assist local governments in the area of sign regulation.

Chairperson of Zoning, Land Use, and Local Control Committee of State Bar Government Law Section Council.

Vice-Chair of Independence Charter Township Open Space Committee.

Past Chairperson and Commissioner, Oakland County Parks and Recreation Commission.

Past board member, William Booth Legal Aid Clinic (Southeast Michigan).

Past board member, Oakland County Legal Aid program.

Past member of Board of Directors, Land Information Access Association, a non-profit public interest corporation.

Past Board Member and *pro bono* legal advisor, North Oakland Headwaters Land Conservancy.

Past member of state-wide committee for the development of model inland lake regulations for Michigan Department of Natural Resources, and co-author of report.

Past member of state-wide Senate select *ad hoc* committee to work out compromise legislation for comprehensive amendment of the Michigan Wetland Act.

Past-President, Upper and Middle School Dads' Club, Cranbrook Schools.

Past pro bono legal advisor to Southeast Michigan Wetland Consortium.

GAF GOVERNMENT CLIENT LIST
February 2025

General Counsel

City of Novi (General Counsel Service)
City of Lake Angelus (General Counsel Service)
City of Dearborn Heights (Co-General Counsel Service)
City of Auburn Hills (Assistant Atty Services)
City of Bloomfield Hills (Assistant Atty Services)
City of Farmington Hills (Assistant Atty Services)
City of Walled Lake (Assistant Atty Services)
Charter Township of Independence (General Counsel Service)
Charter Township of Bloomfield (Co-General Counsel Service)
Charter Township of Oakland (General Counsel Service)
Charter Township of Orion (General Counsel Service)
Township of Metamora (General Counsel)
Township of Oscoda (General Counsel Service)
Township of Salem (General Counsel Service)
Township of Southfield (General Counsel Service)
Charter Township of Waterford (General Counsel Service)
Charter Township of West Bloomfield (General Counsel Service)
Village of Bingham Farms (General Counsel Service)
Village of Goodrich (General Counsel Service)
Village of Ortonville (General Counsel Service)
Village of Lake Orion (General Counsel Service)
Oakland County Board of Commissioners (Assistant Atty Services)

Special Counsel

| | |
|----------------------------------|---------------------------------|
| City of Algonac | Charter Township of Brighton |
| City of Alpena | |
| City of Battle Creek | Charter Township of Commerce |
| City of Benton Harbor | Charter Township of Delta |
| City of Charlotte | Charter Township of Brandon |
| | Charter Township of Milford |
| City of Frankfort Planning Comm. | Charter Township of Oxford |
| City of Inkster | Charter Township of Plymouth |
| City of Jackson | Charter Township of Scio |
| City of Keego Harbor | Charter Township of Springfield |
| City of Lansing | Charter Township of Watertown |

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| City of Madison Heights | Charter Township of White Lake |
| City of Oak Park | MDOT |
| City of Pontiac | Township of Kasson |
| City of Rochester Hills | Township of Grant |
| City of Romulus | Township of Metamora |
| City of Southfield | Township of Burt |
| | Township of Sharon |
| | Township of Tyrone |
| | Village of Beverly Hills |
| | Village of Franklin |
| | Village of Grass Lake |
| | Village of Oxford |
| | Oakland County Drain Commissioner |
| City of Roseville | Washtenaw County |
| | Oakland County Executive L. Brooks |
| City of Royal Oak | Patterson |
| | Oakland County Association of Township |
| | Supervisors |
| City of Wixom | Michigan Association of Township |
| City of Wixom Charter Revision Commission | Supervisors |
| Charter Township of Brandon | Michigan Association of Clerks |
| | Michigan Townships Association (Special |
| | Counsel and Amicus) |
| | Michigan Municipal League (Special Counsel |
| | and Amicus) |

**GERALD FISHER FEE SCHEDULE
FOR CITY ATTORNEY PROPOSAL
FOR THE CITY OF THE VILLAGE OF CLARKSTON**

April 15, 2025

Fee schedule for services would be based on the following rates:

- Gerald Fisher, as City Attorney \$ 200 per hour
- Kristin Kolb,* as Asst. City Attorney 150 per hour

Monthly billing statements would be provided specifying the date, description and time expended for each service performed, together with an itemization of expenses to be reimbursed, such as postage, mileage, advanced costs, copying, with all expenses billed at cost, without an add-on multiplier.

*See attached bio and related information for Kristin Kolb

Kristin Kolb is a Senior Attorney with the firm of Rosati Schultz Joppich & Amtsuechler, PC, in Farmington Hills. Her customary hourly rate is higher than \$150 per hour. However, she is very agreeable to work at this lower rate with the view of earning the City's confidence.

She has been representing local governments and other public authorities and agencies since 1999. Most recently, she spent 10 years as in-house counsel for the Charter Township of Canton. In that capacity, she was responsible for handling all of the day to day legal issues facing Canton, including, but not limited to, drafting, reviewing, interpreting and administering contracts and ordinances, handling land use and development issues, assisting with FOIA and OMA questions, property maintenance/nuisance abatement matters, providing support to the Public Works Division in the areas of water, sewer and storm water management, and the sale and acquisition of land, along with many other issues the Township faced. She was also responsible for provision timely legal advice to the three full-time elected officials, Board of Trustees, Downtown Development Authority, Township boards and commissions, Department Directors, managers and staff.

While at Canton, Kristin also provided guidance in the areas of worker's compensation, disability and other benefits, and employment and labor issues. Finally, Kristin was responsible for defending the Township in litigation and prosecuting nuisance cases in the circuit court.

Prior to joining Canton, Kristin worked for firms representing townships, cities, and other public agencies throughout southeast Michigan.

Kristin earned her Bachelor of Arts degree from Alma College, and her Juris Doctor and Master of Business Administration degrees from the University of Detroit Mercy.