



MAMA Spring Conference

Taking Back Our ROW:

**Defending and Advancing Local Control of Our ROW
and Public Places**

**10AM Tuesday March 12, 2024
Meeting Room 203**

Presented by Michael J. Watza

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PROTEC Legislative Agenda

1. **Oppose Cable Streaming Legislation HB 4965 Amending Video Service Act** [https://www.legislature.mi.gov/\(S\(z0znbc4u3wdi35npagqpgdf\)\)/mileg.aspx?page=GetObject&objectname=2023-HB-4965](https://www.legislature.mi.gov/(S(z0znbc4u3wdi35npagqpgdf))/mileg.aspx?page=GetObject&objectname=2023-HB-4965)
2. **Electric Transmission Line Certification Act: Elevating MPSC Rules over Home Rule and Local ROW control**
[https://www.legislature.mi.gov/\(S\(1tto40u1hylvlljcakrtjkob2e\)\)/mileg.aspx?page=GetObject&objectname=mcl-Act-30-of-1995](https://www.legislature.mi.gov/(S(1tto40u1hylvlljcakrtjkob2e))/mileg.aspx?page=GetObject&objectname=mcl-Act-30-of-1995)
3. **Miss Dig Amendment: Eliminated local government immunity for Miss Dig Operations.** [https://www.legislature.mi.gov/\(S\(0ossxjnhzhrcpitmtigy3h5u\)\)/mileg.aspx?page=getObject&objectName=mcl-Act-174-of-2013](https://www.legislature.mi.gov/(S(0ossxjnhzhrcpitmtigy3h5u))/mileg.aspx?page=getObject&objectName=mcl-Act-174-of-2013) Sec 732
4. **“Not so” Small Cell Act Limiting local control over Cell Towers in our ROW** [https://www.legislature.mi.gov/\(S\(mzesmbjylnixah2urcipojto\)\)/mileg.aspx?page=getObject&objectname=mcl-act-365-of-2018](https://www.legislature.mi.gov/(S(mzesmbjylnixah2urcipojto))/mileg.aspx?page=getObject&objectname=mcl-act-365-of-2018)
5. **ZEA Amendment which eliminated local review of significant additions and growth of existing Macro Cell Towers**
[https://www.legislature.mi.gov/\(S\(54mhjrkwpplzrjhic0agwgoux\)\)/mileg.aspx?page=getObject&objectName=mcl-125-3514](https://www.legislature.mi.gov/(S(54mhjrkwpplzrjhic0agwgoux))/mileg.aspx?page=getObject&objectName=mcl-125-3514)
6. **Solar Farm Legislation** <https://www.legislature.mi.gov/documents/2023-2024/publicact/htm/2023-PA-0230.htm>
7. **Reverse DTE v City of Taylor** [City of Taylor v Detroit Edison Co, 475 Mich 109; 715 NW2d 28 \(2006\)](#)
8. **Oppose Other Legislative Initiatives such as Property Tax Exemptions**
9. **Bump Metro Act Nickel/Foot**

Oppose Cable Streaming Legislation HB 4965 Amending Video Service Act

[https://www.legislature.mi.gov/\(S\(z0znbcaw43wdi35npagqpgdf\)\)/mileg.aspx?page=GetObject&objectname=2023-HB-4965](https://www.legislature.mi.gov/(S(z0znbcaw43wdi35npagqpgdf))/mileg.aspx?page=GetObject&objectname=2023-HB-4965)

Alternatives:

Legislative: Florida Communications Service Tax – Netflix is paying and itemizing – Producing “The CST is expected to raise just over \$2.1 billion in FY2014-15, \$750 million of which is for local governments.”

Fla population is twice Michigan at 21 Million so reduce revenue expectation by ½ = \$1Billion total Revenue and \$375 Million for Local Govt?

See also – Chicago Entertainment Tax and Maine Streaming Fee Legislation

Litigation: Setbacks: Ca. and Tx Cts of Appeal, following other courts, end Streaming Litigation in States where Municipals surrendered their right to franchise directly with video providers, thus ceding litigation rights to the States. Fortunately, Michigan Munis do not suffer from that problem, having retained individual municipal franchising rights. So our

position to require streamers to comply with Video Service obligations and PEG Fees remains strong.

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Electric Transmission Line Certification Act

- Elevating MPSC Rules over Home Rule and Local ROW control

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See Sec 10; MCL 460.570

Allows ITC and MPSC to unilaterally rewrite/ignore duly authorized Local Zoning and install 150' towers right down Main street

This law must be amended to re-establish local zoning

New Helix/Hipple ITC Line Proposed – 115 mile line – Appeal to Munis to challenge Act.

Miss Dig Amendment

- https://en.wikipedia.org/wiki/San_Bruno_pipeline_explosion#:~:text=The%20loud%20roar%20and%20shaking,death%20toll%20was%20eight%20people



Miss Dig Amendment

- **Eliminated local government immunity for Miss Dig Operations.**

[https://www.legislature.mi.gov/\(S\(0ossxjnhzhrcitmtigy3h5u\)\)/mileg.aspx?page=getObject&objectName=mcl-Act-174-of-2013](https://www.legislature.mi.gov/(S(0ossxjnhzhrcitmtigy3h5u))/mileg.aspx?page=getObject&objectName=mcl-Act-174-of-2013) Sec 732

- 1. WHY? Because the Gas Pipeline Industry sought to avoid liability for its 80 year old gas lines, one of which blew up the City of San Bruno on September 9, 2010
- 2. The law must re-establish governmental immunity so the pipeline industry cannot deflect its own responsibility to uninvolved local government.

“Not so” Small Cell Act

- **Limiting local control over Cell Towers in our ROW**
[https://www.legislature.mi.gov/\(S\(mzesmbjylnixah2urcipojto\)\)/mileg.aspx?page=getObject&objectname=mcl-act-365-of-2018](https://www.legislature.mi.gov/(S(mzesmbjylnixah2urcipojto))/mileg.aspx?page=getObject&objectname=mcl-act-365-of-2018)
- These front yard Cell Towers were never small and now they are growing
- There are legitimate RF Radiation issues
- Industry issues: AT&T going back to fiber and Verizon Wireless “5G” slammed by Wall Street for lack of reliability and financial viability
- See FCC Orders and 9th Cir Appeal Opinion-Local Aesthetics
- We need to reassert control over our neighborhoods and street ROW

ZEA Amendment eliminated local review of significant additions to existing Macro Cell Towers

- [https://www.legislature.mi.gov/\(S\(54mhjrkwplzrjhc0agwgoux\)\)/mileg.aspx?page=getObject&objectName=mcl-125-3514](https://www.legislature.mi.gov/(S(54mhjrkwplzrjhc0agwgoux))/mileg.aspx?page=getObject&objectName=mcl-125-3514) (2012 Am 2018)
- See also the Fed Telecom Act Sec 6409;47 USC 1455a
<https://www.govinfo.gov/content/pkg/USCODE-2015-title47/html/USCODE-2015-title47-chap13-subchapIV-sec1455.htm>
- This law must be amended or repealed allowing local zoning to address these significant expansions

Solar Farm Legislation

- <https://www.legislature.mi.gov/documents/2023-2024/publicact/htm/2023-PA-0230.htm>

Reverse DTE v City of Taylor

City of Taylor v Detroit Edison Co, 475 Mich 109; 715 NW2d 28 (2006)

In this 2006 Opinion, the “Strict constructionist” Michigan Supreme Court reversed 100 years of precedent and ignored clear Constitutional language granting local communities control over local ROW. This opinion must be legislatively or judicially reversed

Oppose Other Legislative Initiatives such as Property Tax Exemptions

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Bump Metro Act Nickel/Foot

- Metro Act – Limiting local control and fees for ROW access
- See [Act 48 of 2002](#); MCL [484.3201](#) et seq
 - We need to improve local revenue:
 - » 5 cents/ft for Telecom ROW Access vs Market:
 - » Oregon Munis at \$5+ Dollars/ft
 - » N. Mexico at **35 cents/ft rural** and **\$1.81 Urban**
 - We need to reassert **local control over lines and large Boxes in our ROW**

It's Not All Challenges

“We” are Accumulating Some Wins

- **Cable Streaming Legislation HB 4965 Stalled**
[https://www.legislature.mi.gov/\(S\(z0znbcaw43wdi35npagqpgdf\)\)/mileg.aspx?page=GetObject&objectname=2023-HB-4965](https://www.legislature.mi.gov/(S(z0znbcaw43wdi35npagqpgdf))/mileg.aspx?page=GetObject&objectname=2023-HB-4965)
- **BB Funding Conquered (for now)** [Act 224 of 2020](#); MCL [484.3251](#) et seq and Appropriations [PA 53 SB 565](#) Sec 359
- **Lansing Prevailing Wage Opinion Assoc.** [Associated Builders & Contractors v City of Lansing, 499 Mich 177; 880 NW2d 765 \(2016\)](#)
- **UPPCO v Village of L'Anse** [Upper Peninsula Power Co. v. Village of L'Anse, 2019 Mich. App. LEXIS Lv Den'd6781](#)
- **Williams vs. Detroit** [22a0258p-06.pdf \(uscourts.gov\)](#) (December 2, 2022)
- **Sheffield v Detroit City Clerk** [Sheffield v Detroit City Clerk, 508 Mich 851; 962 NW2d 157 \(2021\)](#)

Cable Streaming Legislation HB 4965 Stalled

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BB Funding Conquered (for now)

- Act 224 of 2020; MCL 484.3251 et seq and Appropriations PA 53 SB 565 Sec 359
- **Broadband: State Laws barring local eligibility for \$2 Billion in BB BEAD Grants**
- See Act 224 of 2020; MCL 484.3251 et seq and Appropriations PA 53 SB 565 Sec 359
- WIN!! On June 28, 2023, our (partner's) language was included in the 2023/4 Appropriations Bill HB 4437 Sec 609, <http://www.legislature.mi.gov/documents/2023-2024/billconferencereport/House/htm/2023-HB-4437-CR-1.htm>
- Sec. 609.
- **(3) The department shall consider cooperatives, nonprofits, public-private partnerships, private companies, public or private utilities, public utility districts, or local governments for eligibility to deploy and access broadband funds appropriated in part 1 and shall not unduly favor any of these entities.**
- ...
 - (c) **The total estimated cost of the project is \$1,600,000,000.00.”**
- Efforts in Process with our partners to address PA 224 which remains in place and poses a potential problem in 2025

Lansing Prevailing Wage Opinion

- [Associated Builders & Contractors v City of Lansing, 499 Mich 177; 880 NW2d 765 \(2016\)](#)
- Under our current Constitution, there is simply no room for doubt about the expanded scope of authority of Michigan's cities and villages: “No enumeration of powers granted to cities and villages in this constitution shall limit or restrict the general grant of authority conferred by this section.”^{[21](#)} Moreover, these powers over “municipal concerns, property and government” are to be “liberally construed.”^{[22](#)}
- The relevant constitutional language does not state that a matter cannot be a “municipal concern” if the state might also have an interest in it.^{[26](#)}
- ...the 1963 Constitution, which grants cities and villages broad powers over “municipal concerns, property and government” whether those powers are enumerated or not.”

UPPCO v Village of L'Anse

- [Upper Peninsula Power Co. v. Village of L'Anse, 2019 Mich. App. LEXIS Ly Den'd6781](#)
- ***“The question here is whether such [franchising] decisions are subject to review for reasonableness, and we have concluded they are not....”***
Opinion p. 6-7
- And even if a reasonable standard were applied in review...
- ***“...the fact that the Village thought it could supply electricity to its residents at less cost to them easily meets any reasonableness requirement. Governments act on behalf of the people. If they can act to benefit those people, which would include any financial benefit, then that would qualify as “reasonable” under any rubric and is not “whimsical and principle-free”. Opinion p7 fn 6***

Williams vs. Detroit

- [22a0258p-06.pdf \(uscourts.gov\)](#) (December 2, 2022)
- The Circuit recently upheld a decision for Detroit supporting its program to limit vendors within 300 feet of Little Ceasar's Arena. The Plaintiffs were longtime street vendors who had been displaced when the Arena was built and had hoped to resume business after it was constructed. The City with the urging of the Arena adopted a 300 foot exclusion zone prohibiting street vendors from operating within that zone without a permit. These vendors did not get the new permit and sued asserting a property interest in the right to use the right of way to vend based on the long term use. The court sided with Detroit and recognized that **discretionary permits do not create property rights** even though of long duration for purposes of due process.

Sheffield v Detroit City Clerk

- Sheffield v Detroit City Clerk, 508 Mich 851; 962 NW2d 157 (2021)
- While the Court held that the Election Commission was not a "City," the Justices uniformly expressed their agreement with the point that City's have authority to regulate matters of local concern unless the law or constitution states otherwise.
 - Gerry Fisher

Etc...

FCC starts several Proceedings – Deadlock Over

- Net Neutrality NPRM
<https://www.fcc.gov/document/rosenworcel-proposes-protections-against-video-service-junk-fees>
- Junk Fees
- Pole Attachment Rules
- Increase BB Definition from 25/3 to 100/20Mbps
- Proposes-new-rules-to-protect-consumers-against-cable-and-streaming-blackouts <https://cordcuttersnews.com/fcc-proposes-new-rules-to-protect-consumers-against-cable-and-streaming-blackouts/>
- Investigating AT&T Wireless Outage

Etc.

Congress

- Fails to renew Affordability Connectivity Program (ACP) funding
- HB 3557 Strips all Local Control over Telecom/Cable
- **Merit Networks** <https://www.merit.edu/> **Offers Free Assistance to Municipal Broadband Efforts**
- Bead \$\$ maybe left over for Urban Centers? '
- U.S. now has nearly 450 municipal broadband networks
<https://www.fiercetelecom.com/broadband/us-now-has-nearly-450-municipal-broadband-networks>



Michael J. Watza Biography

Martindale Hubbell AV Rating/Super Lawyer Designation/Detroit Business Top Lawyer

Michael J. Watza is Chair of the Governmental Regulatory Practice Group at Kitch, a full service Law firm based in Detroit, with offices in Lansing, Mt. Clemens, Chicago, Ill. and Toledo, OH

Mr. Watza's practice provides litigated, legislative and regulatory solutions on behalf of municipal, health care and private sector clients, concerning Legislation, Complex Litigation, Governance Issues, Telecommunications including Cable and Cell Towers, Pipelines, Energy, Insurance and Gaming. He is a Michigan registered lobbyist.

Michael also serves as Outside General Counsel to PROTEC, a consortium of over 100 Michigan Municipalities. He is also Outside General Counsel to Merit Network, a Michigan University Affiliate engaged in developing the Internet and hi-speed low cost access to it since 1966. He also Chairs the Novi EDC, Michigan Attorney Grievance Commission Grievance Panel #9, and the International Municipal Lawyers Telecommunications Committee.

He was twice appointed by Governor Granholm and Snyder, to the Michigan Gaming Control Board, serving there for 8 years.

Mike has also served as Special Projects Counsel to the Michigan Municipal Risk Management Authority.

Michael has served as an adjunct faculty member at Michigan State University College of Law teaching Communications Law & Policy and Ethics and the Practice of Law and the Michigan State University Institute for Public Utilities.

In 2008, Michael successfully opposed Comcast's effort to move PEG channels to the 900 digital channel range resulting in, among other things, an apology by Comcast to Congress.

In 2013 he lawyered the 1st Michigan Municipal Broadband Network in Sebewaing, Mi and has assisted on many subsequent projects since then.

He is presently leading PROTEC's effort to take back local public ROW by a series of legislative initiatives before the new 2023/24 Michigan Legislature.

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