COA Opinion: Standard evergreen provision in a restrictive covenant allows amendment only at the time of renewal

17. June 2010 By John Bursch

In 1972, the creators of a subdivision in Hillsdale, Michigan, adopted covenants that restricted all structures in the subdivision to residential use. The covenants had a 25-year duration, "after which time said covenants shall be automatically extended for successive periods of ten years unless an instrument signed by a majority of the then owners of the lots had been recorded, agreeing to change said covenants in whole or in part." Defendants began operating a hair salon in their home in 2007 and, when Plaintiffs complained, persuaded a majority of their neighbors to sign an amendment to the covenant—in the middle of a 10-year renewal period—allowing for certain home-based businesses, including hair salons. The trial court granted summary disposition to Defendants on Plaintiffs' claims for declaratory and injunctive relief, but the Court of Appeals reversed, holding that the plain language of the renewal provision indicated that the 10-year period was a "restriction as to the frequency of amendment by less than a unanimous vote." Because the amendment was by less than unanimous vote, it could not take effect until the end of the 10-year extension period, i.e., in 2017. Accordingly, Plaintiffs were entitled to summary disposition. The case is *Brown v. Martin*, No. 289030.