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Land Use Regulation:

Zoning Ordinances

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This is one in a series of publications designed to acquaint the interested Michigan public with recent concepts in land use guidance and management. The series covers junkyards, construction permit qualification systems, historical districts, outdoor advertising and zoning ordinance implementation and administration.

Zoning ordinances are important tools for guiding land use. This pamphlet discusses the important procedural requirements that must be followed by elected officials and appointed boards and commissions. In implementing and administering zoning ordinances, local officials and board or commission members should consult with the attorney for their governmental unit.

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Introduction

Governmental units in Michigan all have specific enabling legislation giving them the power to zone. The legislation includes Public Act 183, 1943, County Rural Zoning Enabling Act; Public Act 184, 1943, Township Rural Zoning Act; and Public Act 207, 1921, City and Village Zoning Act. Each of these enabling acts enumerates specific procedural requirements that must be followed by elected officials and appointed boards and commissions.

It must be emphasized that there are differences in the requirements set forth by the three enabling acts. However, the following material will focus solely on the similarities among the acts. Because amendments to the enabling acts often involve procedural changes, governmental units are urged to review all zoning action procedures with their legal counsel to insure compliance with the requirements set forth in the enabling legislation.

Administration of a Zoning Ordinance

The administrative steps in the three zoning enabling acts are basically the same. For instance, under the enabling acts, the zoning ordinance written by the individual governmental unit must include a detailed specification of administrative procedural requirements. These requirements are listed in the Administrative section of the ordinance. The section should include details of administrative procedure as well as administrative practice. It should also cover implementing actions by a Zoning Administrator or Zoning Inspector.

The Zoning Inspector or Zoning Administrator is appointed by the governing body of the local administrative unit and is thus considered an employee of that unit. As the chief officer for zoning, the Administrator initiates, or otherwise directs, actions pertaining to the issuance or denial of permits, inspections, certifications, and any necessary compliance orders.

Steps in Enforcing a Zoning Ordinance

The Steps that are followed in the enforcement of a zoning ordinance generally include: application for the issuance of a permit, violation of ordinance provisions and resultant actions, voidance, and for

renewal of permits, certification for occupancy, and fees, charges and expenses. These basic steps are enumerated below:

- (1) Under zoning ordinance regulations, permits must be obtained from the Zoning Administrator before any changes can be made on zoned property. For example, a permit is required before any building or structure can be constructed, altered, converted, enlarged or moved. A permit is also needed before any changes can be made in the specific manner in which a structure or property is used.
- (2) The citizen or his representative applies for the permit from the Zoning Administrator. The following information is generally required in the permit application: the location of the land being considered for the permit, the lot size and shape, the size and placement of existing structures on the land, and the location and size of proposed construction.
- (3) After reviewing the submitted plans and examining the property for compliance with zoning requirements, the Administrator may either grant or deny the permit. If the Administrator approves the application, he usually issues a "land-use permit" or a "zoning compliance" permit.
- (4) If the provisions of the ordinance do not warrant the issuance of the permit the Administrator will deny the permit.
- (5) If illegal use of the property or structure is detected or if illegal modifications or structural changes are observed, the Administrator is authorized to issue a stop work order.
- (6) If a stop work order is issued, the Administrator must notify, in writing, the individual responsible for the violation. The notification indicates the nature of the ordinance violation and also orders the action necessary to correct it.
- (7) If the construction or use is not completed within the time period specified by the ordinance, usually one year, the permit can be voided. Conversely, upon re-application, the permit can be renewed if it complies with the provisions of the ordinance at the time of the renewal.
- (8) No building or structure can be occupied until a certificate of occupancy has been issued by the Zoning Administrator.

- (9) The holder of a "Zoning Compliance" permit must apply to the Zoning Administrator for a final inspection immediately after completion of the authorized work. If the finished work complies with the provisions of the ordinance, a certificate of occupancy will be issued.
- (10) The Governing Body of the locality must establish a schedule of fees, charges and expenses associated with the administration of the zoning ordinance. The Governing Body is also responsible for developing a method of collecting the funds from compliance permits, certificates of occupancy, appeals, hearings and other charges. The schedule of fees established must be posted in the office of the Zoning Administrator.

Responsibilities and Role of the Zoning Administrator

A large part of the success or failure of a zoning ordinance depends on the abilities of its Zoning Administrator. For instance, the Administrator must be completely familiar with the zoning ordinance and have a working knowledge of the ordinance's powers and limitations. It is the Administrator's job to interpret the ordinance as it is written and to explain the options that are available to those individuals applying for land use permits.

It is also the Administrator's responsibility to explain to land owners the various methods of obtaining relief from ordinance regulations. For example, if a property owner feels that the ordinance deprives him of the reasonable use of his land, then the Administrator might outline the procedure for applying to the Zoning Board of Appeals. However, any advice that the Administrator offers should be presented so as not to build up false hopes on the part of the land owner.

Additionally, the Zoning Administrator should assume the responsibility for improving the zoning ordinance. For example, the Administrator might recommend to the Zoning Board any alterations in the ordinance that he feels will strengthen it or make it more meaningful.

The Zoning Administrator is appointed by the legislative body of the governmental unit and is considered its employee. However, there are instances in

Michigan where two or more governmental units have appointed a single Administrator. This arrangement has generally worked well as long as the units agree on what they expect from the individual and he understands his responsibilities within each unit.

Conducting a Public Hearing

The public hearing is an integral part of efficient zoning ordinance administration. If the hearing is run properly, it is a means whereby elected officials can gather information enabling them to formulate fair decisions on zoning matters. In addition, the public hearing provides individual community residents with the opportunity to present their own viewpoints on particular zoning issues.

Each of the three zoning enabling acts sets forth different requirements as to the number of hearings that must be held; the identification of the person responsible for holding the hearing; and the notice requirements in terms of the persons to be notified and the time lapse before the hearing date. Further, the three acts do not specify definite guidelines on public hearing procedure; they only specify that public hearings must be held. It is therefore recommended that elected officials and appointed boards and commissions adopt a clear-cut set of rules of order governing public hearing procedure. Community residents may then be assured of knowing exactly how any hearing will be held, in terms of what to expect and what is expected of them.

Some suggested procedures for conducting a hearing are outlined as follows: First, when the expected attendance is large and there is a great deal of interest in the issue, request that all persons wishing to express a viewpoint submit their opinions in writing prior to the hearing. Second, if the expected attendance is small, have all those in favor of the zoning issue present their views first; then have all those in opposition to the proposal speak. Grouping similar views helps to avoid confusion. Third, every effort should be made to obtain all the facts and to avoid arguments. No one should leave the hearing feeling that he was not given an opportunity to be heard.

At the start of the meeting, the chairman of the hearing should set specific ground rules. This fourth

procedural suggestion includes the following: (a) when and where the notices of the hearing were published; (b) purpose of the hearing; (c) question or questions being heard; (d) major issues being heard; (e) that after the public hearing results in some recommendations, the issue will be further considered by required reviewing bodies and elected officials before final action is taken; and (f) time, place and date of these reviews.

Members of the hearing body are not required to take specific action directly at the time of the hearing. As a fifth suggestion, very often action should be delayed until the hearing body has had ample time to study carefully all of the information, both pro and con. Sixth, it is neither required nor advisable to hold a popular vote to allow individuals attending the hearing an opportunity to express their opinions. Seventh, it is extremely important that an accurate record of the proceedings be kept. This record should be kept on official file and may be used as a precedent for later decisions. Tape recorders are generally the most effective means of ensuring an accurate representation of hearing proceedings.

Citizen Relief from Zoning Administrative Decisions

No governmental unit prepares a "perfect" zoning ordinance. No one has a crystal ball that can foresee every situation that might arise. However, the three enabling acts have a built-in safety valve which provides a method of coping with problems arising from the strict application of any given ordinance. Although each of the three enabling acts sets up the Zoning Board of Appeals in a slightly different manner, the purpose of the Board remains the same: to give individual citizens a chance to appeal their particular cases at the local level.

Every unit of government that enacts a zoning ordinance must appoint a Zoning Board of Appeals. The Board is responsible for assuring that property owners in the unit are treated fairly under the terms of the zoning ordinance.

If, for example, an individual community resident can not meet zoning ordinance requirements because of some minor infraction, he must be referred to the

Zoning Board of Appeals. If a variance cannot be granted, either the Board or the Administrator may instruct the appellant to seek a zoning amendment from the governmental unit.

Each enabling act defines some guidelines for the appeals procedure. Similarly, each local zoning ordinance sets up some general guidelines of its own. In general, however, the following should occur. First, the Zoning Board of Appeals should adopt specific rules of procedure. The Board acts primarily on matters concerning a party's appeal of a decision made by the Zoning Administrator. For instance, an appeal can be made only after a land use permit has been denied by the Administrator. Forms should be supplied by the Administrator or the Zoning Board to facilitate orderly appeals and to insure adequate supporting information for decisions.

Second, the Zoning Board of Appeals should take action regarding a hearing within a reasonable period of time which is generally stipulated in adopted procedures. All interested parties in the appeal must be notified, either in person or by mail, of the time, place and object of the hearing. Any party may appear in person or by agent or attorney. It is recommended that notice of the hearing be given at least three days in advance, but not more than 10 days prior to the hearing date.

Third, after a careful review of the Administrator's record and of the hearing proceedings, the Zoning Board of Appeals either reverses or affirms the Zoning Administrator's decision. In granting or denying the appeal, the Board of Appeals must specify the grounds for its decision. The action taken should be in writing and an official part of the proceedings.

Fourth, decisions of the Zoning Board of Appeal are not final. Any person, taxpayer, department or board of the governmental unit that is aggrieved by the Board's decision has the right to appeal to the Circuit Court on questions of law or fact.

Comments

Implementing and administering a zoning ordinance for a governmental unit need not be a difficult process. If the ordinance is well written and enforced in a fair and equitable manner, there should be few problems.

The following brief statements can help you avoid some of the common problems often encountered by elected officials, appointed boards and administrators:

Procedure — too often there is a lack of formalized procedure for implementing and administering the ordinances. This is particularly true in rezoning and amending procedures. Such procedures are spelled out in the state enabling legislation and in the local ordinance—they must be followed.

Records — inadequate records (by government officials, appointed boards and commissions, and the administrator) of all actions taken and reasons for such actions can be an important problem. It can result in illegal zoning, cause delays in action, and creates a hardship on citizens in the governmental unit. These records must be written and kept on file.

Organization of Ordinance — the ordinance should be easily read and understood, contain those sections as required by the enabling act, have a complete index, contain adequate definitions and contain only those regulations that the governmental unit is willing to enforce.

Lack of Education and Understanding — too often a zoning ordinance is adopted in a flurry of activity with little, if any, attempt to involve people in the deliberations or to carry on any type of educational program. People must be involved and feel that they had a part in the preparation of the ordinance or there will be little public support or understanding that zoning is a means for protecting property values and rights and for guiding orderly community growth.

Enforcement — good administration can make a zoning ordinance work. A well qualified individual should be selected as the Administrator. He can administer the ordinance of more than one municipality if the work load does not become too burdensome, or he can work in more than one capacity, such as Health Officer. It does not seem to be advisable to appoint an elected official to the job as a conflict of interest could develop.

Lack of Amendments — no ordinance has been written that is complete, nor can it foresee all of the

changes that will take place because of continued development and new attitudes of community residents. Too often a governmental unit and its legislative body feel that the zoning job is done once the ordinance is written. Amendments are necessary to assure a workable document reflecting the needs of the governmental unit and its people.

Land Use Plan — the provisions of an ordinance must be based on a plan and reflect its goals, objectives, standards and provisions. Too often the ordinance reflects only the land use existing at the time of its adoption and does not take into consideration the desire of the people about future development of their community.

Over-Zoning — there is a great tendency to create more space for such uses as commercial or industrial than is actually needed. The demand for such space is limited in most instance and in others it places a burden on existing transportation and utility services. The temptation to over-zone is great, especially when coupled with the mistaken impression that such space allocation will greatly increase the tax base of the governmental unit.

Spot Zoning — the term "spot zoning" is used by the courts to describe a zoning amendment which is invalid because it is not in accordance with a comprehensive or well-considered plan. Very simply, "spot zoning" could be defined as a process of singling out a small parcel of land for a use totally different from that of the surrounding area, for the benefit of the owner and to the detriment of others. It is a practice to be avoided.

Exclusive Zoning — establishing zones that exclude incompatible uses. In most instances, zones today tend to be cumulative. That is, they allow more than one major use per zone. For example, residential use in a commercial or industrial zone. This will almost certainly lead to incompatible uses. The potential industrial sites will be reduced in value and it will be very difficult if not impossible to maintain or to achieve the desired residential environment. This concept is being looked at closely with the advent of the Planned Unit Development principal and the use of Exclusive Agricultural Zone as a means of preserving good agricultural land.

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