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Administering Township Zoning: A Basic Guide for Citizens and Local Officials  
Michigan State University  
Cooperative Extension Service  
West Michigan Regional Planning Commission  
Division of Land Resource Programs  
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**ADMINISTERING  
TOWNSHIP ZONING:  
A BASIC GUIDE FOR  
CITIZENS AND  
LOCAL OFFICIALS**

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**ADMINISTERING TOWNSHIP ZONING:  
A BASIC GUIDE FOR  
CITIZENS AND LOCAL OFFICIALS**

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through a comprehensive planning grant  
from the Department of Housing and Urban Development.

## DEDICATION

This guide is dedicated to the countless township citizens and local officials who constructively seek to understand and apply zoning to implement township land resource management plans. May this guide further enhance your abilities to effectively manage the development of your communities.

## ACKNOWLEDGEMENTS

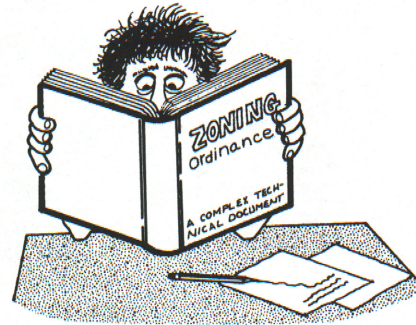
Special thanks are extended to Raymond Fix and Paul LeBlanc for their comments on a preliminary draft of this guide.

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# INTRODUCTION



It is very easy for people who encounter zoning for the first time, to get confused or lost in a maze of unique zoning terms and procedures. This is true for both new township officials and for property owners seeking to, or opposing, change of the use of land. If you are a recently appointed member of the Zoning Board, Planning Commission, or Zoning Board of Appeals, or are a citizen with concern about zoning, this guide is designed to help you. It takes you through *the zoning maze* identifying "who does what" in township zoning matters and "how they do it".

This guide identifies the basic responsibilities of each body or official exercising a common zoning task as well as the basic procedures associated with these activities. It is not a zoning ordinance nor a substitute for one. It is limited to questions that commonly arise in the administration of township zoning and does not address other related matters or procedures such as those involved in township planning programs, capital improvement projects or subdivision regulations. *This guide assumes that your township ordinance is consistent with the Township Rural Zoning Act, P.A. 184 of 1943, as amended thru 1978. It assumes your ordinance has been properly adopted and is consistent with the plan and studies used to develop it.* Consequently, this guide is not designed to resolve problems associated with antiquated zoning regulations, poorly drafted provisions, or an improperly adopted zoning ordinance. It can, however, help quickly orient you to township zoning and if you are a township official, to aid you in getting full measure out of the zoning resources that exist within the township.

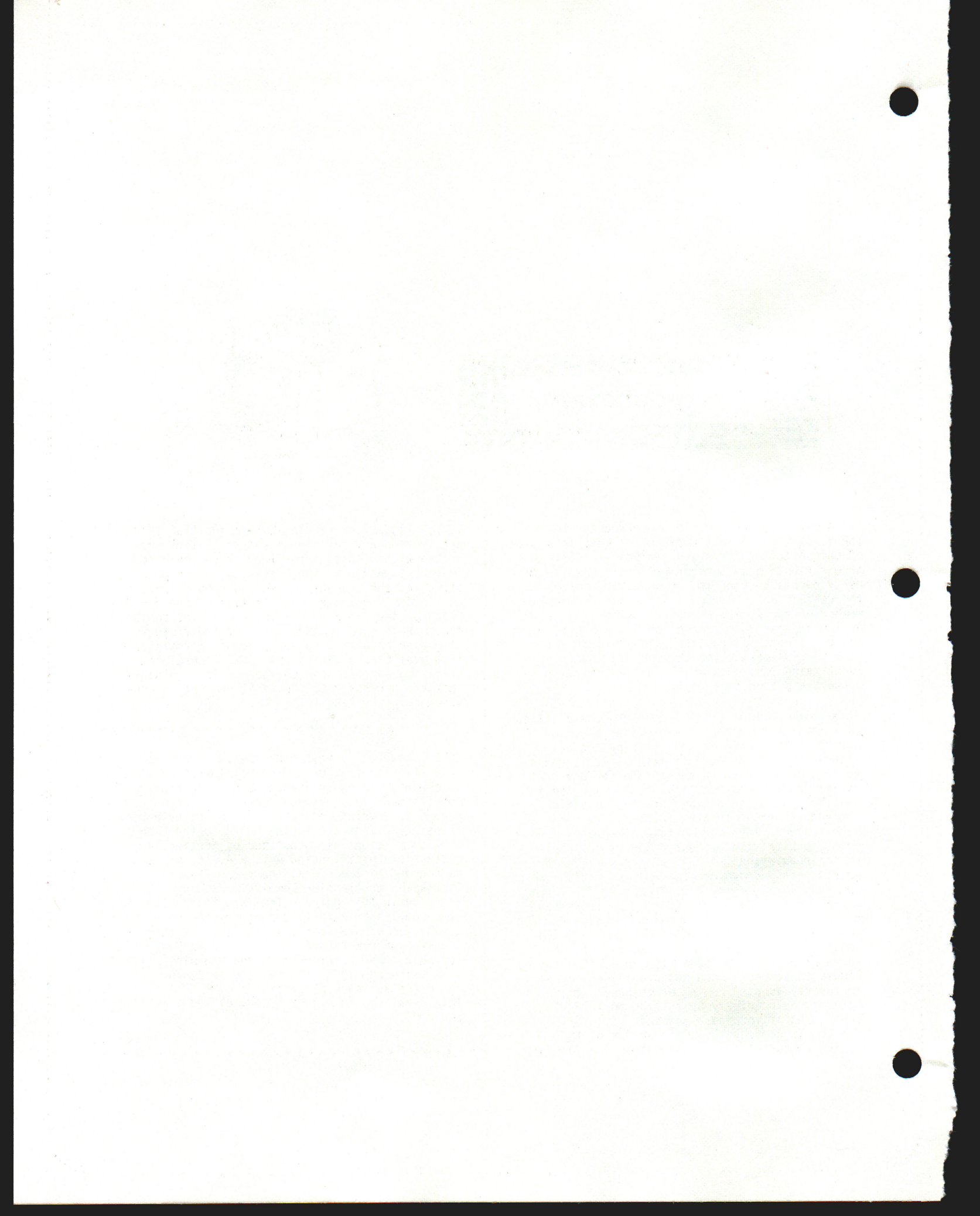
If you find after reading this guide that there are procedures, roles or responsibilities described within that differ from those contained in your township zoning ordinance, or as practiced in your township, then you should bring the inconsistency to the attention of the Zoning Board or the Planning Commission (if the zoning powers have been transferred) for their study. It may be necessary to seek technical assistance from qualified planners and legal counsel in preparing any proposed changes to the ordinance that are necessary to insure it remains in conformance with state law.

\*\*\*\*\*

NOTE: Several surveys over the past five years have revealed that most Michigan townships with a township zoning ordinance have a Planning Commission. This guide assumes the statutory powers to develop and carry out zoning have been transferred from the Zoning Board to the Planning Commission (as authorized by Section 11 of the Township Planning Act, P.A. 168 of 1959, as amended). Therefore, the terms Planning Commission or Planning Commission/Zoning Board are used in this guide. The term means Planning Commission only if the powers of the Zoning Board have been transferred. If this transfer of powers has not occurred in your township, then references to the Planning Commission should be interpreted as Zoning Board (established by Section 4 of the Township Rural Zoning Act, P.A. 184 of 1943, as amended).

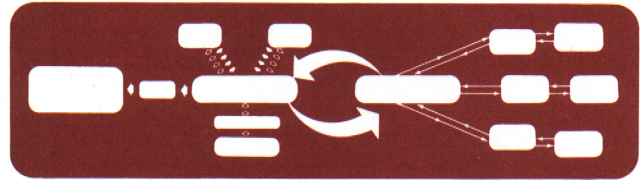
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# PART I

## UNLOCKING THE SECRET OF THE ZONING MAZE



### The Zoning Maze

Zoning and other public regulatory tools are frequently described as "confusing", "puzzling" or "like a maze". This is especially true for the citizen or local official encountering a zoning procedure for the first time. It is unfortunate that this sentiment exists since zoning procedures are designed to insure fairness and equal treatment to all property owners and to thereby prevent arbitrary and capricious regulation of private property. The remedy to this problem is to improve citizen and local official understanding of township zoning. This involves identifying the key to unlocking the secret of the zoning maze.

### What is the Key?

- Clue: Zoning originated in the minds of persons greatly concerned with the concepts of consistency, orderliness, certainty, step-by-step progress, fairness, and rational thinking. Notably, these are attributes of the attorneys and planners who greatly influenced early development of zoning.
- Clue: Zoning typically seeks to identify appropriate locations for various types of land uses and to provide minimum standards for insuring compatibility between adjacent uses of land.
- Clue: There are in reality, only three or four basic procedures which guide the entire range of most township zoning activities. It is the characteristics of the form and function of these activities and not their names which identify them.

These clues suggest that the key to understanding zoning and unlocking the secret of the zoning maze is contained in the old adage:

There is a place for everything and everything must be in its place.

If you feel you've been handed a key you don't know how to use, then journey with us through the zoning maze and find the meaning to this key.

### Defining Zoning

The first step in this journey is to define zoning. Zoning is an important tool used to bring about orderly development of communities. It works by regulating various aspects of how land may be used. Its name derives from the division of land within the community into zones (also called districts) each of which permits certain uses of land accord-

ing to specific standards. There are a number of objectives to be achieved through zoning. These include:

- conserving and protecting property values by preventing incompatible land uses from locating in a given area;
- facilitating adequate and economical provision of public improvements;
- providing for orderly community development;
- insuring the needs of the state's citizens for food, fiber, energy and other natural resources are met;
- limiting overcrowding of land and congestion of population, transportation systems and other public facilities; and
- when necessary, developing special programs to achieve specific land management objectives and avert or solve specific land use problems.

Zoning principally achieves these objectives by controlling land uses, density, building height and bulk, lot sizes, yards and open spaces, setbacks, and accessory uses. Different regulations may be established to carry out specific purposes stated for each zone, although within each zone land uses are treated similarly.

A zoning ordinance consists of two distinct parts -- the district map and a written text. The text sets out the purposes, uses and district regulations for each district, the standards for special land uses and for administration of the ordinance. Zoning has a direct effect on the health, safety, and general welfare of the community by influencing traffic and parking, congestion, slum prevention, sewers, water supply, schools, parks, playgrounds, fire prevention, community revenues and expenditures, and, of course, property values.

Zoning typically seeks to achieve its objectives by grouping compatible uses within a district and thereby separating incompatible uses. Uses of land are typically incompatible if the characteristics of the use of the land may create negative consequences on adjacent uses. This may occur if residential uses adjoin land uses with large amounts of noise, dust, odors, traffic, or smoke. Together, community plans and zoning should establish an orderly land use pattern related to transportation facilities, utilities, other public facilities and services as well as to both the natural suitability of the land for the intended purposes and adjacent uses of land. An appropriate balance of various land uses within the community is typically sought. Likewise, grouping

land uses with similar needs or direct relationships one to the other, helps maximize efficiency and minimize friction, while protecting land values, amenities and reducing public service costs. For example, schools and parks are good neighbors for residential areas; intensive commercial or industrial developments may not be.

Zoning regulations do constrain the uses to which a property owner may put land and the arrangement of those uses on a single parcel. However, at the same time, zoning protects each property owner from the uncontrolled actions of others. Without zoning, uses of land such as junkyards and asphalt batching plants could be developed adjacent to your home. While these land uses provide valuable services to the community, their appropriate location is not adjacent to residential areas. Yet, zoning is not merely a "negative" act -- aimed at keeping certain land uses out of a community -- but also is a "positive" one -- creating desirable and harmonious places for people to live, work and play. It is based upon local goals and helps insure the future embodied in community plans is built, piece by piece. Thus, zoning controls are a means to an end and not an end in themselves.

A township is authorized to adopt zoning by state statute. The Township Rural Zoning Act, Public Act 184 of 1943, as amended, permits, but does not require a township to zone. Under the Act, zoning may promote the public health, safety and general welfare through reasonable regulations which are adopted and implemented in accord with the statute. These regulations are contained in the Township Zoning Ordinance. Zoning is not retroactive and does not prevent use of lands which do not conform with the regulations of the district in which they are located. Zoning must provide for reasonable use of land and cannot be arbitrary or confiscatory. The ordinance must be adopted in accordance with the procedure stated in the Township Rural Zoning Act and after adoption must be administered consistent with statute procedures.

Once enacted, a zoning ordinance is not static. Changes can be obtained in several ways. An amendment to the text of the ordinance or a rezoning of the map can be adopted by the Township Board of Trustees. Permission to establish a special land use may be obtained after a review of a proposed site plan by the Planning Commission to insure conformance to the standards stated in the ordinance. Appeal of an administrator's decision or a request for a variance due to a practical difficulty or unnecessary hardship can be sought from the Zoning Board of Appeals. These various actions can be confusing. Which is the appropriate action in a particular situation? This and other questions will be addressed in the following sections of this guide.

## Zoning is Constitutional

Zoning has been the subject of a great volume of litigation, but courts long ago upheld the constitutionality of the valid exercise of zoning in a community. This includes both the U.S. Supreme Court in 1926 in the case of Euclid v Ambler Realty Co. 272 US 365 and the Michigan Supreme Court

in 1928 in the case of Dawley v Ingham Circuit Judge 242 Mich 247. In the celebrated case of Padover v Township of Farmington 374 Mich 622 (1965) two Justices of the Michigan Supreme Court had the following to say about zoning:

Surely the function of zoning is to plan a modern day community for continuance and growth over a period of years. The growth cannot possibly come at once any more than a seed can spring into a tree overnight. Unless the pattern is set and followed, proper growth can never materialize. The alternative is to pay the price in crime, juvenile delinquency, inadequate sewers, inadequate roads, inadequate schools, inadequate parks, and worst of all, inadequate human beings -- a pattern that has been all too clearly evident upon the American scene. A city, village, or township is entitled to work out a better destiny for itself under such clear statutory authority.

Zoning is just one function of local government. It should not be an isolated function. It should be coordinated with related development regulations. It should be done properly. Individual property owners have a right to expect responsible zoning administration and coordinated development review procedures. Township officials have a responsibility to fulfill this expectation. Hopefully, this publication will help prevent misinformation and lack of information from erecting unnecessary barriers to effective zoning in your community.

## WHAT IS ZONING?

- Zoning is a means of avoiding land use conflicts between one neighbor and another.
- Zoning is a tool used to insure that new uses and structures will have characteristics generally compatible with others in the area in which it is located. It is a means for promoting the welfare of the Community by guiding its growth along orderly lines.
- Zoning is a method of implementing official township community development policies.
- Zoning is a legal, enforceable document which is prepared by a planning or zoning commission and adopted by the legislative body (the Township Board).

## WHAT ZONING CAN DO FOR YOUR TOWNSHIP

Speculative real estate investments, land division into vacation sites, loss of farm land, patterns of sprawl development and rapid growth are common concerns in many Michigan townships. Even normal growth can cause problems if it occurs without public watchfulness. Community planning and land

resource management are essential to insure orderly community development.

#### Zoning Can:

- Help stabilize and preserve property values by preventing undesirable land uses and controlling land speculation;
- Prevent adverse social and economic impacts of new development from impacting existing developments;
- Control development densities so that areas considered appropriate for increased development can be economically serviced when necessary with roads, sewer, water, electricity, fire and police protection, schools and recreation; and
- Stabilize and protect existing rural and semi-urban areas from losing their identity or character.

### HOW CAN ZONING DO THIS?

A zoning ordinance is a legal document which prescribes and controls the . . .

- Use of buildings, land and natural resources for trade, industry, residence and conservation;
- Location, height and bulk (yards and setbacks) of uses, buildings and other structures;
- Area or size of a lot (and that portion of the lot which may be occupied or left for open space); and the
- Density of population and intensity of development.

### RELATIONSHIP TO OTHER LAND REGULATIONS

A zoning ordinance is not a . . .

- Building Code. Zoning is not meant to be the main device to control the internal materials and manner of constructing a building.
- Land Subdivision Control Ordinance. Zoning does not directly regulate the individual design and lay out of land division into lots, streets, etc.
- Health Code. Zoning cannot directly regulate the design and layout of septic systems other than to require locational standards and compliance with local health codes.

Zoning regulations should be coordinated with building, health, subdivision and other local land regulations. This helps insure that public policy is consistently implemented and prevents unnecessary delays and additional development costs which a land developer can easily incur from uncoordinated development review procedures.

### EFFECTIVE ZONING

Zoning can be successful only if:

- it is based on a sound understanding of the community's needs and reflects the citizen's desires and concepts of what the community should be;
- competent legal and other technical assistance is sought as needed;
- it is based on a properly structured and enacted zoning ordinance;
- it is consistently, fairly and impartially administered and enforced;
- it is administered in strict compliance with procedures required by statutes and all procedures specified in the township zoning ordinance;
- it is periodically reviewed and updated;
- it is understood and supported by the public;
- it is an integral part of the mechanisms adopted by the community to implement community plans and growth management programs.

### WHAT ZONING IS NOT OR SHOULD NOT BE

Zoning is not a medium for cure of all urban and rural ills; it is not intended to lend public support to economic, racial and religious sanctions; it is not an enforcer of private deed restrictions; nor is it a device for intervention in neighborhood feuds or personal quarrels. It does not guarantee an Eden untouched by machines, wandering dogs, or other noisy participants of the urban scene.

Zoning is not a magic potion to stir in with the tax base for cure of past fiscal mistakes. It is not designed to suppress individuality, or to increase tax revenues by making construction of housing as expensive as possible. It should not be used as a device for enforcing narrowly parochial views on style, color, texture, or shape.

Zoning does not assure development. It merely permits it. Thus, excessive commercial zoning does not mean that commercial development will take place. It merely removes the land from categories from which it might more logically be used.

Zoning is not a means for artificially reducing the value of land so that it can be acquired for public use at reduced price.

Zoning is not a weapon to be used in the political arena to assist supporters or punish opponents. Neither is it a scale on which the thumb rests in favor of friends and to the detriment of strangers.

Zoning is not a popularity contest. Where

well-considered planning requires an action, it should be taken even in the face of anguished outcries at public hearings. Head counts don't help; reasonable debate does. In such cases, the answer should be conversion where possible. It should never be capitulation.

---

*Adapted from: "ZONING: A Special Report to Appointed Local Planning and Zoning Officials" by the Florida Planning and Zoning Association, Inc., Tallahassee, Florida.*

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## EXCLUSIONARY ZONING PROHIBITED

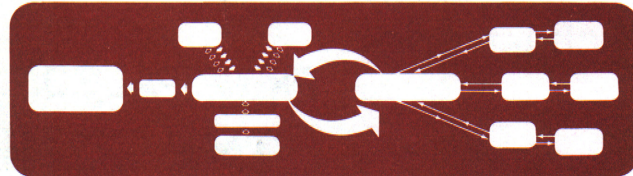
The Township Rural Zoning Act provides that:

A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a township in the presence of a demonstrated need for that land use within either the township or surrounding area within the state, unless there is no location within the township where the use may be appropriately located, or the use is unlawful (Sec. 27a., P.A. 184 of 1943, as amended).

## NOTES

## PART II

### WHO DOES WHAT IN TOWNSHIP ZONING



#### The Three Basic Zoning Functions

There are three basic functions inherent in every zoning ordinance. They may be labelled legislative, administrative and quasi-judicial. These terms reflect the basic nature or characteristics of each function as it should be exercised. Different bodies and officials carry out these responsibilities and it is important to understand "who does what". Unfortunately, one of the most common local zoning mistakes is to have the wrong body take action on a matter which properly is in the realm of another body. When this happens, the legal status of that decision is in jeopardy if challenged and public confidence in the local zoning program may be eroded.

The *legislative* function of zoning refers to adoption of the original zoning ordinance itself as well as any amendments to the text or zoning map which are adopted later. This action can only be taken by the Township Board of Trustees, the elected legislative body. The Township Board is the policy making body and acts after receiving the recommendation of the Planning Commission. Only the Township Board, as an elected body, can legally adopt township ordinances and amendments to them.

The *administrative* function of zoning relates to the day-to-day activities involving administration of the provisions and requirements of the zoning ordinance. The Zoning Administrator (often the Building Inspector) and Planning Commission frequently share in the administrative tasks. The administrative function is the main function with which people get involved when seeking zoning approval.

Lastly, the *quasi-judicial* function refers to the appeals process regarding the interpretation and enforcement of individual provisions of a local zoning ordinance. Although this Township function is not purely judicial and not conducted in a court of law, it is established in order to ensure equal justice. An appeals mechanism is necessary because occasions or situations will arise when the strict enforcement of the zoning ordinance may create physical or practical difficulties or unnecessary hardships on an individual property owner. This function also involves interpretation of the ordinance as necessary. A Board of Appeals is created to carry out this important function. An appeal of a decision of a Board of Appeals is taken directly to Circuit Court.

These three basic functions are summarized on the following page in Chart One. Reference is given to the appropriate section of this guide discussing the procedure used to process these types of zoning activities.

In addition to these three basic zoning functions, there is an important supplemental element which can

be called the technical element. This involves fact finding, technical assistance in processing requests and receiving advisory opinions related to the land use issue(s) at hand. The variety of groups which a township may employ for zoning (and planning) technical assistance are the township attorney, community planners, engineers and other professional experts; when and as necessary. Depending upon the size, need and economy of the township, professional planning assistance can be obtained by either (1) hiring a township planner; (2) retaining a professional consultant or firm by contract; or (3) seeking advice, when the need arises, from a county, regional or state planning agency.

#### The Public Officials Who Carry Out Zoning Functions

There are, as previously identified, a number of township officials concerned with the proper execution of the ordinance. In Michigan townships, these include the following as listed below according to function:

##### *Legislative*

#### TOWNSHIP BOARD (IN MATTERS OF ZONING)

The Township Board of Trustees is the legislative or governing body of the Township. All the members, including the Supervisor, are elected by the citizens. As the local legislative body, only the Township Board has the authority to formally adopt a zoning ordinance and amendments to the text and zoning map.

#### Responsibilities:

When township zoning is first contemplated, the Township Board under Act 168 of 1959 may create a Zoning Board pursuant to Section 4 of the Township Rural Zoning Act, or may transfer this responsibility to the Planning Commission. This body researches, studies, and proposes a draft ordinance according to a plan, for consideration by the Township Board. The process of developing the ordinance, holding the required public hearing, having the draft ordinance reviewed by the County and resolving initial public concerns is generally carried out before the Township Board formally receives the proposed ordinance. The Board reviews and considers the text, map and all public comments. Furthermore, it looks to see how or if public comments were adequately resolved. At its discretion or at the written request of property owners, the Township Board may hold additional public hearings

# PRINCIPAL ZONING ACTIVITIES: THE ZONING MAZE

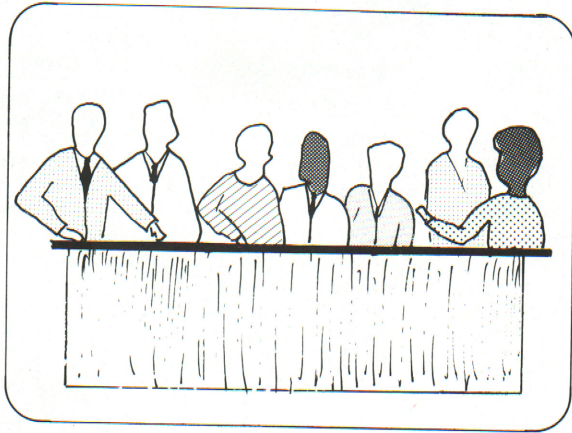
WHO	DOES WHAT	HOW
Zoning Bodies & Officials	Zoning Functions/Activities (statute reference)	General Procedures See Page of this Guide
Township Board, after reviewing recommendations of Planning Commission/ Zoning Board and County Review Board	<i>Legislative</i> Zoning ordinance adoption and amendments (Sections 7, 9, 10, 11, 14)	5 and 13
Zoning Administrator	<i>Administrative</i> Zoning Permits (Sec. 24) Certificates of Occupancy (Sec. 24) Zoning Violations (Sec. 24)	16 17 20
Varies-typically Zoning Administrator and Planning Commission/Zoning Board <sup>1</sup>	Site Plan (Sec. 16e)	19
Varies-may be Administrative Official, Planning Commission/Zoning Board, Township Board	Special Land Uses (Sec. 16b)	22
Varies-may be Administrative Official, Planning Commission/Zoning Board, Township Board	Planned Unit Developments (Sec. 16c) <sup>2</sup>	24
Board of Appeals	<i>Quasi-Judicial</i> Appeals <sup>3</sup> -ordinance interpretation-variances (Sections 19-23)	26
An Administrative Official, Planning Commission/Zoning Board, Township Board	Conducts public hearings	28

<sup>1</sup> Planning Commission/Zoning Board - means Planning Commission if the powers of Zoning Board have been transferred, or if the powers have not been transferred or there is no Planning Commission, then it means Zoning Board.

<sup>2</sup> Planned Unit Developments may also be handled as amendments requiring legislative action by the Township Board.

<sup>3</sup> Appeals of decisions on special land uses or planned unit developments may be taken to the Board of Appeals only if so specified in the ordinance.

and may also refer suggested ordinance changes back to the Planning Commission for a response. Thereafter, at any regular meeting or a special meeting called to consider the proposed ordinance (or amendment), the Township Board may adopt it. A majority vote is required. Once adopted, the Township Board may also give the ordinance immediate effect. A notice of adoption must be published in a newspaper of general circulation within 15 days after adoption.



Legislative Body

In matters of district boundary map changes (re-zoning) or amendment to the text, the statutory role played by the Township Board is the same as in the original process for adopting the zoning ordinance. However, amendments which are made in order to conform to a decree of the court may be adopted and published by the Township Board without referring the amendment to any other body or agency.

Should a need to protect the public health, safety and general welfare of the Township arise while the Planning Commission is first preparing a draft ordinance, the Township Board may direct the Commission to prepare and submit a draft interim zoning ordinance. The Commission would conduct a hearing and then refer the interim ordinance to the county for review. Afterward, the Township Board may adopt it. An interim zoning ordinance is only temporary, being valid for one year with renewal not to exceed two additional years. An interim ordinance may not be adopted if a permanent zoning ordinance is already in effect. See Section 15 of the Act for details.

In addition to the Township Board's legislative role described above, the Township Board is also permitted by state statute to perform an administrative role in certain activities, providing the local zoning ordinance so specifies. This administrative role may apply to all or specific special land uses and planned unit developments as defined by the state enabling act. (See pages 22 and 24 for further background information.) However, the Township Board does not have authority to hear appeals of an administrative zoning decision or action, and may not overrule a decision of the Board of Appeals. Nor for that matter, may the Board of Appeals review a decision by the Township Board denying a rezoning or text amendment. An appeal of a decision by the Township Board of Trustees regarding an amendment to the ordinance goes directly to Circuit Court.

## Administrative

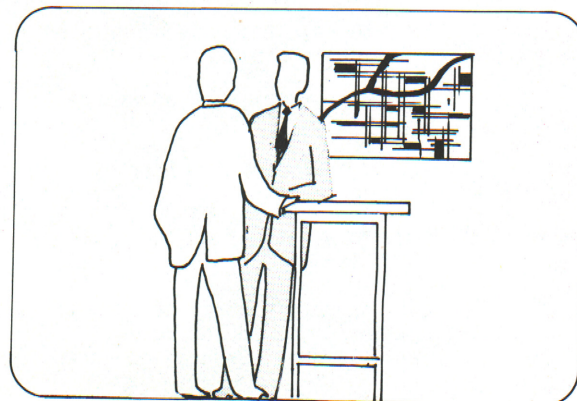
Administrative zoning responsibilities are generally shared between the Zoning Administrator and the Planning Commission (Zoning Board if the powers have not been transferred). Each of these three official groups is described below.

### ZONING ADMINISTRATOR

On the township level, it is common for a Building Inspector to be delegated the responsibility for administering the zoning ordinance. Under that arrangement, the Building Inspector is more appropriately called the Zoning Administrator. Other titles are sometimes used, such as Zoning Inspector or Zoning Enforcement Officer. Although not all townships designate the building inspector as the zoning officer, the vast majority do for the sake of local coordination of zoning with building approvals. Also, some rural townships use a part-time administrator or may share the services of one with neighboring townships, or may even use a county zoning administrator (by contractual agreement).

Normally, when applying for a zoning approval, the Zoning Administrator is the official whom the applicant would see first. The Zoning Administrator is specifically assigned the task of reviewing applications and inspecting sites for zoning compliance. This task is generally carried out before a zoning and/or building permit is granted and the process is usually specified in the zoning ordinance.

Depending on how an individual ordinance is written, the Zoning Administrator may also carry out directives of the Board of Appeals and the Planning Commission. If there is a question regarding the meaning of the zoning ordinance, then the Zoning Administrator would obtain an interpretation of the ordinance from the Board of Appeals. A common example arises when a person applies for a land use not clearly provided for in the ordinance. The Zoning Administrator asks the Board of Appeals to interpret the ordinance and to determine under which related class or kinds of permitted uses the proposed use would fall in order to properly process the request. Once designated, the districts in which that use was permitted and the standards required for that use would be applied. When the Board of Appeals rules on matters under their jurisdiction, they may issue directives to be carried out by the Zoning Administrator. (See section on the Board of Appeals.)



Zoning Administrator



The Zoning Administrator may also seek out the Planning Commission or Zoning Board for advisory comments and recommendations in the processing of individual zoning applications where questions of physical planning, land use impacts and site conditions arise which may be of concern to the public health, safety and general welfare.

### Responsibilities:

*(are specified in the zoning ordinance)*

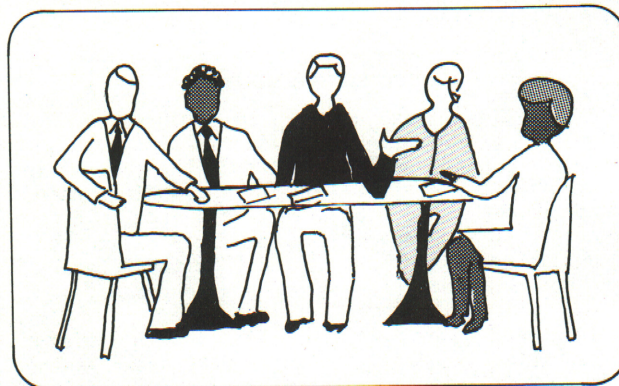
The major responsibility of the Zoning Administrator is to administer the ordinance precisely as it is written. There is no authority to deviate from the ordinance, nor to modify the requirements. In general, the principal duties of the Zoning Administrator are described in the ordinance and may be comprised of any of the following:

- Assist citizens in determining what zoning forms and procedures apply to proposed zoning requests and land use changes.
- Assist citizens in the completion of required permit application forms.
- Review and investigate permit applications to determine compliance with the provisions of the zoning ordinance.
- Issue the appropriate permit when all provisions of the ordinance have been complied with. If the use is not in compliance with the ordinance, the applicant is notified and assisted with an appropriate alternative procedure or appeal procedure, if the applicant so chooses.
- Perform inspection duties to insure proposed land use changes are and will remain in compliance with the ordinance.
- Identify, monitor and control nonconforming uses.
- Investigate alleged violations of the ordinance and enforce corrective measures when required.
- Defend decisions of office before the Board of Appeals.
- Keep the zoning map, text and office records up to date by recording all amendments, and retaining all official documents.
- Periodically report to the Planning Commission or Zoning Board, and Township Board on the status of township zoning operations.
- Propose solutions to any problems encountered in administering the zoning ordinance.
- Establish and administer rules of procedures within the office.
- Provide information on zoning to citizens and public agencies upon request.
- Perform other duties as specified by local ordinance.
- 8 -- Help develop and conduct in conjunction with the Planning Commission or Zoning Board, a continuing program of public education on zoning matters.

## PLANNING COMMISSION (IN MATTERS OF ZONING)

For many townships, a Planning Commission serves as the Zoning Board. Frequently this is because the Township Planning Act authorizes the Planning Commission to prepare township plans and studies, to review and improve proposed public improvements, and to carry out responsibilities of the Zoning Board if this power is transferred to them. By doing so, an important tool, the zoning ordinance, can be monitored to insure it continues to help guide community development consistent with township plans.

This is especially true when the zoning ordinance is prepared after a land use plan and policies have been developed. Once the ordinance is adopted by the Township Board, the Planning Commission assists in those aspects of ordinance administration specified by the ordinance itself. This often includes review and approval when warranted, of proposed site plans, special land uses and planned unit developments.



Planning Commission

### Responsibilities:

*(P.A. 168 of 1959, as amended)*

Where zoning powers have been transferred to the Planning Commission by the Township Board, the statutory authority and requirements for the Planning Commission in terms of zoning administration are fairly explicit as highlighted below. (The composition of a Zoning Board differs in some respects and are described in the following section.)

1. A minimum of four regular open meetings must be held each year.
2. The Planning Commission must prepare and adopt a basic land use plan to guide development in unincorporated portions of the township.
3. In matters of zoning, the Planning Commission may prepare and recommend to the Township Board a zoning ordinance having a text and map showing proposed zoning district boundaries. The Commission must:
  - a) Specify who shall administer and enforce the ordinance.

- b) Conduct at least one public hearing held on the proposed ordinance.
  - c) Send the proposed ordinance (after the hearing) to the County Zoning Commission (or County Planning Commission or County Zoning Coordinating Committee depending on which body exists in the county) for review, unless review is formally waived by the County Board of Commissioners.
4. The Planning Commission must also advise and make recommendations to the Township Board concerning future amendments, changes, additions or departures from the ordinance.
  5. Periodically, a report must be presented to the Township Board concerning the operations of the zoning ordinance with comments and recommendations for possible amendments.

**Membership & Guidelines:**

*(P.A. 168 of 1959, as amended)*

The membership of the Planning Commission and its operating guidelines are identified in the Township Planning Act:

1. The Planning Commission may contain between five and nine members who are appointed by the Township Board.
2. One member of the Township Board must serve on the Planning Commission.
3. Terms of office are for three years, except for the initial members appointed who must serve staggered terms.
4. The Planning Commission must elect its own officers and establish its own rules of procedure.
5. The Planning Commission is authorized to prepare an annual budget and utilize outside technical and professional expertise.
6. Members of the Planning Commission may be compensated.

**ZONING BOARD**

If zoning powers are not transferred to the Planning Commission, the zoning ordinance is prepared by a Zoning Board appointed by the Township Board of Trustees. After ordinance adoption, the principal function of the Zoning Board is primarily advisory and administrative.

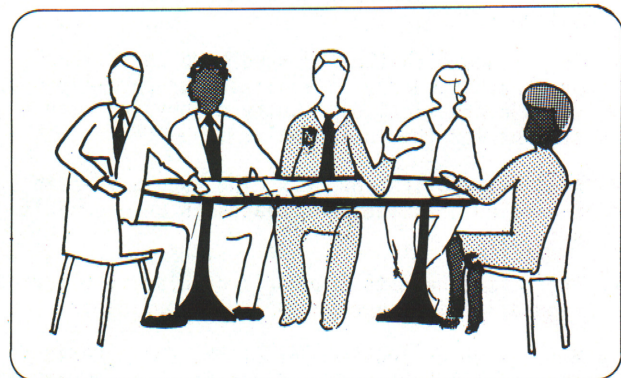
**Responsibilities:**

*(P.A. 184 of 1943, as amended through 1978, Sections 4-13)*

The statutory responsibilities of the Zoning Board are outlined below:

1. A minimum of two regular, open meetings are required to be held each year.

2. The Zoning Board must prepare and recommend to the Township Board a zoning ordinance (for the unincorporated parts of the township) having a text of regulations and a map showing proposed zoning district boundaries, and must:
  - a) Specify who shall administer and enforce the law.
  - b) Hold at least one public hearing.
  - c) After public hearing, refer the tentative ordinance to the County Zoning Commission (or County Planning Commission or County Zoning Coordinating Committee depending on which body exists in the county) for review, unless review is waived by the County Board of Commissioners.
3. The Zoning Board must also advise and make recommendations to the Township Board concerning amendments, changes, additions to or departures from the ordinance.
4. Periodically, a report must be prepared for the Township Board on the operations of the zoning ordinance with comments and recommendations for possible amendments.



Zoning Board

**Membership & Guidelines**

*(P.A. 184 of 1943, as amended through 1978, Sections 4-6)*

The membership of the Zoning Board and its operating guidelines are authorized by statute.

1. The Zoning Board may contain between four and seven members appointed by the Township Board.
2. Terms of office are four years, except for the original members who serve staggered terms.
3. Vacancies are filled by the Township Board.
4. Elected officers of the Township and their

employees shall not serve as a member or an employee of the Zoning Board.

5. The Zoning Board must elect its own officers.
6. The Zoning Board is authorized to prepare an annual budget and utilize outside technical and professional expertise.
7. A budget may be developed and funds appropriated annually in advance by the Township Board.
8. Members can be removed by the Township Board based upon written charges of misfeasance, malfeasance and nonfeasance in office, and after public hearing.

Again, please note that where the term Planning Commission is used in this guide in the context of zoning responsibilities, it means Zoning Board if there is no Planning Commission in the township.

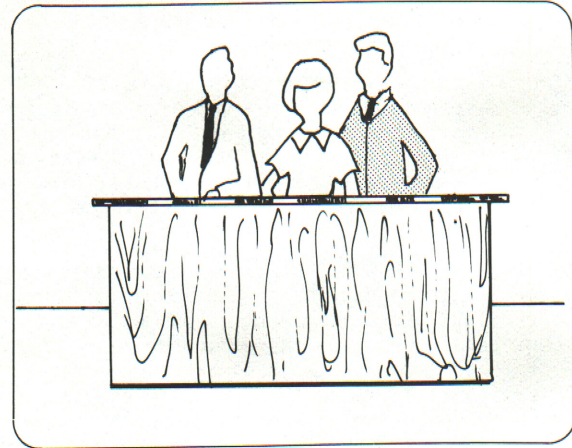
### Quasi-Judicial

## BOARD OF APPEALS

The Board of Appeals is the only body at the township level to hear appeals on various zoning matters. When administrative decisions are made in connection with enforcing the ordinance, it is possible that they will be appealed. The most common reasons for appeal or requests for interpretation are:

- Compliance with the required yard and setbacks or other standards on a particular parcel produces a practical difficulty or physical constraint for the individual.
- A strict application of zoning regulations in a particular situation creates an unreasonable situation.
- There is a need to interpret or clarify a zoning regulation in order to apply the ordinance.
- A decision or requirement of the Zoning Administrator has been made which a property owner feels is inconsistent with the ordinance requirements.
- A use is not specifically provided for in the ordinance and ordinance interpretation is necessary to determine which use is most similar in character to the proposed use.
- If permitted by the ordinance, to review a decision made by an administrative body on a special land use.

The Township Board of Appeals, therefore, serves as the first level or step for an individual to appeal a decision, or ordinance standard as applied to him or to request an interpretation of the ordinance. When a point of controversy cannot be resolved at this step, the next step is to proceed through the state court system, beginning with Circuit Court. No local body, including the Township Board, can over-ride a decision of the Board of Appeals.



Board Of Appeals

### Responsibilities:

*(P.A. 184 of 1943, as amended, Sections 18-23A)*

The statutory responsibilities of the Board of Appeals as cited in the enabling act appear below in summary form. The Board of Appeals:

1. Adopts rules of procedure to govern its actions as an appeals board.
2. Hears and acts upon all questions that may arise from the administration of the zoning ordinance, including ordinance interpretation, review of standards, and the zoning map.
3. Hears and acts upon appeals made from a review, order, requirement, decision or determination made by a body or official who is administering the zoning ordinance.
4. Hears and acts upon requests for variances, keeping in mind the spirit of the ordinance, public safety and justice.
5. May hear appeals with regard to special land uses and planned unit developments, only if expressly authorized in the local ordinance. Reasonable conditions may be imposed upon review.
6. Makes decisions only by majority vote.
7. Must state the basis or grounds for its decision. It must identify the facts which support the conclusions reached on the cases before it.
8. Conducts all meetings in public. Formal hearing of any appeal must be set within a reasonable time and conducted as a public hearing with due notice given to all parties affected. Specific requirements of the local ordinance must also be adhered to.
9. Has all the powers of the (administrative) officer or body from whom the appeal is taken.

10. Can rehear a case, if ordered by Circuit Court. In this case, the Court must find that the records are inadequate for proper Court review, or that there is additional pertinent evidence which was not presented to the Board of Appeals. In this instance, the Board of Appeals must review their decision and either modify or affirm its original findings and decision.

## Membership & Guidelines

*(P.A. 184, as amended,  
Sections 18 and 19)*

Membership of the Board of Appeals and its operating guidelines are prescribed in the enabling act. Membership is based partly according to population.

### 1. Size:

- a) Township with a population of 5,000 persons or more--there shall be a minimum of five members.
- b) Township with a population of less than 5,000 persons--there shall be a minimum of three members.

The total size of the Board of Appeals must be specified in the zoning ordinance.

2. The first member shall be a member of the Planning Commission (Zoning Board if there is no Planning Commission). The remaining members shall be appointed by the Township Board from among the electors of the township residing out-

side of any incorporated areas. Membership shall be representative of the local population including the various interests located in the township. One member may be a member of the Township Board.

3. No elected official shall serve as chairperson.
4. No employees or contractors to the Township Board may serve on or be hired by the Board of Appeals.
5. Terms of office are three years, except for those serving as representatives from the Planning Commission or Township Board. For such representatives, terms are limited to the time they are members of their respective boards or commissions. Of those appointed to the original Township Board of Appeals, terms may be for less than three years in order to stagger individual terms of office.
6. Successive members may be appointed within one month after the preceding member's expiration date.
7. The Board of Appeals is authorized to prepare an annual budget.
8. Members may be removed by the Township Board for nonperformance of duty or misconduct in office, based on written charges and after a public hearing.
9. Where member conflicts of interest exist, such member shall disqualify himself from voting. Failure to do so constitutes misconduct in office.
10. A majority is required in order to conduct business.

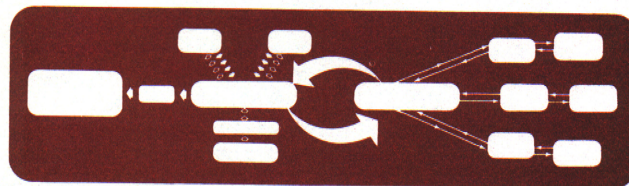
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## NOTES

**NOTES**

# PART III

## GENERAL ZONING PROCEDURES



### Introduction

This part of the guide is devoted to describing general procedures for administering some of the common zoning functions in Michigan townships. They are generally discussed in terms of the following:

- When Zoning Approval is Necessary
- People Involved
- General Procedural Steps
- Sample Checklist to Guide Decisions

Most communities use standard forms to facilitate review and approval of zoning requests. If standard forms are not in use in your township, it may be valuable to develop some. If they are in use, they should be reviewed to insure they contain the necessary information to effectively implement zoning procedures.

There are generally three broad phases through which all zoning requests must pass: application or submission; investigation-evaluation (fact-finding and analysis); and final action. Throughout each phase in the process, proper and defensible zoning administration requires (1) responsible communication, (2) diligent record keeping and (3) consistent adherence to all specific procedural requirements and standards found in the local zoning ordinance and the Township Rural Zoning Act. Once zoning compliance is achieved by an applicant, a requested zoning approval must be granted.

As a guide to insuring proper zoning decisions are made, consistent with the authority of the approval body authority and the purpose of the ordinance, sample checklists of review considerations are provided.

These include sample checklists to:

- Guide Decisions on Zoning Amendments
- Guide Decisions on Zoning Permit Reviews
- Guide Decisions on Site Plan Reviews
- Guide Decisions on Special Land Uses
- Guide Decisions on Planned Unit Developments
- Guide Decisions on Variances

Guidelines for conducting public hearings and maintaining hearing records are also provided.

Specific land use and facility design criteria, or industrial performance standards commonly applied to individual land uses are not discussed here; but are no less important. To some extent, such location and design criteria, as well as performance standards may be obtained from source books published by the particular trade or industry involved. These may also be available from planning, engineering and architectural professionals in private firms and public agencies.

### Legislative Functions

#### ZONING AMENDMENTS

##### When An Amendment is Necessary

When a property owner, the community or township officials seek a change in the provisions, rules or requirements of the zoning ordinance (*text change*) or a change in the mapping of district boundaries (*rezoning*).

##### People Involved

Petitioner(s), Zoning Administrator, the Planning Commission, the county zoning review agency and the Township Board.

##### General Procedural Steps

Amendments, as legislative actions, must follow the same route required for the adoption of the original ordinance. This means that the proposed amendment should be considered carefully alongside adopted township land use policies and plans. The review should establish the compatibility of the proposal with adopted community policies, plans and both existing and future land uses.

However, the one exception to the normal amendment process occurs where the court has adjudicated a zoning dispute and mandates an ordinance change. In that situation, an amendment for the purpose of correcting a provision of the zoning ordinance in accordance with a decree of the court may be adopted by the Township Board with only a notice of the adopted amendment published, and without referring the amendment to any other board or agency provided for in the zoning ordinance. (P.A. 184 of 1943, as amended through 1978, Section 14)

The general procedural steps for proposing zoning changes are as follows:

1. Applicant:
  - a) Inquires of the Zoning Administrator (or other designated officer) as to how one must proceed and obtains the application form.
  - b) Completes and files the application form along with any required fee (and other supporting documentation) to the Zoning Administrator. If the application originates from an official township body, the fee is usually waived.
2. Planning Commission/Zoning Board:

a) Reviews amendment application and studies the appropriateness of the proposed amendment. Study is based on established planning and zoning criteria, as set forth in the zoning ordinance and community plans.

b) A public hearing on the request is scheduled.

3. Opportunity for Public Comments:

By law, the Planning Commission must hold a public hearing before submitting its recommendation to the Township Board. See page 28 for general recommendations on conducting public hearings. The public hearing requirements are as follows:

a) One public hearing is mandatory (additional public hearings are optional).

b) There must be two public notices in newspaper of general circulation in the township for each public hearing:

1) First notice is given between 20 and 30 days prior to hearing date.

2) Second notice is given within eight days of the hearing date.

c) If amendment involves rezoning of land, notice of rezoning must be transmitted in person or by mail at least eight days prior to hearing to:

1) The owner of the property in question.

2) All persons who are assessed for real property within 300 feet of the property in question.

3) All occupants of one and two family dwellings within 300 feet of the property in question.

If notice is sent by mail, an affidavit of mailing must be filed with the Planning Commission as proof of mailing.

Public input is considered and evaluated.

4. Planning Commission (upon completion of the public hearing)

a) Refers petition to the County Zoning Review Body (County Zoning Board, Planning Commission or Zoning Coordinating Committee delegated to review local zoning proposals). The county review body conducts an independent review and makes (advisory) recommendations to the Township Planning Commission. Referral to the county takes place after the public hearing by the Planning Commission. The county has 30 days within which to respond. However, county review may be waived by the County Board of Commissioners. If the county does not respond within 30 days, their approval is presumed.

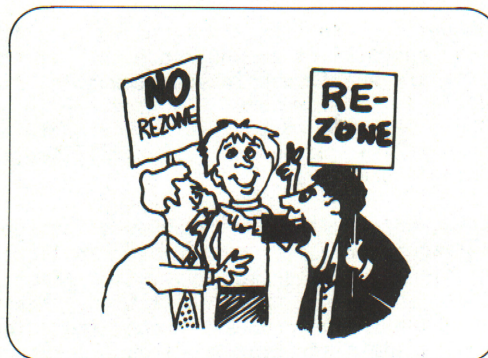
b) Transmits application and a summary report to the Township Board. The summary report includes:

1) A summary of the comments made at the public hearing.

2) Detailed findings concerning the application based on planning and zoning criteria and concerns raised at the hearing.

3) A recommendation supported by the above findings and concerns.

4) The county zoning review body's recommendation.



5. Township Board

a) Adopts amendment.

-or-

b) Rejects amendment.

-or-

c) May hold additional public hearings on the proposed amendment at its own initiative, or if requested by land owners or residents located within 300 feet of the affected land or district. Notice of hearing is published in the newspaper five to 15 days prior to hearing date.

-or-

d) If changes to the proposed amendment are desirable, the Township Board may refer the proposed amendment back to the Planning Commission for its further recommendation within a specified time. Thereafter, the Township Board may either adopt the amendment with or without changes, or reject it. If substantial changes are recommended, such as changing the area affected or the zones under consideration, the Planning Commission should advertise a new public hearing on the request.

## Sample Checklist to Guide Decisions on Zoning Amendments

In order to help Planning Commissions and Township Board of Trustees to objectively determine whether a proposed zoning amendment is appropriate, the following questions could be considered:

1. For amendment applications to add additional uses to a zoning district classification, it is appropriate to determine:
  - a) Is the proposed use already provided for elsewhere in the ordinance?
  - b) Is the proposed use compatible with uses already permitted in that district, including those permitted by right and by special land use permit?
  - c) Does the proposed use relate well with the Township Land Use Plan? Assuming that the zoning district is in harmony with the township plan, does the proposed use contribute to the character of development envisioned in the plan.
  - d) Does the proposed use relate well with the spirit and intent of the ordinance, and with the objectives of the zoning district?
  - e) Is the proposed use locationally appropriate throughout the district?
  - f) Is the proposed use most appropriate in the district if permitted by special land use permits?
  - g) Is there a need to add the proposed use at all?
2. For amendment applications to change or add additional regulations or standards to a district or a use, it is appropriate to determine:
  - a) Does the proposed rule, change or addition help reinforce the Township Land Use Plan?
  - b) Is the proposed rule, change or addition in keeping with the spirit and intent of the ordinance, and with the objectives of the zoning district, or does it go excessively beyond the intent and objectives?
  - c) What is the problem or issue which the change is intended to address? Can this be accomplished in another, more appropriate fashion? Is it a new response to new problems not addressed in the zoning ordinance?
3. For rezoning requests to change, create, extend or reduce a mapped zoning district, it is appropriate to determine:
  - a) Is the use more appropriately handled as a special land use in that district? Does the district already provide for this use as a special land use? Where?
    - b) Are there substantial reasons why the property cannot be reasonably used as zoned?
    - c) Is the proposed zone change supported by the adopted Township Land Use Plan?
    - d) Would the change of present district boundaries be consistent in relation to existing uses?
    - e) Would the change severely impact traffic, public facilities and the natural characteristics of the area, or significantly change population density. Is the change consistent with the purposes for which zoning is adopted?
    - f) Would the rezoning constitute a 'spot zone' granting a special privilege to one landowner not available to others?
    - g) Is the change contrary to the established land use pattern? Will it adversely affect property values?
    - h) Has there been a change of conditions in the area supporting the proposed rezoning?
    - i) Are adequate sites properly zoned, available elsewhere to accommodate the proposed use?
    - j) Is the proposed change out of scale with the needs of the community?
    - k) If the change is approved, what will be the probable effect on stimulating similar zoning requests in the vicinity? Would this secondary affect negatively impact community plans and public services?
    - l) Is the proposed change precedent setting?
    - m) Is the proposed boundary appropriate?
    - n) Was there a mistake in the original zoning classification?

Thus, for any amendment request, it is appropriate to give careful attention to the following:

- a) The effect of the proposed amendment on the comprehensive planning of the entire community.
- b) The changes in community characteristics that may take place because of the proposed change.
- c) The relative effectiveness or ineffectiveness of the present construction of the ordinance, and what specific improvement the proposed change will make.
- d) Whether a justification for a change exists, such as whether a change in conditions has taken place since the original zoning, or whether a mistake was made in the original zoning.
- e) Whether the amendment is designed to correct an improper situation or whether



would it result merely in the granting of special privileges.

- f) Whether an inappropriate precedent will be set.
- g) Whether the proposed change is consistent with the intent and purpose of the ordinance.
- h) Whether the proposed change is consistent with the Township Rural Zoning Act.
- i) Whether there are any "red tape" implications of the change.
- j) Whether the change is exclusionary.
- k) Whether the change is reasonable.

As a general rule, most of these concerns are embodied in the following question when rezonings or district use changes are at issue: Is the proposed class of use appropriate in the proposed location (district)?

If these factors are carefully considered and sufficient data are available for evaluation, a sound recommendation will result. In some cases, it may be necessary for special studies and surveys to be made in order to obtain enough information to answer these questions. Where this is true, the Commission should not hesitate to investigate, making certain that professional technical assistance is used whenever possible. In the case of a major amendment, such as for a shopping mall, a good technique for ensuring that the above points are thoroughly explored is to perform an environmental impact assessment. Large scale zoning changes can have tremendous environmental, social, fiscal and public utility implications. These may greatly affect the plan itself and should be evaluated very carefully.

## BEWARE OF THESE ZONING EXCUSES

"Sad but true, far too many hearings on rezoning cases resemble a horse trading affair being carried out in a comic soap opera fashion.

Some of the more ridiculous excuses offered for granting rezoning follow such lines as:

- What is proposed is better than what is there.
- The lot is only a weed patch, this will clear it up.
- You can't keep a man from using his ground.
- This will bring in more revenue.
- The owner of the ground can get more money for the ground if its rezoned to commercial.
- There are more vehicles on the street than when he built there or bought the property.
- I promised the people if I were elected I would keep taxes down.
- I am sure he would build something good.
- They are too big an outfit, we can't deny the rezoning.
- Her husband is overseas fighting for our (country), how can we deny it?

- He is just an old man trying to make a living, this won't really hurt anyone.
- Service stations provide quick urban renewal.
- We have to bring commerce and industry in today, not worry about a plan of tomorrow.
- I promised the people if I were elected I would bring commerce and industry into our city and this will be a start.
- We approved the commercial rezoning for the other fellow, how can we deny this one?
- We don't have any right to say where commercial or industrial developments should go.
- He invested a lot of money in this ground and these proposals thinking the rezoning would be granted, how can we deny it?
- There is commercial zoning on the other corner, how can we deny it on this corner?
- Like his attorney said, it's probably "unconstitutional", and we don't know for sure.
- We don't want to have to go to court, after all it really doesn't look so bad."

Adapted from Northern Kentucky Area Planning Commission Newsletter, December, 1967.

## Administrative Functions

### ZONING PERMITS

Consistency with the township zoning ordinance is usually assured in one of two ways: by issuance of a separate zoning permit, or as an element of the requirement for a building permit. The zoning permit is very important if the township does not handle the building permit process. Either review approach is workable, however, one should be aware of the advantages and disadvantages of both as outlined below:

#### Township Zoning Permit as a Separate Permit

Advantages:

- separate review process
- can handle all zoning situations dealing with uses, structures and lots
- may be necessary if there is a county building permit in place of township building permit
- insures proper record keeping and documentation practices

Disadvantages:

- creates one additional permit requirement for the builder/developer
- creates an administrative expense if building permits are issued by the township

#### Township Building Permit With Zoning Compliance Checkoff

Advantages:

- one combined permit process, less "red tape"

### Disadvantages:

- difficult to enforce all zoning regulations related to changes in use when no construction is involved (and hence, no building permit is needed)
- record keeping and documentation practices necessary for zoning administration are apt to be subordinated

### When Zoning Approval is Necessary

Unless a particular use or structure is specifically exempted, zoning approval, either as a zoning permit or as part of a locally required permit, is necessary:

1. Prior to construction of a new structure or addition to either a principal structure or use or to an accessory structure.
2. Prior to changing from one use of land to a different use.
3. Prior to moving a prebuilt structure onto a parcel.
4. Prior to changing certain accessory uses of land such as parking areas or signs.

Note: A change in occupancy or ownership of a parcel or structure where the same land use is to be maintained in the same fashion and to the same extent, does not usually require a zoning or building permit.

### People Involved

Applicant, Zoning Administrator and possibly the Planning Commission.

### General Procedural Steps

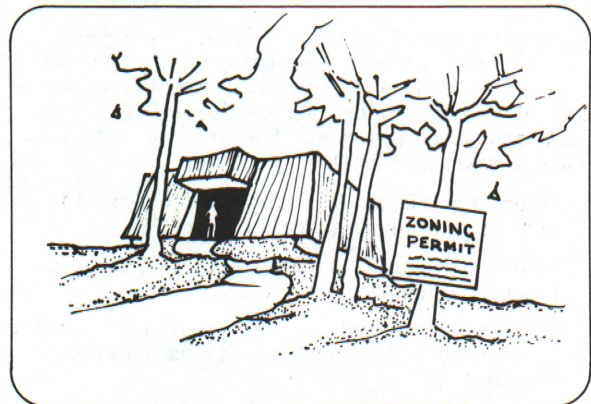
1. Applicant:
  - a) Inquires about the ordinance requirements pertaining to his/her proposed use of land with Zoning Administrator (or perhaps Township Clerk) and obtains the proper application forms.
  - b) Completes and submits application along with fee and other supporting documentation to Township Zoning Administrator.
  - c) If site plan approval is required by the zoning ordinance, the site plan would also be submitted.
2. Zoning Administrator
  - a) Reviews the application:
    - 1) To make sure that it is the proper application for the zoning action requested.
    - 2) To see that all required information is submitted.
    - 3) To determine zoning compliance.

b) Takes one or more of the following preliminary actions:

- 1) Requests from the applicant that any omitted or pertinent and necessary information now be submitted.
- 2) If necessary, requests the Board of Appeals to interpret an unclear ordinance provision.
- 3) Reviews site plan according to site plan review standards as set forth in the zoning ordinance (see page 18 on Site Plans).
- 4) If required by the local ordinance, discusses the application and site plan with the Planning Commission for advisory comments or approval (depending upon ordinance authorization).
- 5) Makes a site inspection to verify accuracy of the application and to gather additional information.

c) Takes final action:

- 1) Approves application (and site plan) if the proposed use complies with all ordinance requirements and if no special review procedures (such as with a planned unit development) is required. A zoning permit is issued or checked off on a building permit.
- 2) Disapproves and rejects application (and site plan) with reasons given in writing.



### Sample Checklist to Guide Decisions on Zoning Permit Reviews

When reviewing an application for a use or structure, the Zoning Administrator will consider a number of physical aspects about its development in relation to the zoning ordinance. However, because the review generally involves a simple check for zoning compliance and no discretion is involved (except if there is a requirement for site plan review), the Zoning Administrator will particularly look at certain key elements. Many administrators, especially those in urbanizing

townships, have developed these key elements into a standardized or systematic review format. Shown below are some of the common key considerations contained in such a format.

All proposed uses and structures to be developed within any zoning district shall be reviewed to insure compliance with each of the following ordinance requirements:

1. That the proposed use is permitted either by right, by special use permit, or by other reviews and approval provided for by this ordinance in the district in which proposed use is to be located.
2. Minimum site area requirements of the district (lot size, lot width, lot coverage, required yard setbacks, setbacks from water bodies and streams, maximum building height, etc.)
3. Minimum building requirements, if any (required area).
4. Minimum dimensions of parking space and required number of parking spaces.
5. Sign requirements.
6. Required lighting, fencing, screening or buffer strips, if any.
7. All public structural or development easements where such exists.
8. All special standards and conditions applicable to the proposed uses or structures which are specifically provided for in the ordinance
9. All general provisions of the zoning ordinance applicable to the proposed use or structure(s).

## CERTIFICATES OF OCCUPANCY

The certificate of occupancy (C.O.) is a permit which is required before a new or old structure is occupied or used, and is usually granted after an inspection. The major purpose for a C.O. is to insure zoning compliance. For example, the C.O. helps to make sure that:

1. After construction, a new structure is the same as the one originally approved.
2. Before occupancy, a new use is the same as the use which was approved.
3. Both structure and use comply with all zoning requirements (and any conditions previously imposed).

It should be noted that because of the similarity to the zoning permit, the use of a certificate of occupancy is not common in rural townships where the pace of development is slow to moderate and a second separate permit is not really necessary to insure ordinance compliance. However, C.O.'s are especially useful (1) in developing suburban townships where active zoning compliance is critical to the welfare of the community, and (2) in some areas where there are no township zoning permits or building permits. In this instance, the county issues building permits contingent upon conformance to township zoning ordinances. In both situations, the C.O.'s are used as local follow-up compliance tools for township zoning.

## When A Certificate of Occupancy is Necessary

This is a matter of local preference and depends on individual local considerations. Generally, a certificate of occupancy can be required:

1. Prior to occupying a new structure.
2. Prior to using land in a manner different from the previous use.
3. Prior to occupying an existing structure with a "new" type of use other than what previously existed.

Note: Certificates of occupancy can also be requested for existing uses and structures for purposes of documenting lawfully existing non-conforming uses and nonconforming structures.

## People Involved

Applicant, Zoning Administrator.

### General Procedural Steps

1. Applicant
  - a) Notifies Zoning Administrator that the structure and use are ready for inspection.
2. Zoning Administrator
  - a) Contacts applicant to establish a mutually agreed upon date and time for inspection.
  - b) Researches and reviews any known records relating to site in question.
  - c) Inspects for compliance with zoning requirements and with previously imposed conditions, if any.

*(If occupancy permit review is combined with building permit review, the Zoning Administrator also inspects for compliance with building code.)*
3. Zoning Administrator Takes Final Action
  - a) Grants the certificate of occupancy  
-or-
  - b) Delays subject to completion or alterations necessary to achieve full compliance and follow-up inspection.  
-or-
  - c) Denies a C.O. in writing based on inspection findings of noncompliance with the ordinance and initiates enforcement action pursuant to ordinance requirements.

The C.O. procedure requires no discretionary decisions. It is simply an inspection by the Zoning Administrator to determine compliance with the requirements of the zoning ordinance and adherence with any conditions previously imposed by a township body or official during the course of the zoning process. As long as ordinance compliance is achieved, a C.O. permit must be issued.

## SITE PLANS

Most ordinances require that a site or plot plan or at least a sketch be submitted as part of the application for a particular use. The site plan is used to insure ordinance compliance and to study general (on-site and off-site) impacts from proposed development. These impacts include ingress/egress, interior/exterior traffic flow, storm drainage, erosion, grading of land, landscaping or lighting and parking. A site plan can vary in detail depending upon the size and complexity of the project, and the administrative needs of the local governmental structure. Some site plans are highly detailed blueprints while other site plans may be nothing more than simple sketches affixed to the backside of zoning permit forms.

The importance to the Zoning Administrator of having a site (or sketch) plan to review cannot be overstated. The final site plan in effect documents that the applicant is knowledgeable of the regulations and is in compliance with them. Also, once a permit is granted based upon the final site plan, the approved site plan than serves as an enforcement tool.

### When Zoning Approval is Necessary

Site plan review is most often not a separate zoning procedure, but instead is a part of another review process, such as review to receive a zoning permit, to obtain a special land use permit, or in relation to a request for a variance. When a separate procedure is specified in a township zoning ordinance it must be followed. Site plan review is required by statute relative to special land uses and planned unit developments. Section 16e of the Township Rural Zoning Act provides the authority and requirements for use of the site plan review technique.

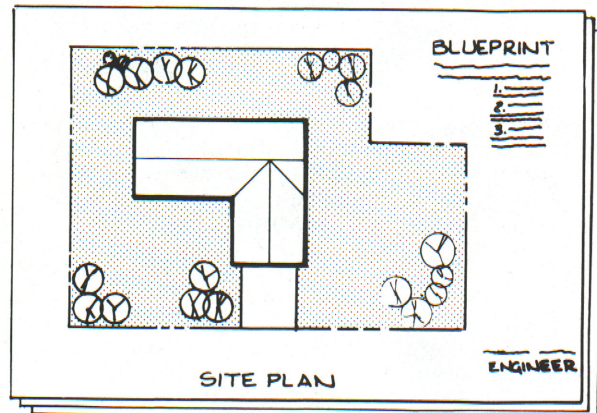
### People Involved

Typically, the Zoning Administrator and/or the Planning Commission are involved in site plan review. The statute requires that the zoning ordinance "specify the body, board or official charged with reviewing site plans and granting approval."

### General Procedural Steps

Procedural steps vary tremendously from community to community. The statute requires, however, that the zoning ordinance specify "the procedures and requirements for the submission and approval of site plans." Decisions rejecting, approving or conditionally approving a site plan must be based upon requirements and standards stated in the ordinance. If a site plan complies with the ordinance requirements, it must be approved. Once approved, the site plan becomes a part of the record of approval and "subsequent actions relating to the activity authorized shall be consistent with the approved site plan, unless a change conforming to the zoning ordinance receives the

mutual agreement of the landowners and the individual or body which initially approved the site plan."



### Sample Checklist to Guide Decisions on Site Plan Reviews

In making rational, defensible decisions and in setting forth conditions for permit approval, uniform review criteria should be employed. Following is an example of typical criteria currently in use. These criteria presume that an ordinance contains standards similar to those cited, which must be complied with to gain zoning approval.

The site plan is reviewed in order to determine:

1. That the proposed use conforms to the uses permitted in that zoning district.
2. That the dimensional arrangement of building and structure conform to the required yards, setbacks and height restrictions of the ordinance.
3. That the proposed use conforms to all use and design provisions and requirements (if any) as found in the zoning ordinance for specified uses.
4. That there is a proper relationship between the existing and proposed streets and highways within the vicinity in order to assure the safety and convenience of pedestrian and vehicular traffic.
5. That the proposed on-site buildings, structures and entry ways are situated and designed to minimize adverse effects (upon owners and occupants of adjacent and surrounding properties) by providing for adequate design of ingress/egress, interior/exterior traffic flow, storm drainage, erosion, grading, lighting and parking, as specified by the zoning ordinance or any county or state law.
6. That natural features of the landscape are retained where they can enhance the develop-

ment on the site, or where they furnish a barrier or buffer between the project and adjoining properties (used for dissimilar purposes) or where they assist in preserving the general safety, health and appearance of the neighborhood, i.e. controlling erosion or the discharge of storm waters, etc.

7. That adverse effects of the proposed development and activities upon adjoining residents or owners are minimized by appropriate screening, fencing, or landscaping (as provided or required in the zoning ordinance).
8. That all buildings and structures are accessible to emergency vehicles.
9. That the site plan as approved is consistent with the intent and purposes of the zoning ordinance which is to promote the public health, safety and general welfare, to encourage the use of lands in accordance with their character and adaptability, to avoid the overcrowding of population, to lessen congestion on the public roads and streets, to reduce hazards of life and property, and to facilitate existing township land use and development plans.

## ZONING VIOLATIONS

There will come a time in every community when the zoning ordinance is violated. Whether this is intentional or unintentional is of little importance. The credibility of successful zoning lies not only in the ability to administer it reasonably and fairly, but in the ability to enforce zoning requirements. Many violations of zoning are voluntarily reported by alarmed residents, concerned citizens and public officials. Following is a discussion of ways of enforcing zoning and handling violators.

### When Necessary

1. When a suspected zoning violation is reported to the Township Zoning Administrator.
2. When the Zoning Administrator identifies what appears to be a violation or is in process of becoming one.

### People Involved

Suspected violator, Zoning Administrator, Township Board and Township Attorney.

### General Procedural Steps

This section discusses two alternative approaches to dealing with zoning violations. The first is an example of a general approach; while the second exemplifies a zoning summons approach which can be used by some communities where violations may be too numerous and costly to prosecute to the full extent of the law.

#### A. General Approach:

1. A suspected zoning violation is reported or identified.
2. Zoning Administrator:
  - a) Makes a preliminary visit to the site to identify a zoning violation. If no violation is found, the matter is documented and the case closed. The person contacting the township of the supposed violation should be contacted about the outcome.
  - b) If a violation is found, it is documented as are the facts supporting this conclusion. A photo showing date, time, place, and signed by the observer can be very helpful.
  - c) Meets with the landowner to discuss the violation.
    - 1) The zoning violation is explained.
    - 2) Remedial measures to correct violation are concretely identified for the landowner.
  - d) Issues a Notice of Violation (after the meeting) to the violator with one copy to be filed.

The notice documents:

- 1) The zoning violation,
  - 2) The meeting,
  - 3) Measures to be taken to correct violation, and
  - 4) A (uniform) period of time given within which to correct the violation.
- e) Reinspects the site, upon expiration of the time period. If compliance is shown, the Zoning Administrator so signifies on the file copy and the violator's copy of the Notice of Violation. The matter is resolved.
- However, if the zoning violation still exists after the expiration of the time period, the Zoning Administrator may proceed in the following manner:*
- f) Schedules a hearing to be held by the Township Board of Trustees.
  - g) Issues a Second Notice of Violation to the violator. The notice:
    - 1) Advises that a hearing before the Township Board had been scheduled,
    - 2) Gives the date of the hearing,
    - 3) Requires that the violator or his/her agent appear in order to show cause as to why the Township should not proceed in Court to prosecute the violation, and

- 4) States that correction of the violation prior to the hearing date will automatically void the requirement of a hearing before the Township Board.

### 3. Township Board

- a) Hears the violator's "show cause" response as to
  - 1) why compliance with zoning has not been met, and
  - 2) why the ordinance should not be enforced against the violator.
- b) Directs the Zoning Administrator and the Township Attorney to proceed with a formal complaint in Circuit Court if the violator, or his/her agent fails to appear, does not give valid reasons for noncompliance or does not give valid reasons against enforcement of the ordinance. *Where the violation involves unlawful construction or illegal usage, either of which may be of a critical nature as specified in the ordinance, a Circuit Court injunction can be an added enforcement action.*

Upon conviction, the violator usually pays the Township fine and certain legal costs (optional). Many local ordinances also state "each day of conviction, and during which a violation continues shall be deemed a separate offense". Remedies are also usually cumulative.



Zoning Violation

### B. Zoning Summons Approach

The zoning summons approach is a popular alternative used by some communities. It is a good intermediate technique which often resolves the problem, and reduces the number of times the Township Attorney or a Court has to be relied upon. The following is a general description of how this approach is used:

1. A suspected zoning violation is reported or identified.
2. Zoning Administrator
  - a) Makes a preliminary visit to the site to identify if a zoning violation exists. If no violation is found, the matter is documented and the case closed.
  - b) If a violation is found, it is documented along with the facts supporting this conclusion.
  - c) Meets with the landowner to discuss the violation.
    - 1) The zoning violation is explained.
    - 2) Remedial measures to correct violation are concretely identified for the landowner.
  - d) Issues a "Warning Ticket" (after the meeting) to the violator with one copy to be filed. The ticket states:
    - 1) The zoning violation,
    - 2) The meeting,
    - 3) Measures to be taken to correct the violation, and
    - 4) A uniform period of time allowed within which to correct the violation.
  - e) Reinspects the site, upon expiration of the time period. If compliance is shown, the Zoning Administrator so signifies on the file copy and the violator's copy of the warning ticket. The matter is resolved.
 

*However, if the zoning violation still exists after the expiration of the time period, the Zoning Administrator generally proceeds in the following manner:*
  - f) Issues a "Zoning Summons" to the violator. The summons:
    - 1) Cites the zoning violation;
    - 2) Gives the date of first meeting and when warning ticket was first issued;
    - 3) Repeats the original measures specified in the warning ticket that were to be taken to correct violation;
    - 4) Indicates the fine as may be previously specified by ordinance or Township Board action, payable to District Court *Where the violation involves unlawful construction or illegal usage, either of which may be of a critical nature as specified in the ordinance, Circuit Court injunction might be a better enforcement action;* and
    - 5) Specifies the date by which fine is to be paid.

*In most cases, compliance will be gained at this point. But if not, the Zoning Administrator:*

- g) Issues a separate Zoning Summons for each day (or week) after the date first summons was issued.
- h) Reports to the Township Board about any violators who have accumulated repetitive summons for the same violation.

### 3. Township Board

- a) Directs the Zoning Administrator and the Township Attorney to proceed with a formal complaint to Circuit Court.

As with zoning permits and certificates of occupancy, the enforcement process requires no discretionary decision on the part of the Zoning Administrator. The administrator simply follows adopted procedures and documents what he/she witnesses and what actions have transpired. Inspections are made according to the Township Zoning Ordinance requirements.

## SPECIAL LAND USES

Special land uses are typically described as those uses of land which may be appropriate and compatible with existing or permitted land uses in a particular zoning district if individualized care is taken to assure that the characteristics of the use under consideration are compatible with adjacent land uses, the natural aspects of the site, and the general character of the area, including availability of public services and facilities. Typically, a special land use permit is issued to identify compliance with the special land use requirements. The Township Rural Zoning Act specifically grants authority for townships to utilize the special land use technique in Section 16b of the Act. The statute requires that uses permitted as special land uses be identified in the ordinance. The body or official responsible for reviewing and approving special land uses as well as the review procedures and standards upon which approval will be based must also be stated in the ordinance.



A Special Land Use?

## When a Special Land Use Permit is Necessary

A special land use permit is typically necessary prior to development of (or conversion to) a use which is listed in the zoning ordinance as a special land use. Sometimes these uses are called special exceptions, special uses, special approval uses, or conditional uses.

## People Involved

Applicant, Zoning Administrator and the body or official responsible for reviewing and approving special land uses. The review and approval body or official may be either the Zoning Board, the Planning Commission (if the zoning powers have been transferred), an administrative official or the Township Board. An appeal of a decision on a special land use may be taken to the Board of Appeals *only if* it is so specified in the ordinance; otherwise, an appeal would go to Circuit Court. *The Board of Appeals is not authorized to be the body responsible for original review and approval of special land uses.*

## General Procedural Steps

1. Applicant
  - a) Inquires about requirements with the Zoning Administrator or Township Clerk and obtains the proper application forms.
  - b) Completes and submits application along with fee (and other supporting documentation) to Township Zoning Administrator or the official responsible for receiving special land use applications.
  - c) Submits a required site plan for approval (Act 184 of 1943, as amended, Section 16e(4)).
2. Zoning Administrator
  - a) Reviews Application Package -
    - 1) To make sure that it is the right application for zoning action requested;
    - 2) To see that all required information is submitted; and
    - 3) To make sure that the proposed use is permitted in a particular district by special land use permit.
  - b) Takes one or more of the following actions:
    - 1) Requests from the applicant that any omitted or necessary information now be submitted;

- 2) If necessary, seeks ordinance interpretation from the Board of Appeals; and/or
  - 3) Forwards the complete application to the body or official designated to review and approve special land uses.
3. Special Land Use Review Body (or official)
- a) Reviews site plan according to site plan review standards, as set forth in the zoning ordinance.
  - b) Reviews the proposed special land use according to standards for special land use permits, as set forth in the ordinance.
4. Opportunity for Public Comments.

If the standards for special land use permits are such that a discretionary decision is to be made, the reviewing body or official must *either*:

- a) Give a public notice in a newspaper of general circulation of official receipt of an application for a special land use permit which:
  - 1) Describes the nature of the special land use request,
  - 2) Indicates the property in question,
  - 3) States the time and place where the special land use request will be considered,
  - 4) Indicates when and where written comments will be received concerning the request, and
  - 5) Indicates that a public hearing on the proposed special land use may be requested by any property owner or the occupant of any structure located within 300 feet of the boundary of the property being considered for a special land use permit.

This notice is also mailed or delivered to property owners and occupants within 300 feet of the property in question. These notices must be made between 5 and 15 days before the date on which the application is to be considered. An affidavit of mailing or delivery of notice must be maintained.

-or-

- b) Give public newspaper notice of a scheduled public hearing. This hearing notice includes items 1) through 4) above. It is also mailed or delivered to property owners and occupants within 300 feet of the property in question. These public hearing notices must be made between 5 and 15 days before the public hearing date. An affidavit of mailing or delivery of notice must be maintained.

All public input is considered and evaluated. A summary of the public comments should be retained in the record of the meeting.

5. Special Land Use Review Body (or official) Takes Final Action

- a) Approves special land use permit application and final site plan. Zoning Administrator is directed to issue permit.

-or-

- b) Approves Special Use Permit application and final site plan subject to conditions which are imposed in order to insure the special land use complies with standards stated in the ordinance. The Zoning Administrator is directed to issue permit.

-or-

- c) Disapproves application and final site plan.

Note: All decisions must be accompanied with a concluding statement citing the reasons for decision and any conditions which may be imposed. The facts presented in the application, staff report (if any) and from public comments should be specifically related to the standards required for approval. If the facts show that the standards are not met, the application must be denied. If all ordinance standards are met, the application must be approved.

### Sample Checklist to Guide Decisions on Special Land Uses

A site plan is required for submission and approval of all special land use permit applications. Frequently, the review and approval of the proposed site plan is handled as a part of the special land use process and not as a separate procedure.

An important concern in reviewing proposed special land uses is whether or not it is appropriate for the site in question. A special land use is usually a unique use which may have particular intrinsic or design characteristics that could possibly create other potential problems. For this reason, a special land use may be appropriate in one place, but not in all locations throughout the particular zoning district. A classic situation is a proposal to build an all-night gasoline service station or car wash near a predominantly residential intersection, even though the subject property is zoned for commercial uses. Rational judgements and conditions need to be made to protect adjacent lands and the overall character of the area from adverse changes and impacts. The following checklist is suggested for considering the appropriateness of a special land use in a particular area:

1. Relationship to the general safety, health, and welfare of the community-at-large. This includes:



- accessibility of the property in question to fire and police protection;
  - traffic conditions, creating or adding to a hazardous situation;
  - transportation design requirements, if any, which will be needed to accommodate any traffic impact from the use intended, and
  - appropriateness of the location, nature and height of the proposed use to the size, type, and kind of buildings, uses and structures in the vicinity and adjacent properties, including the safety and convenience of people therefrom.
2. Any potential decrease in the market value of adjacent building, uses, and structures which are permitted by right under current zoning, if the proposed special land use is approved.
  3. Harmony with the township land use plan. This considers whether the location and size of the proposed use, the nature and intensity of the activities involved, the size of the site with respect to existing and future streets (giving access to it), parks and drainage systems will be in harmony with the township land use plan, and the character of land use which is intended by said township plan for the area or district in question.
  4. Impact from the applicant's proposed use, its location and intensity and the height of its buildings, walls, fences and other structures upon the appropriate character of development existing or planned for the area.
  5. Any hazards arising from storage and use of flammable fluids.
  6. That the operations in connection with any special use shall not be environmentally objectionable to nearby properties by reason of noise, fumes, pollution, vibration, or light to an extent which is more than would be expected of any use permitted by right for the district in which the special land use is proposed.

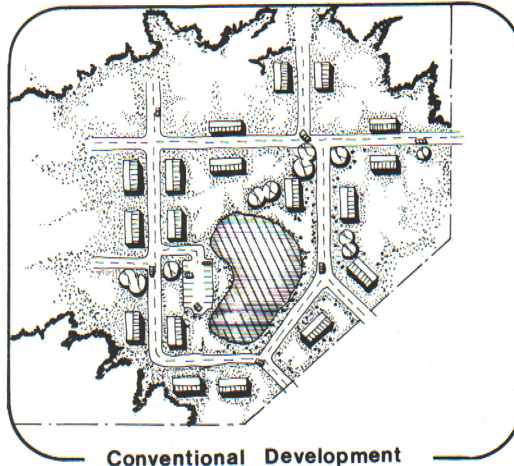
## PLANNED UNIT DEVELOPMENTS (PUD'S)

The Planned Unit Development, or PUD as it is frequently known, is a modern flexible application of zoning. The PUD zoning concept is employed by some communities to encourage innovative and imaginative project design. Sometimes it is called cluster zoning, community unit plan, or planned residential development. Its use has become very popular all over the country. In Michigan, as of March 1, 1979, township use of the PUD has been given statutory recognition in the Township Rural Zoning Act, see Section 16c.

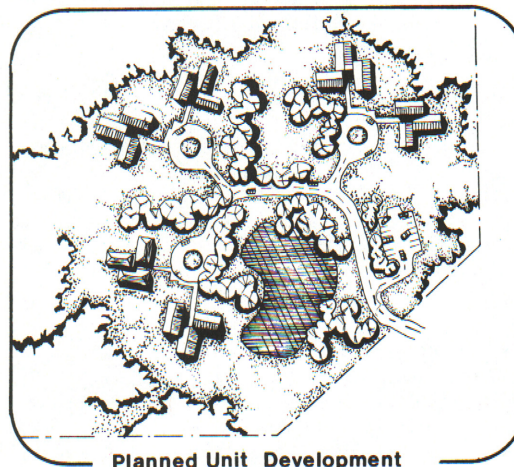
## What is a Planned Unit Development?

"Planned unit development (PUD) is a devise which allows a development to be planned and built as a unit and which . . . permits variations in many of the traditional controls related to density, land use, setbacks, open space and other design elements, and the timing and sequencing of the development. PUD, therefore, is both a type of development and a regulatory process. As a development type, PUD permits flexibility in site design that allows buildings to be clustered; mixtures of housing types such as detached houses, townhouses, or garden apartments, combining housing with such other ancillary uses as neighborhood shopping centers; better design and arrangement of open space; and retention of such natural features as flood plains or steep slopes. It offers greater opportunities for providing lower-cost housing along with conventional housing."

-- Michael J. Meshenberg, *the Administration of Flexible Zoning Techniques, Planning Advisory Service Report No. 318 (Chicago: ASPO, June 1976), p. 19.*



Conventional Development



Planned Unit Development

Comparative Site Layout

Often communities define PUD's as large sites developed as a single unit combining a variety of structures and perhaps uses, in which ownership is retained by a single individual, partnership, corporation or association. Because of the trend to conserve and protect open space, sensitive land resources and the natural environment, a PUD may be the only feasible type of development where particular site conditions, e.g. . . . flood plain, steep slopes, wetland, and poor soils demand clustering or grouping of structures on only part of the site.

### Ways to Provide for a PUD in a Township Zoning Ordinance

Development of land based on a PUD concept is permitted only if the zoning ordinance expressly permits and provides for such development. In developing PUD provisions, the Planning Commission and the Township Board:

1. Defines the term "Planned Unit Development" for zoning purposes,
2. Specifies who shall be the designated review and approval body or official,
3. Determines site eligibility criteria,
4. Establishes standards for approval,
5. Develops public hearing procedures, and
6. Sets forth the PUD review and approval process (which must include site plan review).

With respect to provision 6 above, one of two basic ways to provide for PUD's in the township zoning ordinance are: (1) as a special land use, and (2) as a separate zoning district. The special land use procedure is the simplest of these methods if special land uses are already provided for in the township zoning ordinance since a process of review and approval already exists. The only extra requirements prescribed by state statute for PUD's are that a public hearing is required for PUD's in contrast to the public notice option provided for single-purpose special uses; and that special standards and eligibility criteria must also be provided specifically for review of PUD's. Under this alternative, the body or official charged with review and approval of special land uses becomes the approving body.

A separate PUD zone or district is an approach wherein the mandatory criteria, standards and requirements are contained in a separate PUD District, just as for any district. The local ordinance would have to include provisions which satisfy the above mentioned six features. Of course, in this instance, the ordinance would actually have to be amended to permit a PUD if the land was not already zoned as such and the Township Board of Trustees thus becomes the approval body.

### When PUD Approval is Necessary

When an applicant desires to establish a PUD in a district in which PUD's are permitted after special review.

### People Involved

Applicant, Zoning Administrator, and the PUD review body or official. The PUD review body or official must be specified in the zoning ordinance as having the power to approve PUD's. The review and approval body or official may be either the Planning Commission/Zoning Board, an administrative official or the Township Board.

### General Procedural Steps

If the PUD is permitted as a special land use, then the procedures for processing special land uses (see page 22) are followed; *except that* a public hearing must be conducted. It is also permissible, if the ordinance so provides, for *preapplication conferences* to be held between the applicant and township officials before submission of *preliminary* site plans before the public hearing.

If the PUD is permitted as a separate zoning district, the ordinance amendment process is integrated with the PUD review and approval process.

When a PUD application is found to satisfy all the criteria, standards, requirements and conditions for approval stated in the ordinance, the application must be approved. An appeal of a PUD decision may be taken to the Board of Appeals only if so specified in the zoning ordinance.



A Public Hearing Must Be Held On Proposed P.U.D.'s

### Sample Checklist to Guide Decisions on PUD's

The process of reviewing the PUD application requires site plan review along with considerations similar to that of special uses. Thus, in

addition to the site plan review/and or special land use decision guides, the following sample list of standards is suggested specifically for consideration in making PUD reviews:

1. Is the minimum PUD area requirement of the ordinance met? Are the densities appropriate for the area?
2. Is the location of the proposed PUD appropriate?
3. Are the proposed uses of the PUD permitted in the zoning district in which the PUD is to be located?
4. Is the PUD to be developed in multiple stages? If so, which parts are to be developed when?
5. Are all community water and sewer service requirements of all state, county and local agencies complied with?
6. Is all common property proposed in the PUD clearly provided for? Common property is a parcel or parcels of land, a privately-owned road or roads, together with the improvements thereon, the use and enjoyment of which are shared by the owners and occupants of the individual building sites. When common property exists, the ownership of such common property may be either public or private but should be specified in writing and approved separately. When privately owned, arrangements must be made for the improvement, operation, and maintenance of such common property and facilities, including private streets, drives, service parking and recreational areas.
7. Are necessary public easements on common property which is privately owned adequately granted? When common property exists in private ownership, the owners should be required to grant easements, over, under, and through such property, to the township as are required for public purposes, prior to final approval.
8. Are all site design standards complied with? These standards typically include:
  - Lot area and yard requirements
  - Height limitations
  - Access
  - Building areas (to be in harmony with PUD objectives)
  - Boundary setbacks and buffer areas
  - Off-street parking and loading
  - Residential dwelling unit density (gross density)
  - Landscaping
  - Other local design limitations
9. Have any necessary performance guarantees been required to insure necessary public improvements are installed?
10. Have all conditions required for approval been documented and incorporated into the PUD permit approval?
11. Have a statement of findings and conclusions relative to the PUD proposal been specifically listed and retained as a part of the record?

Note: Final approvals may be granted on each phase of a multi-phased PUD if each phase contains the necessary components to insure protection of natural resources and the health, safety and welfare of the users of the PUD and the residents of the surrounding area. In establishing PUD requirements, the Township may also incorporate by reference, other ordinances or statutes which regulate land development.

## Quasi-Judicial Functions

### APPEALS — ORDINANCE INTERPRETATION — VARIANCES

#### When Action by Board of Appeals is Necessary

1. When an interpretation of the zoning ordinance or map is requested by a citizen or public official;
2. When a citizen appeals a decision made by the Zoning Administrator or by an administrative review body or official from which an appeal to the Board of Appeals is authorized by ordinance; or
3. When a variance from specific ordinance requirements is formally requested.

*Decisions on Special Land Uses and Planned Unit Developments are not subject to an appeal to the Board of Appeals unless specifically stated in the local zoning ordinance.*

*Decisions by the Township Board on amendments are not appealable to the Board of Appeals.*

#### People Involved

- Any aggrieved citizen, or any officer, department, board or bureau of the township, county or state
- Zoning Administrator or an administrative review body (or official)
- Zoning Board of Appeals (and its staff)

#### General Procedural Steps

1. The person (or public agency or official) who makes the appeal
  - a) Inquires to the local Zoning Administrator (or other designated officer) as to how one must proceed and obtains the appeal form.
  - b) Completes and files the necessary form with any required fee to the Board of Appeals or official responsible for receiving such applications. On some matters this might be done within a specified time, as prescribed by ordinance or the rules of the Board of Appeals. Township bodies and officials are usually exempt from paying a fee.

- c) A copy of the appeal is transmitted to the official or body from whom the appeal is taken. Likewise, this official or body must then transmit to the Board of Appeals all documentation and records upon which the appeal was based.

2. Board of Appeals

- a) Reviews the Appeal Form -
  - 1) To make sure that it is the proper form for the requested action, and
  - 2) To see that all required information is submitted.
- b) Schedules a hearing within a reasonable period and gives notice thereof to the parties affected in accord with ordinance procedures and any adopted rules.
- c) Formulates Decision. The Board of Appeals considers the merits for the individual appeal based on standards and considerations established in the statute and as may be embodied in the ordinance.

3. Board of Appeals Takes Final Action

The Board of Appeals has all the powers of the officer or body from whom the appeal was taken and may issue or direct the issuance of a permit. The Board of Appeals either:

- a) grants the appeal wholly or partly,
  - or-
- b) grants the appeal wholly or partly with conditions attached,
  - or-
- c) denies the appeal;
  - or-
- d) when a variance is requested and there is just cause to grant such request due to practical difficulties or unnecessary hardship, the Board of Appeals may reasonably vary or modify specific local zoning requirements so that the spirit of the law is observed, public safety secured and substantial justice done.

The Board of Appeals must state the reasons and facts supporting their reasons for any decision made. These must be written in the record. A concurring vote of a majority of the members of the Board of Appeals is necessary in order to take an action on a matter properly before the Board of Appeals.

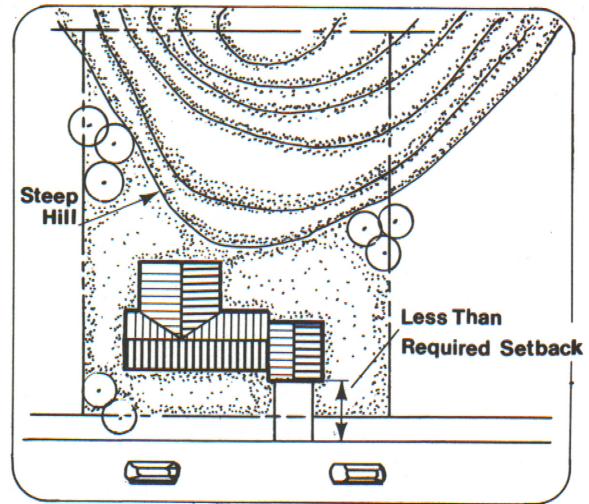
4. Further Appeals in Circuit Court (P.A. 184 of 1943, as amended through 1978, Section 23a)

Should an appeal be taken one step further to the Circuit Court, the Township Rural Zoning Act prescribes guidelines for court review of the record and decision of the Board of Appeals. The Court reviews the decision to insure that it:

- a) Complies with the Constitution and state statutes.
- b) Is based on proper procedure.
- c) Is supported by competent material and substantial evidence of the record.
- d) Represents the reasonable exercise of discretion granted by law to the Board of Appeals.

Should the Court find that the record of the Board of Appeals is inadequate to make the above review, or that additional evidence exists which was not presented to the Board of Appeals, the Court can order the Board of Appeals to conduct further proceedings. The Board of Appeals may then change or stand by its original decision. The supplemental records and decision must be filed with the Court.

As a result of Court review, the Court may affirm, modify or reverse a decision of the Board of Appeals.



A Typical Variance Situation

**Sample Checklist to Guide Decisions on Variances**

The most common appeals deal with requests for a variance from specific ordinance standards such as dimensional requirements of the ordinance including: yard requirements, setback lines, lot coverage, frontage requirements and density regulations.

When a Board of Appeals considers a variance request, it is important that they keep in mind that the variance authority is designed to provide relief to a property owner from an ordinance requirement that is uniquely affecting him/her. It is not designed as a technique to grant special favors to some persons. Almost always people will claim that a variance will allow them to make more money from the property. However, this is not a legitimate argument, since zoning is not designed to permit the most profitable use of land, although reason-

able use of property must be permitted. Where a number of property owners are facing the same problem and seek a variance to relieve their practical difficulty or unnecessary hardship, the appropriate remedy is amendment of the ordinance by the Township Board and not a slew of variances by the Board of Appeals.

Where there are practical difficulties or an unnecessary hardship preventing a property owner from conforming with the strict letter of the ordinance, the Board of Appeals has the power in passing on appeals, to vary or modify any of its rules, regulations, or ordinance provisions by granting variances. Typically, the following conditions must exist:

1. Dimensional zoning requirements cannot be physically met by an existing lot due to narrowness, shallowness or irregular shape, or the topography or natural characteristics of the site inhibit the lawful location of a structure or its accessories (such as septic system, garage, shed).
2. The physical hardship is unique and is not shared by neighboring properties in the same zone. If Board of Appeals finds that the hardship is not unique, but common, amending the ordinance or a rezoning should be pursued.
3. The hardship or practical difficulty was not created by an action of the applicant and either existed at the time of adoption of the requirement from which the variance is requested or is necessary as the result of governmental action such as a roadwidening.
4. The appellant must show that a variance -
  - a) Will not be contrary with the intent and purpose of the zoning ordinance;
  - b) Will not cause a substantially adverse affect upon adjacent properties;
  - c) Will relate only to the property under control of the appellant;
  - d) Will not jeopardize the preservation of a substantial right, although the spirit of the ordinance shall be observed, public safety secured and substantial justice done;
  - e) Will not essentially alter the character of the surrounding area;
  - f) Will not increase the hazard from fire, flood or similar dangers;
  - g) Will not increase traffic congestion;
  - h) Will not produce nuisance conditions to occupants, or nearby premises, whether by reason of dust, noise, fumes, odor, vibrations, smoke or lights; and
  - i) Will not otherwise impair public health, safety, comfort, or general welfare of the residents of the Township.

5. The variance is the minimum necessary to permit reasonable use of the land and buildings.

The burden of showing a variance is warranted falls on the applicant. If the Board of Appeals finds the ordinance requirements can be met or that the criteria for getting a variance have not been met, then a variance is not warranted.

When reviewing an appeal from an action of the Zoning Administrator, the Board of Appeals reviews the facts and ordinance requirements and comes to its own conclusion as to the correct action. Similarly, if the Township ordinance permits appeal to the Board of Appeals of actions on special land uses or PUD requests, the Board of Appeals is limited to reviewing the facts as presented to the reviewing body or official and then determining if all ordinance standards and requirements have been met. If the standards were properly applied, the previous decision would be upheld, otherwise it would be overturned.

## PUBLIC HEARINGS

One of the most important steps in amendment, special land use, PUD, and variance procedures is the public hearing. Public hearings provide specific opportunity for citizens to be heard on zoning matters that may affect their interests. It is absolutely essential that required notices of public hearings be published/distributed as specified in the zoning ordinance and/or Township Rural Zoning Act. At public hearings, it is very important that every interested person be given the opportunity to be heard. But this does not mean the



“Presenting His Case”

process is spontaneous, a hearing should be conducted in a consistent and orderly fashion. The hearing body should not have their decision governed by the public applause meter. The hearing body should not be interested in whether neighbors are in favor or opposed to a given proposal, but rather in why they feel that way; what relevant information do they offer within the context of ordinance requirements to assist in making a decision? The primary purpose of the hearing is,

of course, to gather facts and information. Thus, a hearing process must be established to insure an open, objective atmosphere exists for orderly presentations. It need not be one of paralyzing formality, it is not a court proceeding.

The need for public confidence in the honesty and integrity of the hearing body, dictates that if any member of the body has even a remote interest in the outcome of a proceeding, he or she should disqualify himself from participation in the hearing. Obvious conflicts of interest would include a financial interest in the outcome or a close business or family relationship with the applicant, his/her attorney or any expert witness. The member with a conflict of interest should disqualify him/herself at the outset of the hearing or sooner if the conflict is identified. It is not sufficient to participate in the hearing and merely refrain from voting. The rule to follow if there is a doubt about a conflict of interest is: When in doubt -- step down.

### General Hearing Procedure

The following general hearing procedure is suggested as a guide to developing a specific hearing procedure in your township. Whatever procedure is developed, the procedure should be made clear to all in attendance and consistently adhered to. A simple handout sheet or large board visibly displayed with the hearing procedure will serve this purpose well. Hearings should begin precisely at the time advertised in the notice although they may simply be one element of the agenda.

1. The Chairperson shall announce the subject of the public hearing, as advertised.
2. The public hearing procedures are summarized for all present by the Chairperson. A suggested opening statement might be:

This public hearing to receive public input on the following matter \_\_\_\_\_ in accordance with the official notice, is now open. The (name of hearing body) would like to make it clear that it is bound by rules and laws and that these are the determinates when weighing the case. In order to conduct the hearing within a reasonable time and to keep to the subject at hand, you are asked to observe the following rules:

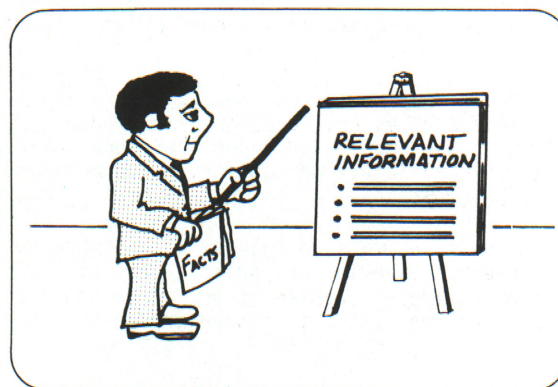
- After the staff presentation, the applicant will state his case fully and furnish the (name of hearing body) with pertinent information concerning the property.
- Those who favor the proposed change will be heard first, and those opposed will be heard last.
- Each person making a statement will be asked to state their name and address.
- Please refrain from repeating what has been said before you, and please do not involve personalities.
- Be as factual as possible.

-- The (name of hearing body) reserves the right to question any speaker.

-- All statements or questions must be directed to the Chairperson.

The (name of hearing body) will or will not make a decision on this matter at today's meeting.

3. The staff is then asked to present the substance of the application and any staff reports and to answer technical questions of the hearing body.
4. Individuals wishing to speak in support of the subject of the hearing shall be recognized by the Chairperson beginning with the applicant(s) or their representative.
5. Individuals wishing to speak in opposition of the subject of the hearing are recognized by the Chairperson. (If there are numerous people in the audience who would like to participate on the issue, and it is known that all represent the same opinion, it is advised that a spokesman be selected to speak for the entire group. A spokesman will thus have the opportunity of speaking for a reasonable length of time, and of presenting a complete case. If this arrangement cannot be made, it may be necessary for the Chairperson to restrict each speaker to a limited time in order that all may be heard. The hearing body must permit comments from all interested or affected individuals and organizations, and it should be stressed that consideration will be given to all comments or suggestions made. Irrelevant and off-the-subject comments should be ruled out of order.)



"Stating The Facts"

6. The Chairperson may, within reasonable limits, upon request, allow cross-examination or rebuttal. All comments should be addressed to the hearing through the Chairperson and not directed to any other individuals. The hearing body should refrain from debating or arguing with persons commenting. The function of the hearing is to gather facts -- not to carry on an adversary relationship.

7. The Chairperson should upon his/her motion or the motion of any member, announce the close of the public portion of the hearing or announce the continuation of the public hearing to another specified time and date if the hour is late or additional pertinent information must be obtained.
8. The Commission then deliberates on the matter. All deliberations must be conducted in an open public meeting.

## Hearing Records

The point that a hearing record is necessary is indisputable; the question which arises is how such a record should be made. Obviously, the most complete record can be obtained by using a court stenographer; however, this is very costly. Many communities have adopted the practice of tape recording each meeting. This low cost method is usually satisfactory when accompanied with a brief written summary of the public hearing comments. It is essential that speakers identify themselves in order to determine at a later time who said what. Of lesser value are the extensive notes taken by a secretary or clerk to the hearing body. Such notes should be made a formal part of the record, after their review and correction if necessary, by a vote of the hearing body.

A complete record of the hearing will typically contain the following:

1. The applicants request on a properly completed form.
2. The records of any action of this request by an administrative official or body including all past records regarding the property such as an earlier request for variance, special land use approval, or a record of nonconforming status.
3. Records that verify due notice to the appropriate parties and to neighboring property owners has been given. Any newspaper notice and the affidavit of publishing thereof must also be retained.
4. Any relevant maps, drawings, or photographs presented as evidence, or as a part of the application and copies of any correspondence received or sent out with regard to this request.
5. A complete record of all public input made at the hearing.
6. A record of what the hearing body saw on any visit it made to the property in question and a summary of any conversations between the hearing body and parties with an interest in the application.
7. A copy of a reference to relevant ordinance requirements.
8. The findings of fact, the conclusions reached and the recommendation or decision made on the request by the hearing body.

9. A copy of any other correspondence to or from the petitioner regarding the decision.

The crucial element of this record is, of course, the findings, conclusions and decision (or recommendation) of the hearing body. The decision must be in writing and include all conditions that may be associated with the decision. The decision or recommendation should not be a mere conclusion or a statement. Each decision should be accompanied by specific findings of fact. These findings should be related to the specific standards stated in the ordinance which the applicant must satisfy. It is not sufficient, for example, for a Board of Appeals to merely parrot the general statutory requirements that a "practical difficulty or unnecessary hardship exists" -- this is not a finding, it is a conclusion. The facts which led the Board to reach this conclusion consistent with ordinance and statutory standards must be identified to support the conclusions reached. These decisions run the chance of having the stand up in a regular court of law, where detailed findings of fact must be presented, and the conclusions of law based upon those facts must follow. It is important that careful consideration be given to all matters. Clear and uniform hearing procedures assist a hearing body in properly carrying out their responsibilities. On occasion, however, the assistance of the Township Attorney is needed. It should be sought when needed. Likewise, before adopting any rules of procedure or public hearing rules, the advice of the Township Attorney should be sought.

## Ten Common Zoning Problems

Among typical kinds of problems growing out of lax zoning administration, improper granting of variance and inappropriate amendments are the following:

1. There are many spot zones, comprising only one or two lots, whose location is not in accordance with a land use plan and inconsistent with adjacent land uses.
2. The Board of Appeals grants too many variances without adequate scrutiny.
3. The Zoning Administrator has issued permits for uses that do not meet ordinance requirements, or has failed to make use of occupancy permits to regulate changes in use, or has failed to carry out an active program to detect and prosecute zoning violations.
4. The Zoning Administrator and Board of Appeals tend to rely on complaints or the consent of neighboring property owners as the principal basis for action.
5. A community haphazardly copies another community's ordinance.
6. A community prepares or adopts the ordinance or amendments without obtaining or consulting the "public pulse" (the prevailing values and attitudes of the public).
7. The community fails to utilize available technical assistance in making rational deci-

sions in the development of zoning regulations and districts.

8. The Zoning Administrator, Planning Commission/ Zoning Board, Township Board and Board of Appeals fail to make uniform and consistent decisions on similar matters.
9. The Zoning Map is made to look just like a 20 year master plan, rather than reflecting a land use pattern appropriate to just the next 3-5 years of expected development in a manner consistent with the plan.
10. The zoning decision bodies fail to adequately state the facts which substantiate the conclusions they have reached in the record on the matter.

These points were adapted from an article by Robert M. Leary, entitled, "Common Deficiencies", which was printed in Principles and Practice of Urban Planning by William I. Goodwin and Eric C. Freund, (Washington, D.C.: International City Managers' Association, 1968), pgs. 419-420.

### Before Making Zoning Decisions

Before any action is taken by an official or body responsible for carrying out a specific zoning function, the following guidelines should be kept clearly in mind:

1. Is the application or request before the right body or official at this time?
2. Are other alternatives available to the applicant that may more appropriately serve his/her needs as well as the public interest?
3. Have you checked relevant provisions of the ordinance, the statute and applicable township plans for their guidance on the matter before you?
4. If you have doubts on how to proceed, have you investigated them instead of "muddling" through in order just to clear the agenda?

### Decision Making Reminders

General reminders to aid decision making:

1. When in doubt--check it out! But,
2. Don't delay when the decision can be made.
3. Remember that permits, approvals and zoning districts run with the property and not the owner.
4. When all standards stated in the ordinance have been met, the permit must be issued.
5. Consistency is very important, but mistakes should not be perpetuated.
6. Permits are of little value if there is no monitoring to insure continued ordinance compliance.

7. At least one member of the body on which you serve should be an expert on the ordinance requirements and on past decisions made.
8. The body on which you serve should adopt and keep current rules of procedure to guide their actions.
9. A simple public hearing procedure should be adopted, clearly pointed out to citizens at each public hearing, and consistently adhered to.
10. Good records of all meetings of the body on which you serve should be maintained.
11. All decisions must be documented. The facts uncovered in the process of reviewing the application, making the analysis and from presented at the public hearing should be explicitly related to ordinance standards and documented along with the conclusions reached on the matter.
12. If a procedural requirement such as newspaper or individual notice to appropriate persons is missed, stop the process and begin again.
13. No decision should be made by vote of less than a majority of the total membership of the body, not just a majority of those present.
14. When technical assistance of the Township Planner, Township Attorney or other professionals is needed, get it.
15. Remember your job is to protect the public interest as embodied in the zoning ordinance. Required procedures and standards must be adhered to.

### NOTES



**NOTES**

## PART IV

### THE END (OR IS IT THE BEGINNING?)

In Part I of this guide, basic zoning procedures were described as resembling a "maze" to the citizen or official with previous limited zoning contact. Parts II and III attempt to lead one thru the maze by identifying "who does what" in township zoning and generally "how they go about their business". This descriptive method is intended to illustrate that zoning, while a technical and legal community power, is really composed of a relatively few sets of functions. Each zoning function or activity has its own statutory and ordinance procedures which are followed to insure that the rights of citizens are protected as the community regulates the use of land. Most of these procedures have very similar characteristics, but the details and the differences are very important. Equally important is the basic issue of which body or official is responsible for acting on certain zoning functions and what standards or guides do, or should, they use in making decisions.

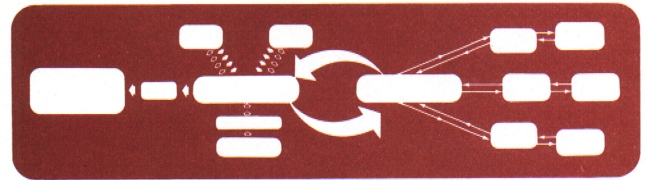
Part I suggested that the key to understanding zoning was related to the old adage that:

There is a place for everything and everything must be in its place.

A zoning ordinance clearly identifies which uses of land are permitted in which zoning districts. But it goes further when those districts are mapped, because then particular land uses have locational characteristics which may be generally described in the ordinance but which assume specific characteristics once mapped. A township zoning ordinance should reflect the whole host of land uses reasonably expected and needed within the township and should adequately provide for them. Attempts to exclude needed land uses from the community may be fraught with legal consequences and may unnecessarily place a costly burden on a community which could be avoided by foresightful action prior to the controversy.

But the adage has meaning beyond the obvious land use -- location analogy. As a technique to help a community manage its growth and development, the use of flexible zoning techniques such as PUD and special land uses is very important indeed. These techniques and the traditional zoning functions of amendment, appeals, and variances together provide a tool, which when properly used, can achieve many public objectives while enhancing the use and enjoyment of private property. With appropriate use of these techniques in conjunction with a planning program, a community should be truly able to find "a (proper) place for everything". The process for reviewing and approving changes in the use of land is thus every bit as important as the actual change itself.

Zoning is a job worth doing, as the benefits can be great, and thus, is worth doing well. Consequently, not only is it important for all involved in zoning decisions to be knowledgeable of their responsibilities and zoning procedures; but defi-



nite efforts to keep the zoning ordinance and community plans current is also very important. Efforts should also be made to orient each new zoning official and Township Board member as to how zoning works and what their role in zoning procedures is. When technical planning and or legal assistance is necessary, it should be sought. There is no reason to perpetuate zoning mistakes from the past, instead proper planning and zoning can be used to help build a future township residents can look forward to.

### THE NEED FOR PERIODIC ASSESSMENT

A land use plan and zoning ordinance begin to grow old and dated from the time of adoption. In rapid growth communities, they often become outdated sooner than expected.

How does a community keep the land use plan and zoning ordinance from becoming obsolete? The best way is through periodic assessment every three to five years by the Planning Commission. At that time, the following questions would be asked:

1. To what extent is the land use plan being actively implemented . . .
  - through zoning?
  - through public improvements?
  - through other efforts?
2. Is implementation taking place as scheduled? If not, why not?
3. Does the settlement pattern of recent development actively coincide with the land use plan map and the recommended land use intensities? If not, why not? What should be done -- change map or increase enforcement of the law?
4. Do the goals and policies still reflect the township's major concerns? If not, what should be changed? Is change realistic?
5. Are items identified in the land use plan as desirable, adequately being protected by zoning?
6. Are unexpected land use conflicts being created by the zoning ordinance which are not addressed by the land use policies?

Based on the answers to the above questions, the Planning Commission must decide if there is a need to revise the land use plan. If the plan needs to be revised, then after the revision is made, the zoning ordinance and/or map should also be reviewed and amended as needed. However, many land use plans and zoning ordinances are updated and amended on a "stop-gap" basis when faced with what appears to be a "crisis". Periodic reassessment will reduce the need to react in this manner and provide a mechanism whereby a community can maintain control of its future.

NOTES

"If we could first know where we are and whither we are tending, we could better judge what to do and how to do it."

Abraham Lincoln

The West Michigan Regional Planning Commission and Division of Land Resource Programs are very pleased to be able to provide you with this report. We appreciate your comments and suggestions as to how future editions of this guide, or other reports we might prepare, can better assist you in planning for and managing land resource use in your township.

MICHIGAN STATE UNIVERSITY



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