



Zoning and Land Use: What You Need to Know (the devil's in the details!)

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- **Legislative Body** (i.e. County Board, City Council, Township Board, Village Council)
- **Planning Commission** (Administrative Body)
- **Zoning Board of Appeals** (Quasi-Judicial Body)



LEGISLATIVE RESPONSIBILITIES

- Establish and Appoint Planning Commission
- Appoint Zoning Board of Appeals (or in the case of a City, maybe sitting as the ZBA)
- Special Use Permits (Optional)
- Site Plan Reviews (Optional)
- Adopt and Amend Subdivision Ordinance and Land Division Ordinance
- Subdivision Plat Approval



PLANNING COMMISSION RESPONSIBILITIES

- Development of Master Plan (with optional approval of the Township Board)
- Public Works Planning and Review
- Recommendations to Legislative Body on All Zoning Ordinance Amendments
- Special Use Permits (Optional)
- Site Plan Reviews (Optional)



ZONING BOARD OF APPEALS RESPONSIBILITIES

- Variances
- Appeals
- Interpretations
- Classify unlisted uses (May be delegated to PC)



DIFFERENT TYPES OF ZONING DECISIONS

- Master Plan
- Rezoning (Zoning Ordinance Amendments)
- Special Use Permits
- Planned Unit Developments
- Site Plan Approvals
- Development Agreements
- Purchase of Development Rights
- Cluster Zoning
- Variances
- Use classifications
- Appeals and interpretations
- Conditions to Zoning Approvals



MASTER PLAN

○ Authority.

- The Master Plan is the municipality's official statement of the goals and policies for orderly and desirable future development. The Michigan Zoning Enabling Act ("ZEA") states in part that "[t]he zoning ordinance shall be based upon a plan designed to promote the public health, safety, and general welfare...." (MCL 125.3203).



MASTER PLAN (continued)

- A Master Plan serves as a guide for land use for the future. Zoning ordinances regulate the actual use of land in the present. The Master Plan is not a binding legal document. Typically, a Master Plan is intended to show the use of land at a particular end of a planning period, such as five to ten years. The Zoning Map on the other hand, shows land as it is intended to be used in the present.
- Absence of a Master Plan can put the decisions of the municipality at risk. Rezoning and other land use approvals should be consistent with the Master Plan.



ZONING ORDINANCE AMENDMENTS

○ Authority.

- The power to amend zoning ordinances is governed by the enabling authority. The procedures for amending the zoning ordinance are the same as for initial adoption (Amendments or supplements to the zoning ordinance shall be adopted in the same manner as provided under this act for the adoption of the original ordinance – MCL 125.3202). Compliance with the statutory procedures is strictly enforced. The devil's in the details!



ZONING ORDINANCE AMENDMENTS (continued)

- **Role of the Planning Commission.**

- Public Hearing. Before submitting its recommendations for a proposed zoning ordinance amendment, the planning commission must hold at least one public hearing.
- Notices. Prior to a public hearing, notice must be published in a newspaper of general circulation not less than 15 days before the hearing. 125.3103. Notice must be given by personally delivery or by mail (public or private) to all persons to whom real property is assessed within 300 feet of the property that is the subject of the request and to the occupants of all structures within 300 feet of the subject property regardless of whether the property or structure is located in the zoning jurisdiction
- Recommendation. The PC shall submit for review and recommendation the proposed amendment, including any zoning maps, to the zoning commission of the county for a 30 day review period. MCL 125.3307. If there is no county zoning commission or county planning commission, the proposed zoning ordinance shall be submitted to the coordinating zoning committee. The County Board can by resolution waive its right to review.



ZONING ORDINANCE AMENDMENTS (continued)

- **Role of the Legislative Body.**

- Optional Hearings. Upon receipt of the proposed amendment and summary, the legislative body may hold additional hearings if it considers it necessary or if required. Notice requirements still apply.
- Hearing Required. After receiving the planning commission's report, the legislative body must grant a hearing to an interested property owner who requests a hearing by certified mail, addressed to the clerk. Notice provisions do not apply, except that the interested party must receive notice at least 15 days prior and it must describe the nature of the request, indicate the property subject to the request, when and where the hearing will be held and when and where written comments will be received.
- Referral Back and Adoption. The legislative body may refer a proposed amendment back to the PC for consideration and comment within a specified time. After any required hearings, the board may adopt the ordinance amendment with or without any amendments previously considered by the planning commission.



ZONING ORDINANCE AMENDMENTS (continued)

- Publication and Filing. A zoning ordinance amendment must be filed with the clerk and notice of the ordinance adoption must be published in a newspaper of general circulation within 15 days.
- Effective Date. Generally amendments take effect 7 days after publication or such later date specified by the board or by charter.
- Referendum.
 - Within 7 days after publication the ordinance will take effect unless a registered voter residing in zoning jurisdiction of a Township or County files with the Township or County clerk a notice of intent to file petitions requesting a referendum election on the amendment. Petitions containing the signatures of registered electors residing in the zoning jurisdiction equal to at least 15% of the total vote cast within the zoning jurisdiction for all candidates for governor at the last preceding general election at which a governor was elected must be filed within thirty (30) days after initial publication. MCL 125.402.



SPECIAL USE PERMITS ("SUP's")

○ Authority.

- Legislative bodies have the authority to establish SUP's pursuant to the Zoning Enabling Act. MCL 125.502. Special uses are uses that may be permissible in a zoning district, but require more attention than principal permitted uses.
- Notice. Municipality must provide notice of the request. The notice must indicate that a public hearing on the special land use request may be requested by any property owner or the occupant of any structure located within 300 feet of the property being considered for a special land use regardless of whether the property or occupant is located in the zoning jurisdiction.
- Public Hearing. Generally not required unless the body or official responsible for approving the special land use requests a hearing or upon the request of the applicant or a real property owner whose real property is assessed within 300 feet of the property, or the occupant of a structure located within 300 feet of the property.



SUP's (continued)

○ Ordinance Provisions

- Must establish ordinance provisions specifying:
 - The special land uses and activities eligible for approval consideration and the body or official charged with reviewing special land uses and granting approval.
 - The requirements and standards upon which decisions on requests for special land use approval shall be based.
 - The procedures and supporting materials required for application, review, and approval.



PLANNED UNIT DEVELOPMENTS (“PUD’s”)

- Authority.

- Municipalities are authorized to approve planned unit developments, which includes terms such as cluster zoning, planned development, community unit plan, and planned residential development and other terminology denoting zoning requirements designed to accomplish objectives of the zoning ordinance through a land development project review process based on the application of site planning criteria to achieve integration of the proposed land development project with the characteristics of the project area.



PUD's (continued)

- PUD's provide added flexibility to the zoning ordinance, allowing the review of large projects based upon plans specifically geared to that project and the specific site.
- The PUD process provides the potential of clustering development, providing open space, mixing uses on the site, and averaging zoning densities between zoning districts located within the PUD.
- Procedure. Approval of the PUD can involve the legislative body, the planning commission, an administrative official, or a combination, as determined by the zoning ordinance. The procedure for approving PUD's is similar to the SUP process, requiring public notice and a hearing. Some PUD's may require zoning ordinance amendments.
- Phasing. A PUD may be approved in phases.



SITE PLAN REVIEW

○ Authority.

- The zoning ordinance may require the submission and approval of a site plan before authorization of a land use or activity is given. MCL 125.3501.
- Site plan review and approval is required for special land uses and planned unit developments.
- Approval or denial of a site plan must be based on the requirements and standards in the zoning ordinance, other statutorily authorized and properly adopted planning documents, other applicable ordinances, and state and federal statutes.
- A site plan must be approved if it meets the standards of the zoning ordinance and is in compliance with the conditions lawfully imposed.



SITE PLAN REVIEW (continued)

○ Sample Site Plan Review Standards.

- The following standards are examples that may be utilized in reviewing site plans. These standards are intended to provide a frame of reference for the applicant in the development of site plans as well as a method of review for the reviewing authority. These standards should not be regarded as inflexible requirements. They are not intended to discourage creativity, invention, and innovation.
 - Preservation of Landscape: The landscape shall be preserved in its natural state, insofar as practicable, by minimizing tree and soil removal, and any grade changes shall be in keeping with the general appearance of neighboring developed areas.
 - Relations of Proposed Buildings to Environment: Proposed structures shall be related harmoniously to the terrain and to existing building in the vicinity that have a visual relationship to the proposed buildings. The achievement of such relationship may include the enclosure of space in conjunction with other existing buildings or other proposed buildings and their creation of focal points with respect to avenues of approach, terrain features or other buildings.



SITE PLAN REVIEW (continued)

- **Drives, Parking and Circulation:** With respect to vehicular and pedestrian circulation, including walkways, interior drives and parking, special attention shall be given to location and number of access points to the public streets, width of interior drives and access points, general interior circulations, separation of pedestrian and vehicular traffic, and arrangement of parking areas that are safe and convenient and, insofar as practicable, do not detract from the design of proposed buildings and structures and the neighboring properties.
- **Surface Water Drainage:** Special attention shall be given to proper site surface drainage so that removal of surface waters will not adversely affect neighboring properties or the public storm drainage system. If practical, storm water shall be removed from all roofs, canopies, and paved areas and carried away in an underground drainage system. Surface water in all paved areas shall be collected at intervals so that it will not obstruct the flow of vehicular or pedestrian traffic, and will not create puddles in the paved areas.
- **Utility Service:** Electric and telephone distribution lines shall be underground. Any utility installations remaining above ground shall be located so as to have an harmonious relation to neighboring properties and the site. The proposed method of sanitary sewage disposal from all building shall be indicated. In any case, all utility installations shall be carried out in accordance with the Standard Rules and Regulations of current adoption of the Michigan Public Service Commission.
- **Special Features:** Exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings, and structures, and similar accessory areas and structures shall be subject to such setbacks, screen plantings or other screening methods as shall reasonably be required to prevent their incongruous with the existing or contemplated environment and the surrounding properties.
- **Advertising Features:** The size, location and lighting of all permanent signs and outdoor advertising structures or features shall be consistent with the requirements of the ordinance.



ZONING BOARD OF APPEALS

○ Authority

- The zoning board of appeals must hear and decide questions that arise in the administration of the zoning ordinance, including the interpretation of the zoning maps. The ZBA may adopt rules to govern its procedures. The zoning board of appeals must also hear and decide on matters referred to the zoning board of appeals or upon which the zoning board of appeals is required to pass under a zoning ordinance. The ZBA must hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body charged with enforcement of a zoning ordinance. For special land use and planned unit development decisions, an appeal may be taken to the zoning board of appeals only if provided for in the zoning ordinance.



ZONING BOARD OF APPEALS

○ Types of Decisions Made by ZBA.

- Statutory Authority to Grant Variances. Where an applicant can prove practical difficulty or unnecessary hardship (in the case of use variances) in carrying out the strict letter of the zoning ordinance, the ZBA may grant a variance so that the spirit of the ordinance is observed, public safety secured and substantial justice done.
- Variances. Variances fall within one of two categories:
 - Use Variances. A use variance authorizes a use of land otherwise prohibited under the zoning ordinance. Generally speaking, Counties and Townships cannot grant use variances, unless as of Feb 15, 2006 the ordinance expressly authorized the ZBA to grant use variances or the County or Township granted one or more use variances before Feb 15, 2006.
 - Dimensional Variances. A dimensional variance is concerned with requirements respecting area, height or setback. A dimensional variance is also necessary before an applicant may expand or enlarge an existing nonconforming use.
- Appeals and Interpretations. A ZBA is empowered to hear appeals from decisions by zoning and building officials, and to issue interpretations of ambiguous provisions contained in the zoning ordinance. A public hearing and notice is required for appeals and interpretations. However, if the request does not involve a specific parcel, notice need only be published in a newspaper and given to the person making the request.
- Use Classifications. Some ordinances give the ZBA authority to "classify" uses that are not listed in the zoning ordinance.



ZONING BOARD OF APPEALS DECISIONS (continued)

- Practical Difficulty and Unnecessary Hardship.
 - Use Variance. To obtain a use variance, an applicant must prove to the ZBA that it will suffer "unnecessary hardship" if the variance is denied. The unnecessary hardship must relate to the property for which the variance is sought. In order to show unnecessary hardship, the applicant must prove:
 - The land in question cannot yield a reasonable return if used only for the purpose allowed in that zone;
 - The plight of the owner is due to unique circumstances and not the general conditions in the neighborhood; and
 - The use to be authorized by the variance will not alter the essential character of the locality.



ZONING BOARD OF APPEALS DECISIONS (continued)

- Dimensional Variance.
 - Dimensional variances may be granted base on a less rigorous showing of "practical difficulty." Michigan courts have generally looked to the following criteria to determine practical difficulty:
 - Whether compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.
 - Whether a grant of the variance applied for would do substantial justice to the applicant as well as to other property owners in the district, or whether a lesser relaxation than that applied for would give substantial relief to the owner of the property involved and be more consistent with justice to other property owners.
 - Whether relief can be granted in such fashion that the spirit of the ordinance will be observed and public safety and welfare secured.



ZONING BOARD OF APPEALS DECISIONS (continued)

- Denial. Even in situations where the applicant can prove practical difficulty or unnecessary hardship, the request for a variance may still be denied.
 - Self-Created Hardship. A variance may be denied where the alleged practical difficulty was created by the applicant or the applicant's predecessor in interest, and not by the enactment of the zoning ordinance.
 - Lack of Authority. The ZBA may not have the authority to grant use variances, regardless of any showing by the applicant.



ZONING BOARD OF APPEALS DECISIONS (continued)

- Rehearings and Judicial Review of Decisions of the Zoning Board of Appeals.
 - Rehearings. The powers of the ZBA are limited to the powers granted to it under the ZEA. Thus, the decision of the ZBA is final and there is no authority for rehearing or reconsideration.
 - Judicial Review of a ZBA Decision. The ZBA's decision is final when made. However, a person with an interest affected by the zoning ordinance may appeal to the circuit court. On appeal, the circuit court shall review the record and opinion of the ZBA to insure that the decision:
 - complies with the constitution and laws of the state;
 - is based upon proper procedure;
 - is supported by competent material and substantial evidence on the record; and
 - represents the reasonable exercise of discretion granted by law to the ZBA.
 - Scope of Review. The circuit court acts as an appellate court in reviewing ZBA decisions. The circuit court is limited to a review of the record made before the ZBA. The circuit court is not a forum for the applicant to present new evidence or testimony.
 - Time for Taking Appeal. An appeal from a decision of a zoning board of appeals shall be filed within whichever of the following deadlines comes first:
 - (a) Thirty days after the zoning board of appeals issues its decision in writing signed by the chairperson, if there is a chairperson, or signed by the members of the zoning board of appeals, if there is no chairperson; or
 - (b) Twenty-one days after the zoning board of appeals approves the minutes of its decision.



CONDITIONAL APPROVALS/AUTHORITY TO ATTACH CONDITIONS ON LAND USE APPROVALS

- Attachment of Conditions to Land Use Approvals.
The planning commission, board or council has the statutory authority to attach conditions to the approval of the following:
 - SUP's.
 - PUD's.
 - Site plans.



CONDITIONAL APPROVALS/AUTHORITY TO ATTACH CONDITIONS ON LAND USE APPROVALS (continued)

- Attachment of Conditions to Variance Approvals.
 - The Zoning Board of Appeals has the authority to attach conditions to variances.
- Attachment of Conditions to Rezoning Approvals. The Supreme Court explained that attachment of conditions to a rezoning was not prohibited as “contract zoning” in a footnote contained in Addison Twp v Gout, 432 Mich 627; 443 NW2d 139 (1989).



CONDITIONAL APPROVALS/AUTHORITY TO ATTACH CONDITIONS ON LAND USE APPROVALS (continued)

- Tests for Validity of Conditions:
 - Standard under Nollan v California Coastal Comm, 483 US 825, 831; 97 L Ed 2d 677; 107 S Ct 3141 (1987).
 - Conditions are appropriate when the condition serves a legitimate public interest necessary to eliminate an anticipated harm that will come about due to approval of the requested land use.
 - There must be a *nexus or connection* between the condition and the stated purpose for the condition.



CONDITIONAL APPROVALS/AUTHORITY TO ATTACH CONDITIONS ON LAND USE APPROVALS (continued)

- Standard under Dolan v City of Tigard, 512 US 374; 129 L Ed 2d 304, 316; 114 S Ct 2309 (1994).
 - The Supreme Court clarified its position regarding conditions on zoning decisions by requiring the conditions to be in "rough proportionality" to the nature and impact of the proposed development.
 - Two-prong test:
 - Whether essential nexus or connection exists between the legitimate state interest and the permit condition.
 - Whether there is the requisite degree of connection between the condition and the impact of the project. To fulfill the second prong, the required conditions must be in "rough proportionality" to the nature and impact of the proposed development.



CONDITIONAL APPROVALS/AUTHORITY TO ATTACH CONDITIONS ON LAND USE APPROVALS (continued)

- Standards and Conditions.
 - Necessary to meet *one* of the following:
 - Insure that public services and facilities will be adequate to accommodate increased load caused by new use.
 - Protect environment and conserve resources and energy.
 - Insure compatibility with adjacent uses.
 - Promote socially and economically desirable use of land.



CONDITIONAL APPROVALS/AUTHORITY TO ATTACH CONDITIONS ON LAND USE APPROVALS (continued)

- Must meet *all* of the following.
 - Protect natural resources, health, safety and welfare and social and economic well being of occupants, neighbors and the community.
 - Related to valid exercise of police power and purposes affected by the proposed use.
 - Necessary to meet intent and purpose of zoning ordinance.
 - Related to standards established in zoning ordinance.
 - Necessary to insure compliance with those standards.



LEGAL TESTS FOR LOCAL REGULATION

- Authority
 - Statutory
 - Case law
- Public purpose
- Reasonableness



KEY QUESTIONS OF AUTHORITY

- Statutory language controls
- No implied powers
- Strict compliance with statutory procedures, including notices and hearings, is required



PUBLIC PURPOSE CONSIDERATIONS

- Master plan is evidence of public purpose (but not conclusive)
- Public purpose is presumed (rebuttable by expert evidence)
- Many purposes may be legitimate:
 - Orderly development
 - Infrastructure
 - Aesthetics
 - Nuisances
 - Traffic safety
 - Sanitation
 - Growth
 - Flooding
 - Environment
 - Local economy



REASONABLENESS

- When does regulation go too far – and become a taking?
- Must allow land owner reasonable use – not highest and best use
- Balancing Test:

PUBLIC INTEREST

- Substantial?
- Legitimate?
- Physical Invasion?
- Avoid Harm or Confer Public Benefit?

EFFECT ON LAND OWNER

- Economic Impact?
- Investment-Backed Expectations?
- Any Economic Uses Left to Land?
- Property as a Whole



AVOIDING ZONING LAWSUITS

- **Have and Follow a Plan.** The master plan is an essential foundation for any zoning ordinance. Also remember that the master plan should be reviewed and updated periodically.
- **Rely on Your Experts.** Pay attention to your planning and legal advice. Good experts are essential to defending your zoning decision.
- **Follow Proper Procedures.** Lawful notices and hearings are essential to zoning validity.
- **Know your Statutory Authority.** The Township Zoning Act is the source of your zoning authority. The conditions and limitations imposed by the Act are mandatory.
- **Honor a Public Purpose.** A zoning decision is subject to attack if it does not reasonably promote a legitimate public purpose.
- **Make Clear Findings.** Don't make the court search for reasons to uphold the township's zoning decision. Include those reasons in your written findings.
- **Be Reasonable.** Make sure that every parcel in the township has at least one reasonable use.
- **Do Not Take.** Analyze your zoning decisions to be sure that the economic impact on the landowner is sufficiently justified by a substantial and legitimate public interest.
- **Do Not Exclude.** Make sure that the zoning ordinance text and map provide an appropriate location for all types of land uses.
- **Avoid Conflicts of Interest.** The perception of fairness in the zoning process is undermined by perceived conflicts of interest.



PREEMPTION ISSUES

- Right to Farm Act.
 - A farm is not a public or private nuisance if it conforms to generally accepted agriculture and management practices determined by the Michigan Commission of Agriculture.
 - A farm is not a nuisance if farm existed before a change in land use and farm was not a nuisance before the change in land use.



PREEMPTION ISSUES (continued)

- A farm is not a nuisance as a result of:
 - Change in ownership.
 - Temporary cessation or interruption of farming.
 - Enrollment in government programs.
 - Adoption of new technology.
 - Change in farm product being produced.
- Any zoning changes associated with agriculture should be based on a master plan for land use across the territory.
- It may be necessary to revisit master plan and re-evaluate the commitment to an agriculture sector of the municipality.



PREEMPTION ISSUES (continued)

○ Public Schools.

- Is the use governed by the ZEA?
- Schools are subject to zoning absent a clear legislative intent that schools are exempt from local zoning.
- Municipalities are preempted from zoning for purposes of siting school buildings, agriculture farms, athletic fields and playgrounds, libraries, administrative buildings.
- Schools must comply with other applicable zoning ordinances.



PREEMPTION ISSUES (continued)

○ Aeronautics.

- Municipalities cannot enact ordinances preventing the use of and occupancy of land for an airport.
- The Michigan Aeronautics Code provides authority for political subdivisions to acquire property for constructing and enlarging airports either within or without the territorial limits of the political subdivision.
- When the legislature clearly expresses its intent, local ordinance will be preempted.
- Federal jurisdiction will allow those areas not preempted to be governed by local zoning law.



OPEN DISCUSSION & QUESTIONS