

Planning and Zoning Primer

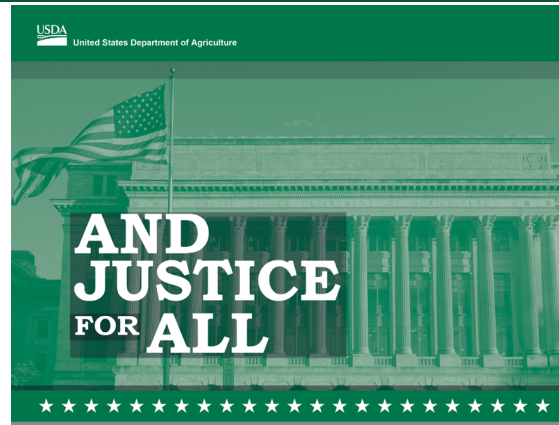


Part One

(Part Two is How To Influence Zoning Decisions)



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Zoning decisions and land use change happen all around us. To participate in and shape the outcome of those decisions, **community residents must have a basic understanding of planning and zoning.**



This program will cover

- A.** Why Plan
- B.** Planning
- C.** Implement the plan
- D.** Coordination
- E.** Zoning
- F.** Training | Keep up-to-date



A. Why Plan?

"Would you tell me please which way I ought to walk from here?"- said Alice.

That depends a good deal on where you want to get to- said the cat."

– Alice's Adventures in Wonderland by Lewis Carroll (Charles Dodgson)



Sir John Tenniel -1865

A. We all Plan

- Often, **we plan subconsciously.**
- We think ahead and **prepare accordingly.**



We get dressed
before going out
of the house



We make a list
before going to
buy groceries)



We measure
before we cut
the board



A. We all Plan



To buy a car:

1. We establish a goal

“To have a new car all the time”

“To buy a new car every two years”

2. We establish a policy

“To put \$200 each month in a savings account for the car” or “To maintain a good credit rating so I can get a car loan” or both.

3. We establish a strategy

“To have monthly income which is more than \$_____.” (So, we can afford the \$200 per month or car payments.)

4. We take action

“Research, test drive, and select the car we want” and we **buy the car.**



A. We all Plan



Planning as a Government (when one plans for a community)

- **Can not do it subconsciously** (Open Meeting Act; we are in a democracy).
- **Must be open**; include many people.
- Must have a **formal process**.
- Must have **formal adoption**.

P.A. 33 of 2008, as amended, Michigan Planning Enabling Act M.C.L. 125.3801 et seq.



A. We all Plan



Does this all seem too complex, difficult?

That is a good sign because:

“For every problem, there is one solution which is simple, neat and wrong.”

– H. L. Mencken



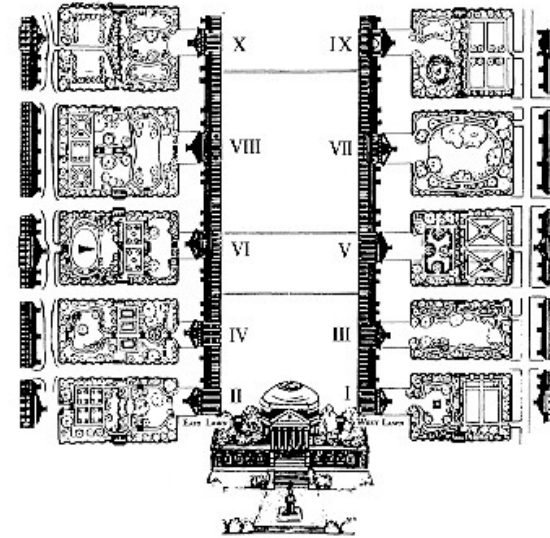
A. We all Plan

Planear no es nuevo:

- New Haven (1682)
- Philadelphia (1682)
- Detroit (1700)
- New Orleans (1718)
- Savannah (1733)
- Washington D.C. (1800)



Our founding fathers did community planning:



Jefferson's Plan for the University of Virginia. Public Domain.

Thomas Jefferson (Charlottesville and University of Virginia)
Washington D.C. (1800)



A. We all Plan

The Purpose of Planning

Why Plan according to **Michigan Society of Planning Officials.**

(Wyckoff, Mark A. and others; *Community Planning Handbook-Tools and Techniques for Guiding Community Change*; Michigan Association of Planning; March 1992; Page 2.)



A. We all Plan

»» Planning is a process, fundamental to what we do (personal lives, jobs, and in a community).



Planning (or failing to plan) is important at the community level as it **affects many people**.

Change occurs with or without planning – planning is a way to guide change.



To **maximize** the **positive**



Minimize the **negative** impacts



A. We all Plan



Zoning is based on a plan; **the plan is when/where decisions are made** about possible development.

“The world
is run by
those who
show up.”

- Then: Often big picture issues are decided in the planning process.
- By the time it is a zoning permit or amendment proposed, it is too late.
- So: **Be active in the development of the Plan. Participate.**



Creating Local Diversity on Boards and Commissions



Review local
census data



Identify
**underrepresented
populations**



Reach out to
**women
and minority
populations**
in your
community

B. Planning

Planning is a mix of:



Research, **science**
(Fact Book)



Public opinion, politics for
the community.

- **Need to do both.**
- Some say the **process** (that builds consensus, involves many people) is **more important** than the “published plan”



B. Research

- Do not use just any “study.”
- There is **good and bad** research/science.

Know the signs of good research:



Those standards are:

- Was the data "**double-blind**?"
- Was the study **peer-reviewed**?
- Can the study be repeated and get **similar results**?
- **The researcher does not have a stake in the outcome.**



B. Public Policy



Content of various plans

- Manistee
- Grand Traverse
- Emmet
County/Petoskey
- Leelanau
- Benzie
- Canterbury (New Zealand)



B. Content of Plans

	Manistee	Grand Traverse	Emmet	Leelanau	Benzie	New Zealand
Introduction	✓	✓	✓	✓		✓
Summary	✓	✓	✓			✓
About the Plan	✓	✓		✓	✓	
International/ national/ state/ regions	✓			✓		✓



B. Contenido del Plan

	Manistee	Grand Traverse	Emmet	Leelanau	Benzie	New Zealand
Conclusions /Map	✓	✓	✓	✓	✓	✓
Industrial Areas	✓					
Commercial Areas	✓					
Residential Areas	✓	✓				



B. Content of Plans

Map, continued	Manistee	Grand Traverse	Emmet	Leelanau	Benzie	New Zealand
Rural Residential	✓					
Working lands	✓	✓		✓		✓
Sensitive, environment	✓	✓	✓	✓		✓
Special Areas	✓		✓	✓		✓



B. Content of Plans

	Manistee	Grand Traverse	Emmet	Leelanau	Benzie	New Zealand
Housing	SD	✓	✓			
Human Services	SD			✓		
Education	SD		✓			
Infrastructure	SD	✓	✓	✓		✓

SD = Separate Document



B. Content of Plans

	Manistee	Grand Traverse	Emmet	Leelanau	Benzie	New Zealand
Economic Development	SD	✓	✓	✓		
Air, water, waste, etc.	✓		✓	✓		✓
River/ lake margins			✓	✓		✓
Indigenous peoples	✓					✓

DS = Separate Document



B. Content of Plans

	Manistee	Grand Traverse	Emmet	Leelanau	Benzie	New Zealand
Other (Special)	Oil			Penn		Gw
Public Participation	✓	✓			✓	
Adoption Documents	✓		✓			
Appendixes	✓	✓	✓	✓	✓	✓

Oil = Oil and gas extraction

Penn = Unique issues of being a peninsula

Gw = Groundwater quality and quantity issues



C. Implement the Plan

- Zoning is not **all there is**.
- Government has **other powers** that should also be used to use to **promote/discourage development** in different areas.



Power of
Taxation



Power of
Spending
Money



Police
Power



Coordination



C. Implement the Plan



Taxation

Provide tax breaks (TIFF, etc.)
 Downtown Development Authority
 Industrial Facilities Districts.
 Create Brownfield Redevelopment Authority
 Public-private bonding pollution abatement.



Spend Money

Build/improve roads, or not.
 To buy or not buy, keep land.
 To build or not build sewers.
 To build or not build water mains.
 To build or not build storm sewers.
 To provide or not provide parks.
 To build or not build public buildings.



Police Power

Police Power.
 Zoning ordinance.
 General ordinances (blight,
 urban renewal, junk, housing, road,
 land division, subdivision
 /condominium, etc.)
 Natural Beauty Roads.



Cooperation

Joint authorities: (Joint fire
 departments, etc.)
 Partnerships: (local and state
 operation of campground, river or
 watershed protection, wellhead
 protection, etc.)
 Urban Cooperation Act agreements.
 P.A.425 agreements



C. Taxation Example

City of Traverse City

- Downtown **D**evelopment **A**uthority.
- Zoning District/**DDA** boundaries the same.
- New SEV set aside for downtown **improvements**:



**Street
Scope**



**Parking
Ramp**



**Zoning design
development (neo-
traditional community)**



C. Spend Money Example

Manistee County Road Commission.

1. Year-round road construction to Kaleva.

»» Goal: New industrial park & development

2. No road construction & closing county roads in certain forest areas: old growth, Big Manistee River.

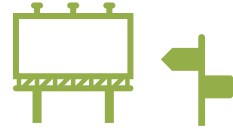
»» Goal: No development in areas important for recreation, trail use, etc. Preserve the outdoor experience, focus snowmobiles away from private lands.



C. Police Power Examples



**Junk
Ordinance**



**Sign,
Billboards Ordinance**

*We will cover zoning (part E of this program)



C & D. Coordination

The Relative Risk Analysis Project (1992) concluded “**lack of integrated and coordinated land use planning**” was one of the top environmental problems.



There are many issues and topics which can not be dealt with in a small area, such as village, city, or township.



To be effective in planning for many issues, it must be done at a larger geographic scale.



D. Coordination ②

Economic development involves **larger area** than village, township, and most cities.



Jobs, and location of employed people is a labor market area; often an entire county or multiple counties.



Coordinated planning is needed to be as effective as possible for economic development: worker training, housing, new industrial sites.



D. Coordinación ③



- **Ground & Surface water:** One community can have a good system to protect river, lake, or groundwater.
- Water **does not stop** at a political boundary.
- Coordinated planning at a watershed (or ground-water watershed) level is critical for **long term success**.

D. Coordination ④

Other topics that demand a multi-government cooperative planning approach include:



Natural features (lakes, rivers).



Technology for farming, mining, pipelines, radio transmissions.



Transportation networks (billboards, parking, scenic).



Major developments. (Have impacts on more than just one municipality (traffic, lights, etc.) reference, relevant portions of other plans adopted by other agencies and governments)

Can you think of others? _____



D. Division of Authority

Who is pulling all this together?



- **Township:** decides local roads.
- **Road Comm:** decides primary roads.
- **Township/village/city:** parks
- **Township/village/city:** billboards along highways.
- **County:** Tax reverted lands.
- **USFS/DNR:** Forest Management, parks, land trading.
- **City/DPW/Township:** Sewers & Water.
- **School Board:** parks, new school buildings.
- County, some townships, city village **each do zoning.**



D. The Plan

Who is pulling all this together?

In Michigan it is supposed to be the **Planning Process**.

Every local government in Michigan should **identify** those “bigger than just local concern” **issues**.



- Put that list on the table for **coordinated planning discussion**.
- **County planning commission [YOU]** has an opportunity to be the leader in this effort.



D. Planning Process

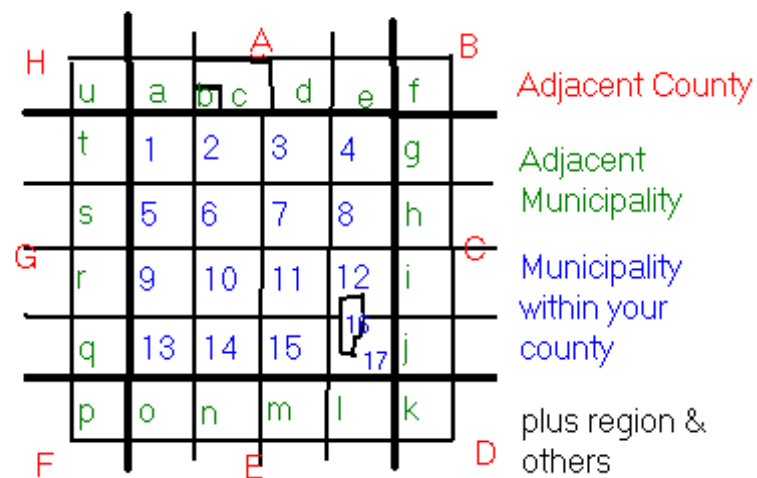
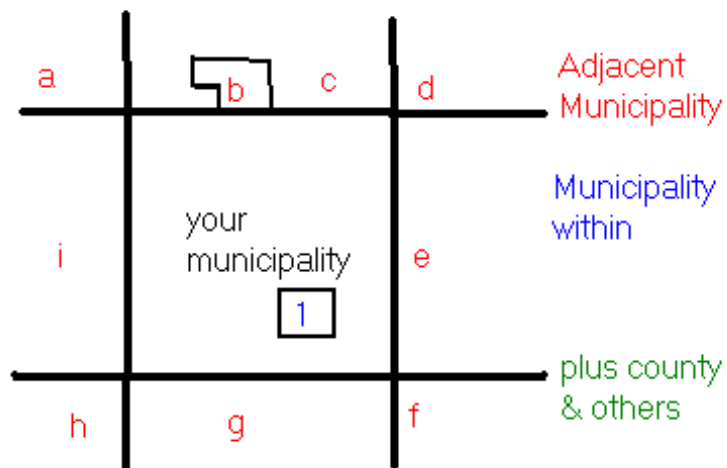


Steps to plan (coordination steps in red):

1. “I’m starting to plan ”**notice to all governments** within/contiguous to the planning area.
2. Conduct background **studies, research.**
3. Prepare **draft** plan.
4. **Approve** draft **plan** (Planning Commission & Legislative Body).
5. **Draft plan** sent to all **governments** within/contiguous to the planning area.

- 6-7. **Draft** plan and region/municipality’s comments on draft plan sent to **county planning.**
8. Planning Commission holds **public hearing** on revised plan.
9. **Adopt final plan** (Planning Commission & maybe Legislative Body.)
10. **Copies of plan sent to all governments** within/contiguous to the planning area.





E. Zoning



United States Supreme Court (*Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926))

Upheld zoning as a proper exercise of the police power to protect the public welfare. (Euclid is a suburb of Cleveland, Ohio.) Court warned zoning must “find their justification in some (proper) aspect of . . . protecting **the public welfare.**” e.g. a Plan.

Many Other Court Cases.



E. Enabling Statute in Michigan

Michigan Courts ruled local government can not just adopt a zoning. **Local government must be given authority to zone by Legislature** (“enabling statutes”)



Zoning is based on a plan: **Legal Basis** (Know where your zoning authority comes from)

P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et seq.*)



E. Some claim zoning is unconstitutional

- That is nonsense. (*Village of Euclid v. Ambler Realty Co.*, U.S. Supreme Court)
- It is possible for **part of a specific zoning ordinance** to be unlawful, **unconstitutional**.
- **Big difference between::**
Zoning is unconstitutional (not true), and a specific part of a particular zoning ordinance is unconstitutional.



E. Zoning is:



**Use of
Land**



Form



**Impact on land
and adjacent uses**

E. Zoning is not:

- To **promote/oppose** economic, racial, or religious views.
- **Enforcement** of private deed restrictions.
- A **solution** for neighborhood **feuds** or personal quarrels.
- A **promoter** of development (it merely permits it).
- A **tool** for the political **arena** (to reward/punish others).
- A **public popularity contest** – zoning decisions are to be based on facts, not majority of votes.



E. Zoning Limitations:

General Rule



- **Cannot totally prohibit anything.** (Must have a place for it somewhere when a need is demonstrated....)
- Must allow continued use of **nonconforming** (grandfathered) land uses.
- Cannot result in a **taking** of private property without paying for it.
- Must provide for **due process of law** and **equal protection** under law.



E. Zoning Limitations:

Outright Preemption of local zoning:

- **Hazardous waste** disposal.
- **Solid Waste** Facilities (landfills) (See county Solid Waste Plan)
- **Utility lines** (electric, phone, etc.)
- **Wind energy power transmission lines** in designated resource zones.
- **Pipelines** regulated by the Public Service Commission.

Outright Preemption



Means the state fully controls/regulates that matter, land use, or activity, with no room for local government to play a role.



E. Zoning Limitations:



Outright Preemption of local zoning:

- **Railroads**
- **State prisons** and public correctional facilities
- **Oil and Gas wells**
- **Surface coal mining**
- **Water pollution** and **Non-point source pollution** regulations



E. Zoning Limitations:

Outright Preemption of local zoning:

Aspects of a farm, “agricultural” that is already covered in Right to Farm Act or in a Generally Accepted Agricultural and Management Practices:



- Manure management and utilization.
- Pesticide utilization and pest control.
- Nutrient utilization.
- Care of farm animals.
- Cranberry production.
- Site selection and odor control of livestock production facilities.
- Irrigation water use.
- Farm Markets.



E. Zoning Limitations:

Outright Preemption of local zoning:



- **Fertilizer** regulation.
- **Mackinac Island Park Authority** activity on state land.
- **State fairgrounds.**
- **Trails** designated by DNR as “Michigan Trailways”
- **State Police radio communication** system.
- State-owned **armories** etc. for military uses.
- **Nuclear power** facilities.
- United States **military facilities.**



E. Zoning Limitations:

Outright Preemption of local zoning:



- **Native American (Indian) tribe** activity on tribal land/in “Indian country”
- Only site plan review of **public schools**.
- Certain public **colleges** and **universities**.
- **County buildings**.
- **Underground storage tanks**.
- Large quantity **water withdrawal**.
- **Pistols** and **firearms**.
- SE Michigan regional **Transit authority facilities**.



E. Zoning Limitations:

Outright Preemption --sort of:



- **Mobile home parks.**
- **Activities of the United States Government.**
 - Federal government must consider local ordinances.
 - Must follow them to “the maximum extent feasible”
 - Shall not obtain a local permit.
- **Nonferrous metallic mineral mining.**
- Certain aspects of **extraction (mining)** of natural resources.



E. Zoning Limitations:

Outright Preemption --sort of:



- **Wireless communication** facilities.
- **Reception antennas.**
- **Fireworks.**
- **Lansing Airport.**
- The **municipality** that adopted the zoning ordinance.
- **County buildings.**



E. Zoning Limitations:

If one is permitted, then also permit:

- »» If zoned “residential” (2, or fewer, units per acre) then must provide for “**open space**”/“**cluster**” development.
- »» If dwellings are permitted, then must allow **mobile homes**.
- »» If dwellings are permitted, then must allow “**state licensed residential facilities**”
- »» If dwellings are permitted, then must allow **craft/fine art home occupations**.



E. Zoning Limitations:

If one is permitted, then also permit:

- »» If dwellings are permitted in a county or township, then must allow **day-care**.
- »» If a county zones an area commercial, (or similar, or if not zoned at all) then must permit **billboards**.
- »» If allows farms then must permit **biofuel production** under a certain size.



E. Zoning Limitations:

Can Regulate, but not prohibit:



- Content of a **sign**.
- **Religious** activities/land uses.
- **Adult entertainment/sexually** oriented businesses.
- **Shooting ranges** (gun clubs.)
- Medical **Marihuana**.



E. Zoning Limitations:

Can Regulate, but must be as strict or stricter than the state:



- **Air pollution** regulations.
- **Airport** zoning.
- **High risk erosion** areas (along the Great Lakes.)
- Designated **sand dune** protection.
- State **natural rivers** protection.
- **Wetlands** regulations/protection.
- **Floodplains**.
- **Soil erosion** and sedimentation.
- Disposal of **septage**.



E. Division of duties and types of zoning decisions

Three parts



**Executive /
Administrative**



Legislative



Quasi Judicial



E. Division of duties

ZONING ADMINISTRATOR	PLANNING COMMISSION	LEGISLATIVE BODY	APPEALS BOARD
Permits	Adopts plan (recommends adopting plan)	Might adopt plan (active in plan adoption)	Hear appeal of zoning administrator decision
Receive applications for special use, PUD, site plans and checks for completeness	Acts on special use, PUD permits (usually)	Appoints members of planning commission, appeals board, may hire zoning administrator	Hear appeal on special use, PUD, <u>only</u> if zoning says
Enforcement	Conduct hearing and make recommendation on zoning amendments	Adopt zoning amendments (might hold additional hearing)	Hear appeal on interpretation of zoning ordinance
Collect fees		Sets fees	Hear requests for variances





Creating Local Diversity on Boards and Commissions



**Review local
census data**



**Identify
underrepresented
populations**



**Reach out to women
and minority
populations in your
community**



E. Typical Zoning Ordinance Table of Contents

- Legal Authority
- Definitions
- General Provisions (regulations that apply everywhere)
- Specific special use standards
- Reference to zoning map
- Zoning Districts (regulations unique to a zoning district)
 - Special areas, Environmental
 - Farm/Forest
 - Rural residential
 - Residential
 - Commercial
 - Industrial
 - Overlay
- Zoning Administrator
- Permits
- Site Plans
- Special Use Permits
- Planned Unit Development
- Appeals Board
- Enforcement
- Amendments



E. Zoning Functions



- A. Permits (must be specifically listed)
- B. Special Use Permits (must be specifically listed)
- C. Amendments (based on a Plan)
- D. Variances, Appeals



E. Zoning Actions

The Public has influence on **b. Special Uses, c. Amendments, d. Variances & Appeals** (public notices, hearing, or similar)

Means any of the following can participate and make submissions:



Applicant /
Developer



Neighborhood
wishing to support
or oppose



Local
government/agency
wishing to support
or oppose, or provide
facts.



E. Zoning Actions

Little public influence on:



- Permits (no review)
- Apply; zoning administrator issues/denies permit often the same day.
- Decision on what is a permitted use (listed in zoning ordinance) made in preparing the plan; writing the zoning ordinance.

Zoning Amendments

- Decision based on the plan – influence is in preparing the plan.



E. Permits

The general “land use permit” or “zoning permit.”



- A person makes application, pays fee, the administrator checks for compliance.
- Use must be specifically listed in the zoning ordinance for the district.
 - Each district should have a list of permitted uses.
 - If not listed, the permit can not be issued.
- An example would be a permit for a house in a residential zoning district.



E. Special Use Permit (incl. PUD)

The “special use permit” or “conditional use permit” or “discretionary permit.”



- It is for land uses which may be allowed in a **particular district**.
- If certain **standards** and conditions are met.



E. Special Use Permit (incl. PUD)

Process:



- A person makes **application**, pays a fee, the administrator makes sure application is complete, forwards to planning commission.
- The **planning commission** will meet and **decide** whether to issue the **special use permit**.
- The decision often requires a **public hearing** first.
- May require a **performance bond** to guarantee compliance.



E. Special Use Permit (incl. PUD)

- **Special use** must be specifically listed in the **zoning ordinance** for the district.
- **If not listed**, the special use **permit can not** be issued.
- **Special use** generally for land uses which are **borderline to being appropriate** for the area.
- The **use may/may not have an adverse impact** on surrounding land.
- The idea is the use is not appropriate for the district, but could be okay if it **meets standards**.



E. Special Use Permit (incl. PUD)

An example would be a permit for a party store in a residential zoning district.

Standards, conditions might include:



- A hedge, tree border so it is not seen by neighbors.
- Lighting which is shaded so it does not shine off property.
- Entrance and location only on main roads.
- Hours to avoid late night noise.



E. Special Use Permit (incl. PUD)

Focus is on “Standards.”

- **Rule:** If all the “standards” are met; then must approve.
- **Special Use** permit is an administrative action.
- **Notices** that someone has applied sent to everyone within/around 300 feet & in **newspaper**.



E. Special Use Permit Standards:

Don't like the standards: then amend the zoning ordinance

Standards in four places:

1. General standards in **Article on Special Uses**.
2. In the Article on the respective **Zoning District**.
 - Setbacks (front, rear, side, waterfront), Parcel Size, Parcel width, Building size, and more.
3. In the Article on **General Provisions** (regulations that apply everywhere)
 - Parking, Screening, Groundwater protection, and lots more.
4. Sometimes there will also be specific standards for a specific type of **Special Use**.
 - Mining, Mobile Home Parks, Heavy Industry, and more.



E. Planned Unit Development

A Planned Unit Development (PUD) is commonly used to allow for **cluster development, mixed uses in a single development**

- 
- Can be handled as a **special use permit** (above)
 - Can be handled as a **zoning amendment** (below)



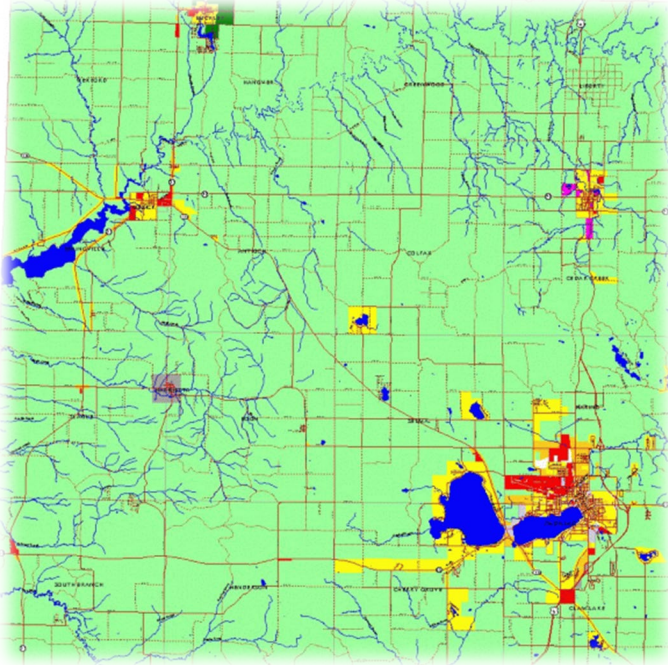
E. Zoning Amendment (incl. PUD)



- **Zoning** is based on a **Plan**.
- An **amendment to zoning** must also be based on (follow) the **Plan**.
- **Zoning amendment is a legislative action.**
The elected officials have much more **discretion** on **adopting, or not adopting, a zoning amendment**



E. Zoning Amendment (incl. PUD)



Two types of zoning amendments:

- **Changes a zoning district boundary** on the zoning map
- **Changes the text** of the zoning ordinance.

E. Amendments change a lot

A zoning amendment makes changes for more than just what is being proposed.



- A text amendment might **change rules for an entire zoning district, or the entire area under that zoning ordinance** – not just the property that someone is proposing something for.
- A map amendment means **any of the permitted or special uses can happen**, not just what someone is proposing on that day.



E. Amendments process

Briefly, the amending process includes:

- A. the planning commission **studying** the proposed amendment.
- B. Planning commission **writing** the text of the amendment.
- C. Planning commission **giving** proper **hearing** notices:
 - Sent to everyone within/around 300 feet & in newspaper, (if rezoning is 10 or fewer parcels)
 - In newspaper (if rezoning is 11 or more parcels)
- D. Planning commission holds at least one public hearing: **attend with submissions.**



E. Amendments process ②

Briefly, the amending process includes:

E. Action by the planning commission to recommend elected body adopt the amendment.

F. In a city or village: can **file a protest petition** (abutter's challenge).

- See a lawyer to do this.
- Do not delay. There are deadlines and things that must be done within a certain amount of time.



E. Amendments process ③

Briefly, the amending process includes:

G. Action by the Legislative Body to adopt the amendment and giving it a date in which it takes effect.

- Legislative Body can:
 - **Adopt** proposed amendment, as recommended.
 - **Hold** additional Hearing(s).
 - » **Attend and give submissions.**
 - Return proposed amendment to the Planning Commission for further study.
 - » When a proposed amendment comes back a second time, the Elected body can **adopt, hold hearings, or reject it.**



E. Amendments process ③

Briefly, the amending process includes:

- H. Publication of a “notice of ordinance adoption.”
- I. Petition for an election (if a township or county)

There are **no shortcuts** and each step, fully documented, is **important**. Proper notice forms, timing requirements, etc., must be followed.



E. Still not happy?

If the Amendment is adopted and one is still opposed to it:



Can petition to **bring the amendment to a vote** of the people (maybe not in a city/village).



See a lawyer to do this.



Do not delay. **There are deadlines** and things that must be done within a certain amount of time.



E. Appeals / Variances



Appeals Board does four things:

- Interpretation of the **Zoning Ordinance**.
- Interpretation of the **Zoning Map**.
- **Issues Dimensional/Regulation** and Use (sometimes) **Variances**.
- **Appeal administrative decisions**.



E. Appeals / Variances

Who can appeal?



Any aggrieved
person



Officer,
department,
board, bureau
of the state



Officer,
department,
board, bureau of
the local unit of
government.



E. Appeal / Interpretations



Appeal decision of the Zoning Administrator. **Text, Map: Interpretations .**

- “**Administrative appeal**” and “**ordinance interpretations**” occur when someone is asking the appeals board to double-check a decision of the zoning administrator.
- There will be cases where the permit applicant, zoning administrator, and planning commission will **read the ordinance, or look at the zoning map, and decide the wording means** two different things, or not agree on where a zoning district boundary is located.



E. Appeal / Interpretations



For text interpretation issues (=standards):

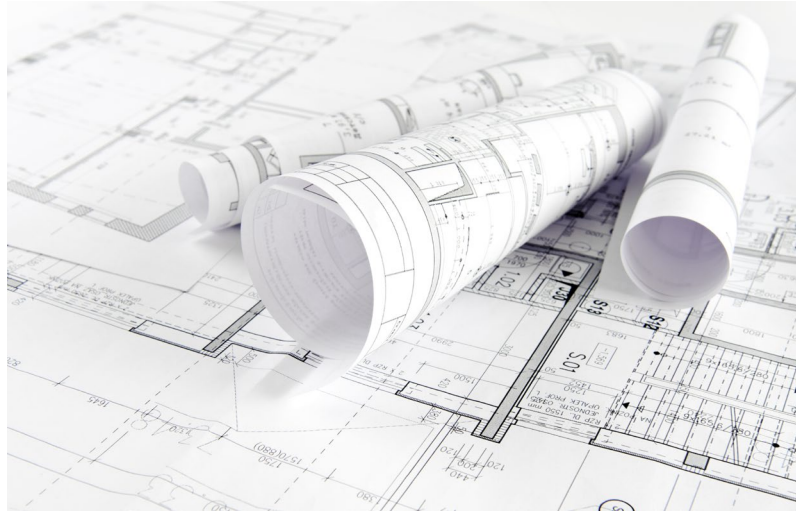
- **Research zoning** ordinance, old minutes, etc.
- **Consider in context** of entire ordinance, section.
- **Review** the definitions in the **ordinance**.
- **Review other zoning districts.** If questioning “if it is allowed in one zoning district?”, and it is listed in another district, but not the one district, then the answer is likely “no.”
- **Seek advice** of planning and legal counsel.
- When it is not clear how to interpret, **benefit of doubt** is extended to the property owner.



E. Appeal / Interpretations

For map interpretation issues:

(see specific rules spelled out in the zoning ordinance (§ 1807 or § 18XX) e.g. = to standards).



E. Appeals / Variances



Request a Regulation Variance.

- Grant an exception to **regulations** for a given use in a zoning ordinance --such as lot size, yard setbacks, building height, building size, parking requirements, etc.
- Appeals board find that a “**practical difficulty**” exists. Thus, one of the regulations must be waived.



E. Appeals / Variances



Request a Regulation Variance, continued.

- **Example:** Parcel is large enough to use, but because it has a pond, a minimum-size house would not fit between the pond (water setback) and the setback from the road or property line. In such a case, a variance to the set back for the side yard setback or road setback may be appropriate.



E. Appeals / Variances



A regulation variance should be difficult to obtain.

“Practical difficulty” (court established standards):

- Will strict compliance with the dimensional requirements of the zoning ordinance prevent the applicant from using the property for the permitted purpose?
- Will granting the variance be fair to the applicant or would a lesser variance work just as well?
- Is the need for the variance due to a situation that is unique to the property and would not generally be found elsewhere in the same zoning district?
- If granted, will the variance uphold the spirit and intent of the ordinance and be fair to neighboring properties?
- Has the need for the variance been created by some action of the applicant?



E. Appeal / Use Variance



Request a Use Variance:

- **An example** might be someone who wishes to build a tavern in a residential district and the zoning ordinance does not list “tavern” as a permitted use or special use for the residential district.
- A use variance should be almost impossible to obtain. The person seeking the variance from the board of appeals must show that an **“unnecessary hardship”** exists.



E. Appeal / Use Variance



Request a Use Variance:

- A county and township appeals board may not have the authority to **grant use variances**.
- **Can grant use variance if:**
 - » A city or village.
 - » A township or county that has zoning which prior to February 15, 2006 specifically authorizes granting use variances: “Use variance” or “variances from uses of land.”
 - » A township or county that actually granted one or more use variances before February 15, 2006.



E. Appeal / Use Variance



A use variance should be almost impossible to obtain. “Unnecessary hardship” (court established standards):

- The property owner must show credible proof his **property will not yield a reasonable (any) return** if used only for a purpose allowed by the ordinance.
- The property owner must show the zoning ordinance gives rise to hardship amounting to confiscation or **the disadvantage must be so great as to deprive the owner of all reasonable use of the property.**
- The need for the variance **is not created** by some action of the applicant.
- The need for the variance is due to a **situation that is unique to the property** and would not generally be found elsewhere in the same zoning district.



E. All appeals



Notices that someone has asked for a variance **must be sent to everyone within/around 300 feet & in newspaper.**



If all else fails, go to court.



E. Zoning Enforcement



Zoning administrator's Duty: Responsible for making sure the zoning ordinance is complied with

- Making sure no construction and no changes in the use of land take place without permits, when needed.
- Making sure, once a permit is issued, the work is done as approved.



E. Zoning Enforcement

There are three types of legal actions:

- »» **Criminal:** pursuing the violation as a criminal matter.
- »» **Injunctive relief in Circuit Court:** A civil action in Circuit Court to stop the violation.
- »» **Civil infraction:** The newest technique is to use process of writing a ticket, similar to a traffic ticket (not a criminal matter).



E. Zoning Enforcement

Techniques to obtain voluntary compliance.

- **Zoning administrator travels to find possible violations before improper** construction or use has progressed too far. Catching a situation early means many more options for voluntary compliance.
- Zoning administrator should be an **extra pair of “eyes and ears”** for the various agencies which enforce other similar statutes and regulations.

To report to them possible violations to their respective

- » **statutes:** to help them find the location and to help make sure that an actual violation is pursued through appropriate channels.



E. Zoning Enforcement



Maintain a good working relationship with other agencies.

- When a **zoning administrator encounters a hostile individual bring another person along to see him.** Others can be the building inspector, DEQ inspector, Health Department sanitarian, Sheriff's deputy and/or others.
- **Bringing another is often the technique** which obtains the individual's cooperation.
- In some cases, the problem will also involve the **Construction Code, environmental statutes, and/or Health or Sanitary Code and other violations.** Should coordinate with those enforcement officers in such cases.



F. Training, Keep up-to-date



Subscribe to: *Planning and Zoning News*©:

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F. Training, Keep up-to-date

MSUE Training programs

- Training in response to specific needs and requests.
- Contact your MSU Extension Land Use Educator.
- www.msue.msu.edu

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- Schindler's own web page of training programs:
- www.msue.msu.edu/lu/



F. Training, Keep up-to-date



- Seven class series. (21 class hours)
- **Contact:**
http://msue.anr.msu.edu/program/info/michigan_citizen_planner



F. Training, Keep up-to-date

- **Membership (conferences, training programs):** Michigan Association of Planning (MAP), 219 South Main Street-Suite 300, Ann Arbor, Michigan 48104. phone: (734)913-2000 fax: (734)913-2061. info@planningmi.org
- Includes subscription: ***Michigan Planner***©
- <http://www.planningmi.org/>



F. Training, Keep up-to-date

American Planning Association

Making great communities happen

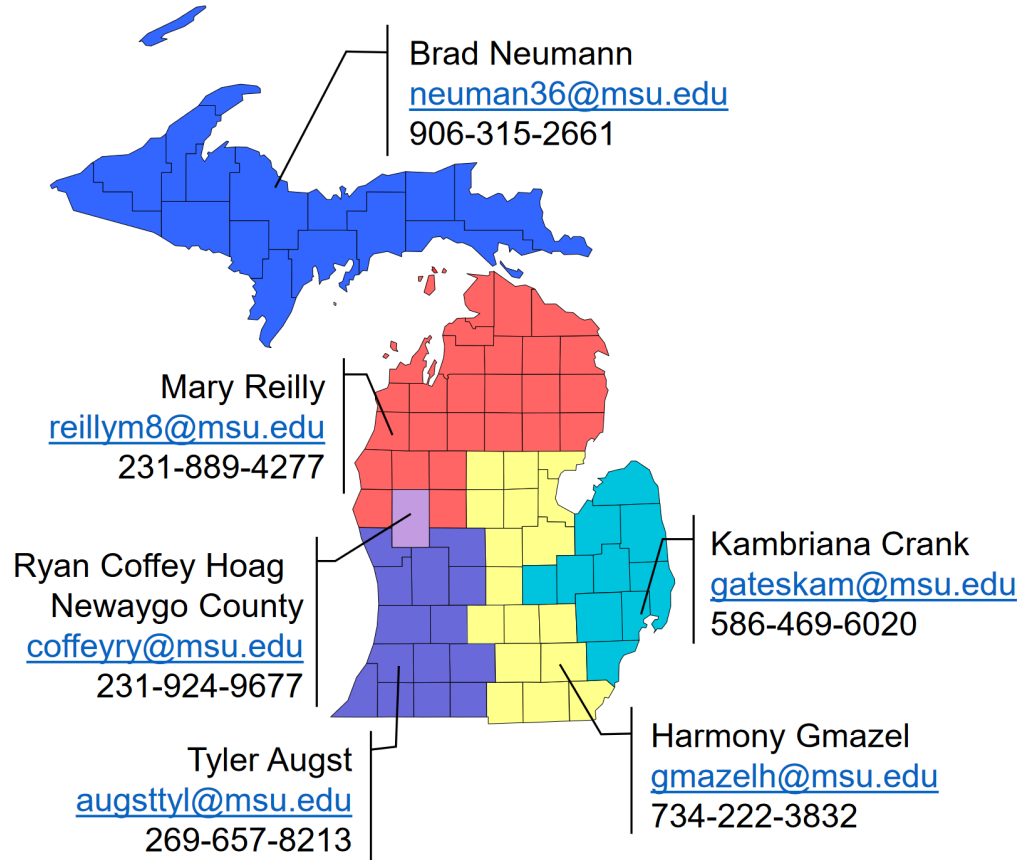
- **Membership:** Includes subscription to *Planning*© magazine.
- (Michigan is unique, weak planning and zoning laws compared to many other states. A national organization is not always germane)
- But APA has many services: technical reports (Planning Advisory Service), books to order, **APA Journal**© (of peer reviewed research academic and science papers), **JobMart**© (job advertisements), American Institute of Certified Planners (professional planner certification), and smaller newsletters specializing in topics (economic development, environment, housing, planning law, small towns and rural planning, transportation, urban design)
- APA, 122 S. Michigan Avenue, Suite 1600, Chicago, Illinois 60603-6107, Phone: (312)431-9100, Fax: (312)431-9985
- <http://www.planning.org/>



Land use educators



Contact a member of the
**MSU Extension Land
Use Team** if you have
questions.





Thank you

- [Name]
 - [Title]
 - [Organization]
 - [Contact Information]



This program will cover

- A.** Why Plan
- B.** Planning
- C.** Implement the plan
- D.** Coordination
- E.** Zoning
- F.** Training | Keep up-to-date



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