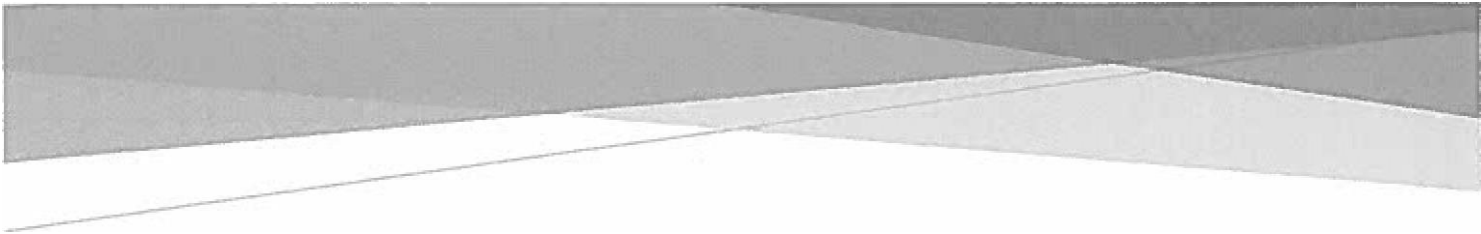


Zoning Board of Appeals Orientation Packet (Binder):

- 1. Oath of Office**
- 2. Meeting Schedule – changes yearly**
- 3. City of Imlay City Board and Commission Handbook**
- 4. ZBA Handbook**
- 5. Michigan Zoning Enabling Act**
- 6. Zoning Board of Appeals Ordinance**
- 7. Robert's Rules of Order**



CITY OF IMLAY CITY Board and Commission Handbook

A guide for participating on a board or committee
for the City of Imlay City, MI.

INTRODUCTION

The City of Imlay City encourages residents to get involved in your local government by joining a board or committee.

The function and responsibility of each board and committee varies but all work to improve City services, beautify the City, and maintain the City's history as a benefit to all residents and for generations to come.

Members meet regularly to support the City through the efforts of the City Commission and City administration.

Your volunteerism as a member of one of our boards and committees will afford you with the opportunity to become involved with the operation of municipal government. As a member of a board and committee you will be responsible for assisting the City in the decision-making process by reviewing and evaluating information and rendering recommendations within the context of your board or committee. Your influence over policy, direction and approvals makes your role very important.

Remember that as a member of a board or committee you are representing the City as a whole. It is important to avoid supporting single issues or pursuing a personal or private agenda.

Applications are available at the City Office and on the City's website, www.imlaycity.org, and can be submitted to: City Clerk, 150 North Main Street, Imlay City, MI 48444.

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APPOINTMENT PROCESS

Most appointments to boards and committees will be made by the Mayor and/or City Commission and maybe subject to the approval of City Commission. Sixty days prior to any expiration of a board or committee term of office, the current member will be notified and asked if they would like to be reappointed. If the member accepts re-appointment their name will be submitted to the Mayor and City Commission for approval. If the member declines, the position will be posted on the City's website, www.imlaycity.org.

Individuals interested in an opening on a board or committee will be directed to complete an Application for Appointment which can be downloaded from the City's website or obtained from the City office.

All applications must be submitted to the office of the City of Imlay City by the deadline date specified on each posting. Those submitted after the deadline will not be considered for the current position openings.

All applications received will be given to the Mayor and City Commission for consideration.

In the event a term is vacated due to resignation, the same process will be followed once notification of said resignation has been received.

OPERATING PROCEDURES

Attendance

Appointment to a board or committee is a privilege freely sought by the applicant. It carries with it the responsibility to participate in board or committee activities and represent the residents of the City. Good attendance ensures a steady flow of communication and keeps everyone abreast of current topics under discussion. Therefore, each member should make every effort to attend all meetings.

When a member is unable to attend a meeting, the board or committee contact person should be notified as soon as possible. A member may be removed for absenteeism. Please refer to your board or commission's bylaws for specific information and rules.

If a meeting is rescheduled from its normal meeting date and time and a member cannot attend the rescheduled meeting, it should not be held against them.

Posting for Regular and Special Meetings

Each board and committee will provide a public notice stating the dates, times, and places of the regular meetings which must be posted at the City offices and all other places as may be determined. Notices of Special Meetings shall be posted at least 18 hours in advance of said meeting. All postings will be coordinated through the board or committee liaison, or the City Manager's office.

Regular Meetings

All meetings of boards and committees shall be properly posted and held in compliance with state statutes, including the Open Meetings Act, 1976, PA 267, as amended. All meetings shall be open to the public.

<http://www.legislature.mi.gov/documents/mcl/pdf/mcl-act-267-of-1976.pdf>

If it is known in advance that a quorum (more than half the members of the board or committee) cannot be achieved, consideration will be taken to notify all members and persons interested in the business before the body. A notice will be posted indicating that due to a lack of quorum, the meeting is cancelled or rescheduled.

Special Meetings

Boards and/or committees may call for a special meeting as circumstances dictate. Special meetings of the Commission shall be called by the Clerk on the written request of the Mayor or of any two (2) members of the Commission, on at least twenty-four (24) hours written notice to each member of the Commission, designating the time, place, and purpose of any meeting.

Special Meetings of boards and other commissions may be called by the City Manager and posted by the City Clerk or as the Charter dictates. Notice stating the time and place of any special meeting and the purpose for which called shall be given to each member of the board or committee at least 18 hours prior to the meeting.

No official action shall be transacted at any special meeting of a board or committee unless the item has been stated in the notice of such meeting as otherwise provided for in the Open Meetings Act.

Quorum

A majority of the members of any board or committee shall constitute a quorum for the transaction of business at all meetings, but in the absence of a quorum a lesser number may adjourn any meeting to a later date.

It is recommended that each board or committee wait 10 minutes after the start of each meeting before the adjournment when a quorum is not present.

Rescheduled or Adjourned Meetings

For a rescheduled or adjourned regular or special meeting of any board or committee, a public notice stating the time and place of the meeting shall be posted at least 18 hours prior to the meeting in the City Hall and all other places as may be determined.

Meetings to be Public

All meetings shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided

by state law, and all persons shall have a reasonable opportunity to be heard. All decisions of any board or committee shall be made at a meeting open to the public. All deliberations of any board or committee constituting a quorum of its members shall take place at an open meeting to the public except as otherwise provided for in the Open Meetings Act.

Closed Meetings

The law provides for closed meetings in a few specified circumstances. In order for a public body to hold a closed meeting, two-thirds of its members must vote affirmatively in a roll call. Also, the purpose for which the closed meeting is being called must be stated in the meeting when the roll call is taken.

Closed meetings may be called without a two-thirds vote for specific reasons. Please see the [Michigan Open Meetings Handbook](#) for more information.

https://www.michigan.gov/documents/ag/OMA_handbook_287134_7.pdf

Explanation of Minutes of Closed Meeting

Minutes of closed meetings must also be taken although they are not available for public inspection and would only be disclosed if required by a civil action. Please see the [Michigan Open Meetings Handbook](#) for more information.

Meeting Preparation

There are various approaches to prepare for meetings. The following are some suggestions.

Step 1: Prepare by budgeting enough time to thoroughly review the entire agenda packet.

Step 2: When the packet is delivered, examine the agenda to get an idea of:

- a. The number of items
- b. Controversial issues
- c. Difficult procedural items
- d. Issues you know little about

Step 3: Begin your study of the individual agenda items. While some people prefer to review the agenda in the listed order, another approach is to study the most important items first.

Step 4: Visit any sites or facilities that will help you deal with the issues. Research topic as necessary for a complete understanding of the issues/topics.

Step 5: If you have questions after completing your review of the agenda, feel free to call the City Manager (or DDA Director for DDA agenda questions) to go over the various items.

Just a note: Being caught unprepared, unaware, or by surprise can be embarrassing during a public meeting. Also, never spring surprises on anyone at a public meeting.

Conduct of Meeting

The Chairperson will preside at all meetings of the board or committee. In the absence of the above, the Vice-chair will preside. All comments must be directed to the presiding officer.

Members of the public will speak only when recognized by the presiding officer.

Agenda Preparation

Agendas for all meetings shall be prepared by the City Manager (or the DDA Director in the case of DDA meetings). Any agenda item so requested to be placed on an agenda must generally be submitted no later than 5 business days prior to the regular meeting, subject to the discretion of the City Manager (or DDA director).

The agenda and supporting materials will be sent a least 3 days before the meeting date. Each board or committee shall have the option of deleting or adding any item to or from the agenda or postponing an item on the agenda to a subsequent meeting. Should an item be postponed, it shall appear on the next regular meeting agenda of the board or committee.

Agenda Format

The following agenda format is recommended for all boards and committees:

- Call meeting to Order
- Pledge of Allegiance
- Roll Call of Members
- Approval of Minutes and/or Consent Agenda Items
- Citizen Participation
- Public Hearings
- Agenda Items o Old Business o New Business
- Report of Members, Chair, Director and/or City Manager
- Other
- Adjournment

Minutes

Written minutes, upon the approval of the board or committee constitute the official action record of its activities. The minutes are not verbatim; they record the essence of the decisions made and action taken.

Review of Minutes by City Commission

It is a requirement of all boards and committees to keep record of its actions by minutes. The minutes of meetings are to be prepared and submitted to the City Commission with a copy to be kept on file with the City Clerk. The purpose of this is to keep the City Commission informed about board and committee activities.

Freedom of Information Act (FOIA)

Please note that any documents relating to any board or committee (i.e. minutes, personal notes, emails, public notices, etc.) are considered public records and copies can be requested under the Freedom of Information Act.

<https://www.foia.gov/>

Rules of Procedure

All boards and committees may follow the Robert's Rules of Order, latest edition. Each board or committee shall outline their rules and procedures in their by-laws.

More information regarding Robert's Rules can be found at:

<http://www.rulesonline.com/>

GENERAL INFORMATION

The following general information is designed to provide you with tools and techniques for you to follow as a guide in your role as a board or committee member.

Public Participation

People presenting an issue or even speaking at a meeting may have never appeared before a public body. The experience can be intimidating. This is not uncommon and you can help these individuals by:

- a. Calming and reassuring them.
- b. Explaining meeting procedures.
- c. Paying attention.
- d. Actively listening to what they are saying.
- e. Avoiding use of third-degree questioning techniques.
- f. Resisting, baiting or lecturing.

Meeting Courtesies

- An agenda shall always be available for members of the audience;
- Comments from audience members should be directed to the Chairperson;
- Commissioners and Board members shall treat the members of the public with dignity and respect;
- Commissioners and board members shall refrain from displaying negative gestures or sounds when they disagree with a member of the public or another commissioner/board member;
- Side conversations shall be avoided;
- The chairperson shall inform the audience of the time limits for speakers and should adhere to those limits;
- The chairperson shall explain the purpose of the meeting and the appropriate time to ask questions;
- The chairperson shall explain technical terms or jargon that might otherwise make it difficult for the audience to follow deliberations;
- The chairperson shall thank participants for their attendance.

Managing Difficult Meetings

From time to time you may face a controversial issue that will manifest itself in a very difficult meeting environment. This type of meeting will most likely involve representatives from one or more sides of an issue who will try and convince you that their position is the correct and right one. Aggressiveness and hostility may characterize the group demeanor. Keep the following in mind as you prepare for and participate in this meeting environment.

Before the Meeting

If possible, the Chairperson may ask that participants designate one or more spokesperson to represent like viewpoints. This may help reduce redundancy while making sure that all sides of the issue will be heard.

The staff representative or recorder should make sure to have agendas and any backup information available for attendees.

Make certain that adequate seating is available. Consider moving the meeting to a larger room if necessary.

Establish and announce the rules before the meeting.

During the Meeting

The Chairperson should explain the issues, the possible actions, and procedures that will be followed at the meeting.

Consider moving an item up on the agenda if there are many people in the audience to hear a specific topic.

Have speakers address the Chairperson and not the audience.

Stop any clapping or shouting early. If not already covered at the beginning of the meeting, explain the reasons why such actions are disruptive and counterproductive.

Citizen pressure on boards and committees can be tough. It is important to remember to address an issue with an open mind and weigh all the facts. Your creditability will be greatly diminished if there is a perception that an issue is a "Done Deal".

Making Tough Decisions

When considering decision making on tough issues, here are questions that might help you think through a pending decision. Not all of these apply in all situations.

- Do I have a conflict of interest in this matter and have I disclosed it?
- Do others who are involved have a conflict of interest?
- Are ethical issues involved?
- Is it permitted by law?
- Do I have enough information to make a decision?
- Can I live with the proposed decision?
- Is the fight for or against the issue really worth it?
- Who will be hurt by the proposed action? Who will benefit?
- Is the decision in the best interest of the majority of residents?

- How will the community view the decision?
 - How will it look in the newspaper?
 - Is the proposed action consistent with my board's or committee's mission?
 - What past practices relate to this issue?
 - Will it really matter five years from now?
 - If the decision is made, and it turns out wrong, can it be reversed?
-
- If I am hesitating-why?

Working with Other Board or Committee Members

It is important to remember that your fellow members have opinions and thoughts that may not coincide with yours. Divergent opinions are not a bad thing and the democratic process works best when all points of view are able to be expressed freely and openly. Your colleagues deserve your respect and the freedom to express their viewpoints. In order to be an effective commissioner or board member, each individual must:

- Work within a team framework for compromise and exchange;
- Separate people from the issues when conflict arises;
- Focus on mutual interests and shared goals;
- Look for compromises and work to understand diverse perspectives;
- Examine one's own approach to dealing with conflict and be open about concerns where there is room for compromise;
- Strive to problem-solve based on collaboration rather than simply making a decision.

Most issues will be resolved and decisions made through the voting and deliberation processes. It is important to recognize that as a commissioner or board member, you have done your job by thoroughly examining the pros and cons of each situation. Once an issue is decided, it is equally important to accept the wishes of the majority and move on to the next issue.

GENERAL PARLIAMENTARY RULES

Rules of Parliamentary Procedure. The rules of parliamentary practice as contained in Robert's Rules of Order, most recent edition, may govern the board or committee in all cases to which they are applicable, provided they are not in conflict with these Rules, City Ordinances, Charter, or other applicable laws.

Discussion. A board or committee member may speak when no motion is pending upon recognition by the Presiding Officer as provided in these Rules.

Withdrawal of a Motion or Support. A member may withdraw his or her motion or support at any time before it is put to a vote.

PRINCIPLES OF ETHICAL CONDUCT

The following principles of ethical conduct apply to all officers, employees, board members, or agents of the City of Imlay City and form the basis for specific standards:

- Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.
- Officers, employees, board members, or agents shall not hold financial interest that conflict with the conscientious performance of duty.
- Officers, employees, board members, or agents shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest referred to in the regulations.
- Officers, employees, board members, or agents shall put forth honest effort in the performance of their duties.
- Officers, employees, board members, or agents shall make no unauthorized commitments or promises of any purporting to bind the City of Imlay City.
- Officers, employees, board members, or agents shall not use public office for private gain.
- Officers, employees, board members, or agents shall act impartially and not give preferential treatment to any private organization or individual.
- Officers, employees, board members, or agents shall adhere to all laws and regulations that provide equal opportunity for all regardless of race, color, religion, sex, ethnicity, age, disability, gender identity, or sexual orientation.
- Officers, employees, board members, or agents shall endeavor to avoid any actions creating the appearance that they are violating the law or these Standards of Ethical Conduct.

Conflict of Interest

As a board or commission member of the City of Imlay City, you have a responsibility to uphold the highest of ethical standards- both for yourself and for the benefit of our community. As a member of a board or commission your service may at times result in situations involving real or apparent conflicts of interest. Believing that service should not be rendered impossible solely by reason of these conflicts, the matter shall be handled through full disclosure of such interest and noninvolvement in any decision in which conflict is in question.

To avoid any conflict of interest or the appearance of a conflict of interest which could tarnish the reputation of the City of Imlay City as well as undermine the public's trust in the City, please:

- Avoid any activity or outside interest which conflicts or appears to conflict with the best interest of the City of Imlay City including involvement with a current or potential City vendor unless disclosed to and not deemed to be inappropriate by the City. ● Decline any gift, gratuity or favor in the performance of City duties except for promotional items of nominal value.
- Refrain from influencing the selection of staff, consultants or vendors who are relatives or personal friends or who are affiliated with, employ, or who are employed by a person with whom they have a relationship that may adversely affect the appearance of impartiality.
- Disclose all known conflicts or potential conflicts of interest in any matter before the board or commission for which you serve and abstain from voting in connection with such matter.
- Do not knowingly take any action, or make any statement, intended to influence the conduct of the City, commission or board in such a way to confer any financial benefit on yourself, your immediate family members or any organization in which you or your immediate family members have a significant interest as stakeholders, directors or officers.

Conflict of interest is handled responsibly when:

- The City, board or commission is given notification of any anticipated potential conflict of interest situations that may arise in the City's normal course of business.
- If there is a conflict, or perceived conflict, disclose your situation to the other members of the decision-making body, prior to deliberation by the body of the issue in question. ● If there is a conflict, or perceived conflict, abstain from deliberation and voting on the issue in question. The abstention should be noted in the minutes of the meeting in which it takes place.

CONCLUSION

This handbook has been presented to you as a guide for your participation on a board or committee. It does not cover all aspects of the board or committee that you may be requesting or to which you have been appointed. There may be training opportunities that will be afforded to you during your term of office. You will be notified by the staff liaison of any training opportunities available. You are encouraged to take advantage of them as they arise. Also, please do not hesitate to ask any questions of staff that will assist you in the performance of your duties and responsibilities.

ADDITIONAL INFORMATION FOR DEVELOPMENT RELATED BOARDS AND COMMITTEES

Please utilize the following links to access important City of Imlay City development related plans and documents. These documents can also be located via the City website at www.imlaycity.org. Hard copies are available at the City office upon request.

[City of Imlay City Charter](#)

[Zoning Ordinance](#)

[General Regulations](#)

[Master Plan 2014](#)

[Public Participation Plan](#)

[Development Guide](#)

[Downtown Development Authority Plan. 2014](#)

[Parks and Recreation](#)

[Capital Improvements Plan](#)

Other helpful resources can be found at:

[Michigan Open Meetings Handbook](#)

[Citizens Guide to State Government](#)

[Freedom of Information Act](#)

Board and Committee members are strongly encouraged to attend training opportunities, depending upon actual costs. Although not a complete list, important training opportunities can typically be found at the following:

[Michigan Municipal League](#)

[Michigan Association of Planning](#)

[Southeast Michigan Council of Governments](#)

If you are interested in a training opportunity, please contact the City Manager, at citymanager@imlaycity.org, or 810-724-2135.

LISTING OF CITY BOARDS AND COMMISSIONS

Please see the City Charter and/or the Bylaws of the specific Commission or Board for more details.

Board of Review

Membership: Three (3). Members must be tax payers and have been residents of the City for not less than three (3) years.

Term: 3 year

Meetings: March and July, specific dates set by City Assessor

Appointment/ Election: Appointed by the City Commission

Responsibilities: Review and correct assessments rolls in accordance with the provisions of State Law.

Downtown Development Authority

Membership: Nine (9) members and the Mayor. Not less than a majority of the members must be persons having an interest in property located in the DDA district.

Term: 4 years

Meetings: 2nd Tuesday of the Month, 5:35 p.m., City offices

Appointment/Election: Appointed by the Mayor

Responsibilities: Propose, finance and implement public improvements in the downtown development authority district.

Housing Board of Appeals

Membership: Five (5)

Term: 3 years

Meetings: 1st Monday, 6:00 p.m., City offices

Appointment/Election: Appointed by Mayor and confirmed by the City Commission

Responsibilities: To protect the health, safety and welfare of the people of the city by performing duties and exercising its powers to meet the objectives of the Rental Dwelling Code found in the Imlay City Charter.

Lamb Steele Board

Membership: Six (6) members and the Mayor.

Term: 3 years

Meetings: March and September as determined by the Board

Appointment/Election: 4 members are appointed by the City Commission or City manager and approved by the City Commission and 2 members are recommended by the tenants of the building and approved by the City Commission.

Responsibilities: Plan the use of the Lamb-Steele Building, supervise the functions enumerated in existing leases relating to the Lamb-Steele Building, establish a financial plan and to respond to financial problems arising out of the use of the Building, to

arrange permits arising out of aforesaid uses, to plan the intended use of the Lamb-Steele property over the useful life of the building and to furnish, equip, improve, operate and/or maintain a building or buildings, and parking lots, and the necessary site or sites therefore for the use of the City.

Parks and Recreation

Membership: Seven (7)
 Term: 2 years
 Meetings: 2nd Tuesday, 6:00 p.m., City offices
 Appointment/Election: Appointed by the City Commission
 Responsibilities: Plan, conduct, supervise and maintain public play fields, athletic fields, recreation centers and other recreation facilities and activities with the consent of the owners and authorities thereof.

Planning Commission

Membership: Seven (7) members who are qualified electors of the City.
 Term: 3 years
 Meetings: 4th Tuesday, 6:00 p.m., City offices
 Appointment/Election: Appointed by the Mayor with approval from the City Commission.
 Responsibilities: Preparation of city Master Plan and city zoning ordinances and necessary amendments for recommendation to the City Commission, consider and recommend to City Commission requested rezoning, hear and decide special land use and site plan approvals.

Zoning Board of Appeals

Membership: Seven (7) members who are residents of the City.
 Term: 3 years
 Meetings: 4th Thursday, 6:00 p.m., City offices
 Appointment/Election: Appointed by the City Commission
 Responsibilities: To hear and decide appeals from and review any order, requirements, permit, decision or determination made by the Building Official and Zoning Administrator, Planning Commission or any other administrative official in enforcing the provisions of the City of Imlay City Ordinances.

**CITY OF IMLAY CITY
BOARDS AND COMMISSIONS POLICY HANDBOOK
SIGNATURE PAGE**

My signature below confirms that I have received a copy of the City of Imlay City Boards and Commissions Policy. I agree to adhere to and abide by the policy and the Code of Ethics as written.

Signature: _____ Printed Name: _____

Date: _____ Name of Board: _____

Zoning: Basic Questions

What is the role of the planning commission?

The planning commission was originally given the responsibility of writing and adopting the master plan for the community. In 2002, this was changed to require more involvement by the legislative body in the planning and adoption process. The planning commission remains the authors of the first draft of the zoning ordinance. This ensures a direct connection between the master plan and zoning ordinance.

While the 2002 change allowed the city or village council to be the adopting authority of the master plan, it is **required** to adopt the zoning ordinance because it is the law.

Why do we need a master plan?

Policies regarding land use are expressed through the master plan. A master plan will include a description of the community, outline goals and objectives and map areas of different land uses, ranging from residential to industrial. The Michigan Zoning Enabling Act requires that a zoning ordinance be based on a plan to help guide zoning decisions.

What is the role of the Zoning Board of Appeals?

It is nearly impossible to write a set of regulations affecting the development of land that can be universally applied. Many communities in Michigan and throughout the country had hundreds or thousands of parcels of land to which zoning standards had to be applied. As a result, it was clear that a means of providing relief from the strict requirements of the zoning ordinance was needed for property owners with unique conditions related to their property. So, each state's zoning enabling acts required that any community which adopted a zoning ordinance must also have a zoning board of appeals. The zoning board of appeals exercises three basic roles or functions:

- Interpreting the ordinance (text and map)
- Deciding appeals from administrative decisions
- Granting variances (use and nonuse).

What is a variance?

A variance is the permission granted to deviate from the requirements of the zoning ordinance. There are two types of variances—use variances and non-use variances. Non-use variances are often referred to as dimensional variances. The authority to grant variances rests with the zoning board of appeals.

If we grant a variance and the person to whom we granted the variance sells the property, is the variance still in force?

Zoning runs with the land—not the person! Like any zoning decision, the variance granted is generally permanent and stays with the property—not with the property owner.

What is a special land use?

The Michigan Zoning Enabling Act permits consideration of special land uses. Special land uses are uses listed in a zoning district which are generally compatible with the purpose and intent of the district but, due to their individual or unique characteristics and potential impact, warrant a more in-depth analysis prior to approval.

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Zoning Board of Appeals Handbook

Published by the Michigan Municipal League

Written by Steve Langworthy
LSL Planning
Community Planning Consultants

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About the Author:

Steve Langworthy is retired from the firm of LSL Planning. His more than 25 years of planning experience includes six years as the Planning Director and Zoning Administrator for the city of Kentwood and extensive experience in a variety of communities as a consulting planner. Steve authored numerous master plans, zoning ordinances, and special studies for communities of all sizes and levels of government.

Forward:

Along with the other appointed and elected municipal officials in your community, members of a zoning board of appeals accept responsibility to protect the personality and vitality of your community. To carry out their duties, these volunteers must digest a mountain of information and negotiate a maze of delicate situations.

This handbook was written to help new zoning board of appeals members understand the scope of their role and responsibilities, and to provide them with a basis of understanding in order to capably perform their duties within the law. Topics covered include: the role of the zoning board of appeals as a whole and the roles and responsibilities of individual members; an explanation of the Michigan Zoning Enabling Act; the ZBA's relationship to other municipal bodies and individuals; how to identify and handle conflicts of interest; how to interpret a zoning ordinance; types of variances; preparing for and conducting meetings; and guidelines for making tough decisions.

As the state association of cities and villages, the Michigan Municipal League is committed to providing a variety of educational resources for both elected and appointed municipal officials to assist them in doing their jobs. The League is a non-partisan, nonprofit association working through cooperative effort to strengthen the quality of municipal government and administration.

This handbook is the latest step in our continuing effort to help municipalities meet the daily challenges of governing. Our thanks go to community planning consultant Steve Langworthy of LSL Planning for developing this text. His knowledge, creativity, insight and patience are most appreciated. Contributing to the legal accuracy of this book were attorney Gerald A. Fisher of Kohl, Secrest, Wardle, Lynch, Clark & Hampton and League Associate General Counsel Sue Jeffers. The Information and Publications staff of the League added a measure of common sense and smooth flavor.

The League's goal is to produce publications that will help to make your job easier. We welcome suggestions for additions to this publication and your comments in regard to all of our publications. Let us know how we are doing and how we can be of further assistance.

Daniel P. Gilmartin
Executive Director

Introduction—The Job

Congratulations!

§ 1 Your appointment to the zoning board of appeals (ZBA) is one that carries a significant responsibility for protecting your community and its future.

This handbook will provide you with some hints about how to be an effective member of the zoning board of appeals. It will tell you about the laws and regulations governing zoning and provide information about some of the expectations and methods you may use to prepare, make and enforce your decisions.

During your term you will encounter a wide variety of zoning related problems. Knowing some of the intricacies of zoning is only a part of your responsibilities. You will also learn how to deal with people, both applicants and neighbors, with patience, tact and diplomacy. Knowing how to act in stressful circumstances is one of the most important parts of the job, and one that is best learned through experience. The *Zoning Board of Appeals Handbook* is your head start on learning how to deal with these difficult situations.

You are encouraged to seek other sources for learning about the technical details of zoning and related topics. These, too, will be a significant part of your job as a member of the zoning board of appeals. The Michigan Municipal League can suggest a number of documents that can help you on your way, as well as an ongoing series of courses you may find helpful.

What's in a Name?

§ 2 Your zoning ordinance may have given a different name to your board than the zoning board of appeals, such as the Board of Appeals, Board of Zoning Appeals, Board of Appeals and Adjustment or some other

similar name. In townships this should not be confused with the Zoning Commission, which is a derivative of a planning commission. Regardless of the name, the duties and authority of the ZBA are largely the same.

The Job

§ 3 The future of your community will be greatly affected by the decisions you make as a member of the zoning board of appeals. Few voluntary, non-elected appointments have the kind of power granted to the ZBA. This is because it is one of only a few bodies that can permit someone to legally avoid compliance with an adopted ordinance. The exercise of this power is restricted by standards discussed in greater detail below that are to be applied in decision making.

It Begins with a Philosophy

§ 4 Becoming an effective ZBA member begins with a clear philosophy of your approach to the task. Perhaps you had a desire to give something back to the community, or something happened in your neighborhood that disturbed you or you wanted to help people. Most likely, you did not get into the job for the money (you did volunteer, after all).

Regardless of why you decided to accept the appointment, to be an effective member, your participation will require a serious commitment of time and energy, and a serious commitment to the laws governing the decisions of the ZBA.

It may help to understand why the job of the zoning board of appeals was created in the first place.

What is a Zoning Board of Appeals?

§ 5 Early in the history of zoning it was recognized that it was nearly impossible to write a set of regulations affecting the development of land that could be universally applied. Many communities in Michigan and throughout the country had hundreds or thousands of parcels of land to which zoning standards had to be applied. As a result, it was clear that a means of providing relief from the strict requirements of the zoning ordinance was needed for property owners with unique conditions related to their property.

To provide an avenue of appeal, each state's zoning enabling acts required that any community which adopted a zoning ordinance have a zoning board of appeals. The function of the ZBA was to be a quasi-judicial body, to carry out two principal functions:

1. To hear and decide appeals of administrative decisions made in implementing the zoning ordinance; and
2. To hear and decide requests for variances from the strict terms of the zoning ordinance. In addition, the ZBA is occasionally called upon to interpret the provisions of the zoning ordinance.

The Role of the ZBA

§ 6 As a member of the zoning board of appeals, you will be dealing with one of the most enduring elements of society – land. Decisions based on the land nearly always last forever because they are in place regardless of the owner. Therefore, your decisions can have a serious effect on the use and value of land.

At the same time, you will be dealing with people, both applicants and neighbors affected by your decisions. You will find that this can create uniquely challenging

situations. Consequently, your actions must be based on the long-term interests of the community which, in turn, must be guided by the decision-making standards of the zoning ordinance.

Every person who can meet the criteria for relief has the right to seek relief from a zoning ordinance requirement. If the standards used by the ZBA are carefully considered and followed, the integrity of the ordinance should be maintained. However, not following such standards leads to problems. Too often variances are granted simply because no one sees any harm. The ZBA soon gains a reputation for not following its ordinance. One merely has to go to the zoning board of appeals to obtain relief from the ordinance—getting a variance is no problem. Eventually, the offhand granting of variances harms the community's ability to enforce the ordinance. Moreover, poorly supported decisions can, over time, destroy the credibility of the zoning ordinance. It is up to the members of the zoning board of appeals to prevent this by strictly applying the standards of the ordinance.

These decisions will not always be easy. In some instances, you will know the land owners, neighbors or applicants personally. The key to acting in a responsible manner is to act in ways that will allow you to treat each person and property in a fair and consistent manner.

Chapter 1 The Basics

§ 7 In the Introduction we noted that being an effective ZBA member begins with a clear understanding of the job and each member's approach to it. Two important aspects with which you should be familiar are the legal basis for the zoning board of appeals and the relationship between the ZBA and other bodies and officials dealing with the zoning process.

The Zoning Enabling Act

§ 8 All zoning authority is granted by the state through the new Michigan Zoning Enabling Act, (PA 110 of 2006). Counties that have adopted a zoning ordinance have zoning authority over townships (but not over cities or villages) which do not have their own zoning ordinance. Cities, villages and townships that have their own zoning ordinances do not fall under county authority.

The zoning enabling act defines the membership, responsibilities and authority of the ZBA. It also describes general rules for the formation and operation of a zoning board of appeals. The chart on the following page outlines some of the differences in the organization of the ZBA at various levels of government.

Membership

§ 9 Qualifications for membership are generally minimal. Members are only required to be an elector and be representative of the population distribution and the "various interests present" in the community."

Although less common, but still practiced, legislative bodies may also act as the ZBA, but only in cities and villages. In townships, an elected official may be a

member of the ZBA, but cannot be the chair.

In addition to regular members, up to two alternates may be appointed to the ZBA. Alternates serve in the event of a declared conflict of interest or absence of a regular member. When called, alternates serve until the application(s) is resolved. In the case of an absence, the alternate stays with the cases heard even if the absent member returns.

Bylaws

§ 10 The enabling act also permits the zoning board of appeals to adopt rules governing their operation, commonly referred to as bylaws. The bylaws should specify certain responsibilities, such as defining officers and their duties, quorum rules, special meeting procedures, conflict of interest procedures, and other aspects of the ZBA's operation. Bylaws are not part of the zoning ordinance but are adopted by the ZBA as its rules for operation.

Relationship to Other Bodies/Individuals

§ 11 It is also important to understand the relationship between the zoning board of appeals and others with responsibility in the zoning process. Zoning responsibilities are divided between several individuals and bodies.

Zoning Act:
Michigan Zoning Enabling Act
2006 PA 110
MCL 125.3101 et seq.

	Community
Number of members	Less than 5,000 population—not less than 3 members
	5,000 or more population—not less than 5 members
Membership	Planning commission member must be on the ZBA; elected official may be on ZBA. In cities and villages, the elected body may act as the ZBA.

Planning Act:
Municipal Planning Enabling Act
2008 PA 33
MCL 125.3081 et seq.

Purpose: to codify the laws regarding and to provide for county, township, city, and village planning; to provide for the creation, organization, powers, and duties of local planning commissions; to provide for the powers and duties of certain state and local governmental officers and agencies; to provide for the regulation and subdivision of land.

The Planning Commission

§ 12 The planning commission is given the responsibility of drafting the master plan; the legislative body must “approve the plan for distribution,” and may elect to become the adopting authority for the plan. After preparing a proposed plan, the planning commission must submit the proposed plan to the legislative body for review and comment. Before the adoption process can proceed, the legislative body must approve the distribution of the proposed plan. If it does not, it must return the plan to the commission with its objections. The

commission must then revise the plan until it is accepted by the legislative body.

The long-term effect of this change to the adoption process will have to be determined. But even if the planning commission is delegated the responsibility of completing and adopting the master plan, the legislative body should be involved in all of the critical steps of the process in order for the plan to be effectively implemented.

The master plan is intended to serve as a guide for the future development of the community. The plan is used to indicate locations for new development where natural features and the environment are not at risk, where community character will not be diminished, and where expenses for new roads and services will be at a minimum. It is essential that any action related to zoning, including those actions taken by the zoning board of appeals, should take into consideration the master plan.

The planning commission is also responsible for writing the first draft of the zoning ordinance. This was done to ensure a direct connection between the master plan and zoning ordinance. Local control of the use of land (with some exceptions, such as some state land uses and federal land

uses) is an accepted legal principle. Land use is controlled through the separation of land into various use areas, called zoning districts. The rules governing these districts are found in the zoning ordinance, which contains provisions controlling the type and intensity of development allowed.

The zoning ordinance should be established and amended as guided by the master plan. The future land use classifications of the ordinance's zoning districts are depicted on the zoning map that is part of the ordinance. The density and intensity planned for the land use districts are translated to the uses permitted, lot sizes and other regulations.

The courts of the State of Michigan do not recognize the master plan as authorizing land uses on its own. This authorization is contained in the zoning ordinance. However, the courts do lend much more credibility to land use actions supported by careful planning than those actions that appear to have been taken arbitrarily against an individual property owner.

The Legislative Body

§ 13 The elected governing body of the community has several responsibilities related to the zoning board of appeals. First, and most obvious, the members of the ZBA are appointed or approved by them, unless the legislative body itself decides to act as the ZBA (cities and villages only). Second, the legislative body is responsible for providing the funds necessary for the operation of the ZBA. This includes per diem (or per meeting) payments to members and other expenses such as mileage for site visits, attendance at conferences and training sessions, educational materials and other costs associated with the ZBA.

Finally, the legislative body is required to adopt the zoning ordinance and any

subsequent amendments, based on a recommendation from the planning commission. Ultimately, the legislative body decides what zoning regulations and policies will be adopted and followed by the community.

It is especially important for the ZBA to recognize its role in relation to the planning commission and legislative body, particularly with respect to the writing and adoption of the master plan and zoning ordinance. There is no formal process for the zoning board of appeals to play an advisory role in determining planning policies or zoning regulations. Accordingly, it is not the role of the ZBA to attempt to change those regulations or policies through their actions. This, of course, does not prevent the ZBA from communicating their thoughts regarding the ordinance during the course of performing its functions.

The Zoning Administrator

§ 14 The zoning administrator is the individual responsible for the day-to-day administration and enforcement of the zoning ordinance. In many communities the zoning administrator is a valuable contact between the ZBA and the applicant, ensuring that all relevant materials are provided, offering advice in filling out application forms, and advising the ZBA on important factual matters pertaining to the requests before them. In some communities the administrator is asked to provide written, advisory recommendations regarding applications.

In communities where staff or other assistance is available, some of the roles filled by the zoning administrator, including submission of recommendations, may be complemented or completed by these other individuals.

Duties and Responsibilities of the Zoning Board of Appeals

§ 15 The zoning board of appeals exercises three basic roles or functions. These include:

- a) Interpreting the ordinance (text and map),
- b) Deciding appeals from administrative decisions, and
- c) Granting variances (use and non-use).

The terms *appeal* and *variance* are often used interchangeably, but in fact are two entirely different concepts.

A variance, if granted, allows a departure from a particular requirement of the zoning ordinance.

An appeal is based on the fact that someone has made a decision related to the zoning ordinance, and another person disagrees with that decision.

Conflicts of Interest

§ 16 Knowing about conflicts of interest is important since the zoning act requires the use of an alternate when a member has a conflict. In some instances, failure to declare a conflict of interest may result in the removal of a ZBA member.

What Constitutes a Conflict of Interest?

§ 17 You probably have a conflict of interest if:

- you are the applicant;
- a close relative is the applicant;
- a business associate, lender or renter is the applicant;
- the proposal could allow you or a business associate to receive a financial gain or benefit;
- you are a planning commission representative to the zoning board of appeals and the matter to be heard is an appeal from a previous

planning commission decision in which you participated; or

If you have to ask...chances are others are asking as well. If you are in doubt about whether or not you have a conflict, it is often advisable to take a conservative approach and declare a conflict. This helps to avoid a public appearance of unfairness.

You may also consider the possibility of declaring a conflict of interest if your home falls within a notification radius used by your community for zoning board of appeals' actions. Since the sending of the notice automatically presumes some degree of interest, this fact should be recognized by declaring a conflict, particularly if a financial impact is likely.

Ultimately, the declaration of a conflict of interest becomes a personal issue and one that should be honored by the other members. If in doubt about whether a conflict of interest is present, it will generally be better to avoid the perception of a conflict, even though an individual member may conclude that a conflict does not exist.

What to Do

§ 18 In order to maintain public trust and insure fairness, it is important to follow some simple steps if a conflict is present. The ZBA bylaws should address fully those actions to be taken in the event of a conflict of interest. Suggested actions are:

1. Declare the apparent conflict of interest. If a member is aware of a conflict prior to the meeting, the staff/chair should be notified in order to allow an alternate to be called. If an alternate is called in, he or she serves on that case until it is completed.
2. Generally, voting by the other members on a conflict of interest is not necessary. However, if the ZBA adheres strictly to Robert's Rules of Order for all meeting procedures (not

just conflicts), members should be excused through a vote. However, declaring a conflict of interest should not be used as a means of avoiding a difficult or uncomfortable decision.

3. Abstain from voting and do not participate in deliberations, either as a member of the ZBA, or as a citizen. Although no one can be prohibited from speaking as a citizen, the comments from a fellow ZBA member will likely be viewed by the audience as being very influential and have the appearance of bias. This does not prevent the member from being represented by an attorney, family member or friend.
4. Once the conflict is declared, you may wish (but have no obligation) to leave the room. This will be a clear indication to the audience that the member has no part in the deliberation or decision, and it avoids any perception by the audience that the member is attempting to influence the others. By all means, the member with a conflict should vacate his or her seat during all proceedings involving the case.

Some Don'ts

§ 19 if you have a conflict of interest, Don't discuss the proposal, either formally or informally with any of the other members.

Don't use inside knowledge and contacts. Make sure that minutes, staff materials, etc., are obtained through the same procedures as any other applicant. It is best to have someone else collect this information.

Don't represent yourself if you are the applicant. Have someone else perform that function. It is acceptable to have other family members, an attorney or a personal representative speak for the member.

Interpretations

§ 20 The ZBA is authorized to issue an official interpretation of the zoning ordinance. Interpretations may be related to either the text of the zoning ordinance or to the boundaries of the zoning map. Unlike legal opinions or recommendations of consultants, an interpretation by the ZBA establishes the meaning of the matter being interpreted and is deemed to be the actual meaning of the ordinance from that point forward, unless the ZBA's interpretation is appealed to the courts.

Several rules of thumb may help in making interpretations.

a) Base map interpretations on the zoning ordinance itself and any relevant historical information. Commonly, these rules are of the "walk like a duck" variety. In other words, if it appears as though the zoning boundary follows a river, it should be assumed to follow the river, or a road right-of-way, or some other physical feature. Where the boundary is unclear, the ZBA should take into account past zoning history (if any) and the potential effect of a determination on surrounding properties.

b) Interpret the text of the zoning ordinance based on a thorough reading of the ordinance in order not to have the effect of amending the ordinance.

c) Give weight to reasonable practical interpretations by administrative officials if applied consistently over a long period of time.

d) Keep records of all interpretations. Once an interpretation is rendered, it is the official position of the community as to that provision. Consistency in decision making is important for the long-term.

e) Generally, if equally convincing points are put forth by the zoning administrator and an individual affected by an interpretation, fairness dictates that the person most affected by the interpretation should prevail. In other words, where two

interpretations are reasonably equal, the benefit of the doubt should be given to the property owner rather than the zoning administrator.

Once an interpretation is made, it is advisable for the planning commission to review the matter to determine whether or not an amendment to the ordinance is needed to further clarify the language (for a text interpretation), or to review the zoning map to determine a specific location of a zoning boundary (for a map interpretation).

Appeals

§ 21 The zoning board of appeals is empowered to hear and decide appeals from any person aggrieved by an administrative decision. An administrative decision is one made by a zoning administrator or the planning commission, or by the legislative body when they are acting in an administrative capacity, (if, for example, the legislative body approved all site plans). Most often, appeals are the result of a disagreement with a decision of the zoning administrator, or, in some cases, a person aggrieved by a site plan review decision by the planning commission. Appeals may be required to be filed within a specific time period set in the zoning ordinance.

The ZBA cannot hear two types of zoning decisions. The first is an amendment to the zoning ordinance (rezoning or text change)—this is reserved for the legislative body. The second type of decision is for special land uses and planned unit developments, which can only be heard by the ZBA if the zoning ordinance specifically allows for an appeal.

Although the ZBA may reverse or affirm, wholly or partly, or may modify a prior decision, its powers are generally limited to determining whether or not the official or body making the administrative

decision acted properly. The ZBA must recognize that the zoning administrator or planning commission has already made a decision regarding the issue as part of its delegated duties. The role of the ZBA is to determine whether the decision was authorized or supported by the zoning ordinance.

In addition, the ZBA should not treat the appeal as a new decision. Rather, review of the decision should be limited to the information that was available to the body or person who made the decision initially. Allowing testimony or evidence in addition to that previously submitted is inappropriate, unless the zoning ordinance directs otherwise.

In those instances where the official or body used proper procedures and standards, the ZBA should uphold the decision, even if the members personally disagree with the result.

Some communities attempt to make appeals and variances the same by allowing an application to the zoning board of appeals only after the denial of a requested permit, such as a building permit or zoning compliance permit. This can be an inefficient and cumbersome procedure since a permit application may require submission of a full application for the permit, even when it is obvious that some requirement of the zoning ordinance is not met and a variance will be needed before a permit can be issued.

Variances

§ 22 A variance grants permission to depart from a requirement or limitation of the zoning ordinance. There are two types of variances:

- a) Nonuse variances (dimensional variances)
- b) Use variances

Nonuse or Dimensional Variances

§ 23 A nonuse variance, also known as a dimensional variance, is a modification of a provision or requirement of the zoning ordinance authorized by the zoning board of appeals when the strict or literal application of the ordinance would cause “practical difficulties” for the applicant. Nonuse variance requests are typically associated with modifications of required yard setbacks, building heights, parking requirements, landscaping or buffering restrictions and related building or facility placement provisions.

To obtain a nonuse variance, the applicant must show that a *practical difficulty* exists on the property by demonstrating that the applicable review standards are met. A detailed examination of these standards is provided in Chapter 3.

Use Variances

§ 24 A use variance allows a use of land that is not permitted in the district in which the property is placed. Granting of a use variance requires that the applicant demonstrate that an “unnecessary hardship” would be imposed if the owner cannot use the property as requested.

Use variances are permitted in cities and villages but limited in townships and counties. According to the Michigan Zoning Enabling Act, only the following townships and counties are eligible to hear use variances:

1. Those that as of February 15, 2006 had an ordinance that used the phrase use variance or variances from uses of land to expressly authorize the granting of use variances; and

2. Those that granted a use variance before February 15, 2006.

However, even if permitted and eligible to hear use variances, the Zoning Enabling

Act allows community opt out of this procedure.

To prohibit use variances the community must adopt zoning ordinance language that prohibits submission of use variance requests.

From a community planning perspective, the indiscriminate granting of use variances is a poor zoning and planning practice. Given the long-term implications, it is important that the ZBA understand the ultimate effects of use variances on the master plan or zoning plan for the community. Approval of a use variance can change the overall land use character of a particular area. That is why strict attention to the use variance standards is necessary.

Following the Rules

§ 25 It is especially important that the zoning board of appeals establish a consistent method of processing applications, conducting meetings and handling other procedures. As noted earlier, the ZBA should have a set of written procedures, or bylaws, for those rules of operation not covered in the zoning ordinance.

Some common considerations follow.

- Incomplete applications (inadequate site plan, fee unpaid, etc.) should not be accepted, i.e., should not be placed on an agenda.
- If public notice was not properly completed, the process must be stopped and a new process begun using a correct notice as to form, content and publication.
- Action should not be taken on any application unless the applicant or a representative is present (unless legal time limits dictate otherwise).

Conclusion

§ 26 Variances are not intended to relieve requirements of the zoning ordinance that are simply preventing applicants from doing what they wish.

Instead, the zoning board of appeals was intended to serve as a safety valve in those relatively rare circumstances where the application of the zoning requirements results in a practical difficulty (for nonuse variances) or unnecessary hardship (for use variances). However, variances approved without sufficient justification can turn the safety valve into a leak. Eventually, this will erode the overall purpose and effectiveness of the zoning ordinance, particularly when it is commonly known that the ZBA is likely to approve virtually any request.

Chapter 2 Preparing for and Conducting Meetings

§ 27 Membership on the zoning board of appeals can mean either just showing up for the meeting or being prepared to make informed decisions. While it is difficult to ask a volunteer to put forth an extra effort, your agreement to serve is also a commitment to do the best possible job for your community.

It is difficult for any member of the ZBA to reach a fair and impartial result without a firm base of knowledge about the matters on which he or she is asked to decide. To gain this knowledge, you will need assistance from the community's staff, the applicant and each member. There are some positive "fact finding" steps you can take to make sure you are ready to make the best possible decision.

Information

§ 28 In order to prepare properly for a meeting, you must review all available and relevant information. At a minimum, this will include copies of applications, site plans and other supporting material. This material should reach you early enough to allow adequate time to study and prepare, normally, at least one week before the meeting.

Public Hearing Notices

§ 29 A public hearing is required for all ZBA approvals (variances, interpretations, and appeals). The notices differ slightly.

For variances, a notice of the request must be published in a newspaper of general circulation.

Notice shall also be sent by mail or personal delivery to the owners of property for

which approval is being considered, to all persons to whom real property is assessed within 300 feet of the property, and to the occupants of all structures within 300 feet of the property regardless of whether the property or occupant is located in the community. If the name of the occupant is not known, the term occupant may be used in making notification.

The notice shall be given not less than 15 days before the date the application will be considered for approval. The notice shall do all of the following:

(a) Describe the nature of the request.

(b) Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.

(c) State when and where the request will be considered.

(d) Indicate when and where written comments will be received concerning the request.

Public hearings for interpretations and appeals are the same, except that notices to individual property owners other than the applicant is necessary only if a specific property is involved in the interpretation or appeal.

Site Visits

§ 30 Visiting the site is a critical step in the decision making process. Even if you have lived in the community all your life, a site will look different to you when a specific request is made. Prior to the site visit you should review any site plans or sketches submitted as part of the application. This review will allow you to gain a proper perspective on the request and how it relates to surrounding properties and to the standards of review you are required to use to reach your decision.

Some precautions must be taken when doing site visits. First, all such visits should always be made individually rather than as a group. Meeting on site (even with less than a quorum) presents several potential problems.

- A site visit by a majority of the membership of a decision making body is a “meeting,” and must be advertised in accordance with the Michigan Open Meetings Act, MCL 15.261 et seq., and the requirements of the Americans With Disabilities Act (ADA) must be met.
- Practically, it is hard for the visiting members to avoid talking among themselves about the proposal. Such discussions can violate the spirit as well as the letter of the Open Meetings Act.

Second, do not go onto the site unless the property owner has granted specific written permission or unless the site is otherwise available to the public (such as an existing shopping center). Verbal approvals should not be relied upon as sufficient permission. Written permission helps avoid misunderstandings and problems with trespassing accusations.

Refusal by the applicant to allow you on the site can not influence your decision.

Many people are concerned about liability or are simply determined to protect their privacy.

The Michigan Open Meetings Act, MCL 15.261 et seq., was intended to make sure that the decision making process followed by government bodies always takes place under the watchful eye of the public. Even though you can simply meet the *letter* of the act, it is just as important that the *spirit* of open meetings be observed. *Don't look for ways around the act; look for ways you can make it work better.*

If permission has not been granted and you feel as though your decision cannot be made without viewing the site, look for other ways to get the same information. This might include aerial photos or surveys. You may also request that the applicant submit photographs, slides or video tape particularly for larger, inaccessible sites. This information may be available from community staff or you may ask for it from the applicant. There are many ways to gather the necessary information and you should not make a decision until it is obtained.

TIP: Consider adding a line to your application form that allows the applicant the option to grant permission for the members to conduct a site visit.

You may feel free to request information from the community's staff. Make sure whatever information you receive is also distributed to each of the other members. Similarly, written materials received at home from applicants or others

should be provided to the community's staff⁶ for distribution to the rest of the members.

Finally, do not talk to the property owner, neighbors or applicant outside of the meeting. The intent of information gathering is to ensure that everyone has the same information on which to base a decision. This is not possible if individual members contact or are contacted by others outside of the meeting.

If the applicant or others contact you, be prepared to tell them that you are required to conduct all of your discussions only when the other members of the ZBA are present. Encourage them to come to the meeting (tell them when and where) or ask them to submit their comments in writing (tell them to whom and by what date). If contact cannot be avoided, it should be reported to the rest of the members during the meeting, along with the general content of the conversation.

Remember - you are only one person on the ZBA; the only time you should act as a member of the zoning board of appeals is in the presence of the other members at a posted meeting.

Before Leaving Home

§ 31 Make sure you have everything. Follow this checklist.

1. Do you have your zoning ordinance and other applicable ordinances, if any?
2. Have you examined the agenda and related materials?
3. Have you written down your questions?
4. Have you completed the site visit? If not, at least drive by the site on the way to the meeting.
5. Have you reviewed the standards that will be used for each decision?

6. Remind yourself that the purpose of preparing for the meeting is not to make a decision; it is only to gather the information needed to prepare you for the decision that is to come.

Meeting the Public

§ 32 Land use issues, as you will no doubt discover, can bring out strong emotions. Faced with a roomful of angry and concerned people, you may sometimes find it difficult to maintain the decorum and professionalism needed. Although many zoning boards of appeal follow Robert's Rules of Order in one form or another, there are other, more subtle aspects that, while not unique to zoning, nevertheless are important.

Being Fair

§ 33 The foremost concern of any member of a public body should be to ensure fairness for all concerned. To accomplish this, it is helpful to keep some simple things in mind.

- Everyone must have the opportunity to speak and present evidence at public hearings. While some limitations may be placed on this right, as described later, no action should be taken that would deprive a person of his or her right to be heard within the confines of applicable rules of procedure.
- Recognize emotional responses and treat them with concern and understanding. Strong responses, within limits, should be expected and understood. Controlling your own emotions is essential, even if the comments get personal.
- One of mankind's greatest fears is public speaking. Make an effort to look beyond the mannerisms

and nervousness to find the speaker's message.

- Regardless of how many people show up to oppose or support a request, you must represent the long term interests of the entire community, not just those at the public hearing. Further discussion of this issue is presented later in this chapter.
- Listen. Public meetings are your chance to take the pulse of the community and to learn more about the neighborhood in which a request is pending. Take advantage of the efforts that those attending the meeting have made and learn as much as you can.

Follow the Rules

§ 34 Playing fair means playing by the rules. Having an effective set of meeting rules helps provide a sense of professionalism and ensures that meetings are orderly. Rules do not need to be rigid. Nor should they be too confining. Occasionally agendas will need to be altered to take unanticipated events into account.

Keeping a subtle balance between the degree of formality required and the informality that is sometimes needed is a learned art. For example, applicants should not be called by their first names. Doing so gives the impression of favoritism, that the person is "connected" in the community. Hearing rules should be made a part of the bylaws of the ZBA and a summary of those rules printed on the back of the meeting agenda so that everyone is aware of them.

Rules for Speakers

§ 35 You will soon learn that people do not often come to a meeting in support of a particular project. Most people have concerns they wish to address, while others are simply opposed to change in their

neighborhood. Having meeting rules for speakers are especially valuable when there are many people who wish to speak. Without a few basic rules (which should be approved by vote of the ZBA) it would be easy for one or two people to dominate the meeting, thus depriving others of the chance to speak their minds.

- Direct comments to the chair. This rule can help avoid debates between members of the audience, between the presenter and the audience, and between ZBA members and the audience or presenter. It also helps ensure that the chair controls the meeting.
- Limit speaking time, when necessary. If there are many people who wish to speak, it is appropriate to limit the time of each speaker to 3-5 minutes, with the exception of the applicant. The applicant should be given as much time as needed, within reason, to present his or her case. During the public comment period, the applicant may wish to respond to individual issues or questions raised. It is generally best to ask that the applicant respond to (or rebut) those questions after all comments have been received.
- Limit the number of times one person may speak. Generally, each person needs to be given only a single opportunity to speak. At the discretion of the chair, persons may be allowed to speak a second time to respond to earlier comments. However, the chair should emphasize that repeat comments are not desired. Your rules may also require a sign-up sheet for those persons wishing to speak, with

- the chair only recognizing those who have signed the sheet.
- The chair may also ask if there is a spokesperson for the audience, and ask that the spokesperson speak for others present who agree with his or her point of view. The chair should allow those for whom the spokesperson is speaking to be recognized, either through a show of hands or by standing. The spokesperson may be given additional time in recognition of his or her role.
 - After the public hearing is closed, it should remain closed. Further comments should not be accepted unless specifically requested by a member of the ZBA.

And the Applause Meter Says...

§ 36 Zoning cannot be a popularity contest, decided by a show of hands in the audience or names on a petition. Many zoning approvals require public input, usually in the form of a hearing. The dilemma in which most decision makers find themselves is trying to determine what weight to give public comments and complaints.

It will quickly be obvious to you that most people do not generally come to a meeting in support of a particular project. Most have concerns they wish addressed or they may simply oppose any development. Some may come to complain about things having little or nothing to do with the issue at hand.

While public input is a valuable part of decision making, the ZBA cannot simply mirror the wishes of those who come to the meeting or send letters. Your job is to follow the standards and requirements of the zoning ordinance. You are obligated to protect the interests of the applicant, those having a direct interest, and the entire

community, not simply the desires of those who happen to attend the meeting.

If it were simply a matter of counting hands in the audience, only one ZBA member would be needed to count the votes or read the applause meter. Simply because a roomful of people shows up to oppose a project, this is not a reason for denial. Similarly, petitions, letters and other written expressions of concern are useful, but only to the point where they provide relevant information.

Ultimately, the role of the public is to provide information to the decision maker. The public can provide a unique perspective on an issue, which may create the need for further study by the community or identify additional information to be provided by the applicant.

Making everyone happy in most cases is impossible, and probably shouldn't be tried. One of the most difficult aspects of planning and zoning is the need to balance the various, often competing, interests of property owners and residents. Michigan law dictates that the public has a legitimate interest in maintaining the important health, safety and welfare aspects of their neighborhood and in having their property values protected.

"My home is my castle" is not an idle remark. Those who follow the NIMBY and BANANA principles sometimes represent this view. The *NIMBYs* believe that the project is well designed, and needed, but located in the wrong place. *Not In My Back Yard* is their battle cry.

Others may believe that the project should not be built anywhere in their community, or perhaps anywhere at all. Their motto is *Build Absolutely Nothing Anywhere Near Anything—BANANA*.

On the other hand, we are also told that owners of property have a right to a reasonable return on their investment and

that zoning cannot unreasonably deprive the owners of that return.

Satisfying all of these conflicting views is simply not possible. The intent of zoning is to avoid the necessity of trying to judge between them. Instead, zoning decisions should treat each person, property, and point of view in a fair and consistent manner. It is not the responsibility of the ZBA to create zoning classifications for rezoning property. Rather, the ZBA must merely determine whether, after considering all evidence presented, the applicant has satisfied the necessary level of proofs for the particular case in order to be entitled to relief.

Rules for ZBA Members

§ 37 As members of a public body, you should follow the same set of rules when presenting yourselves to the public.

- All comments should be directed through the chair. Just as the audience must be recognized by the chair, so too should the members. Not only does this respect the role of the chair, it also sets an example for the audience to follow.
- All deliberations should be in the open. This is a strict legal requirement. It is important that the citizens view the zoning board of appeals as an open, fair and deliberative body. Remember, people are generally suspicious of government. Don't add substance to that perception.
- Stay in the public eye. Do not hold private conferences prior to meeting. Don't meet in a group in a small room or other place outside the meeting chamber. When arriving at the meeting, stay in the chamber. While socializing is acceptable, make

sure the citizens do not get the wrong impression.

- Speak up. Make all of your comments aloud during the deliberations. If you have a question, ask the applicant or the chair, rather than your neighbor. Don't allow yourself to be caught up in private discussions with other members.
- Make all of your comments loudly enough so everyone can hear.
- Express your opinions. Don't just vote without letting everyone know why you are voting, whether for or against the issue. Your comments may help others decide (or change their vote). It also lets the applicant and the audience know the strengths or weaknesses of the proposal. Moreover, it may add to the record if the case goes to court.
- Do not always attempt to answer every question. Some comments cannot be answered and may be asked just to express frustration. When this happens, calmly try to narrow questions down to specifics. Once you get a handle on the real problem, you may be able to suggest a solution.

It is also important that neither the chair nor members of the ZBA attempt to answer questions from audience members that are better answered by the applicant.

- If things get out of hand, take a recess. Long evenings and emotional topics can make for short tempers. A breather may be helpful.

- Do not feel compelled to make a hasty decision the night of the hearing. Everyone should feel comfortable with his or her vote. If he or she does not, obtain whatever additional information is needed before proceeding with the decision.
- Always use the review standards of the zoning ordinance. The standards are your guarantee of reaching fair, consistent and reasonable decisions. Failing to follow the standards of review can easily lead to discriminatory, subjective and inconsistent decisions.

The Experts Say...

§ 38 The question may also arise about how much influence staff reports and opinions should have on a decision. In most cases, staff members are trained in their various fields and are providing their professional opinion. Consequently, their advice and direction are likely to be useful and should be taken seriously. However, that advice and direction should be supported by the facts and by application of the ordinance standards just as the ZBA's decisions are expected to be. The professional's opinions of how the facts relate to the standards may differ from the ZBA's. But ultimately, it is the decision of the zoning board of appeals that will stand.

Keeper of the Gavel

§ 39 The chair is entrusted with enforcing meeting rules. Having a strong chair is important both to the operation of the ZBA and to public's perception of their professionalism. The role of the chair is to maintain order throughout the meeting. The chair should announce each agenda item and note the rules that apply to the hearing. During the meeting, the chair

should ensure that courtesy is maintained and that speakers are not interrupted.

Keeping Faith with the Public

§ 40 Too often, people feel that government works against them rather than in their best interests. While you will not always be able to satisfy everyone, you can make sure that the public knows that they have been heard and that you are acting responsibly. Following rules of fairness, preparing for meetings and making effective decisions can affirm the confidence placed in you by those who appointed you and those whom you serve.

Making Your Decisions Stick

§ 41 It won't matter how much attention is paid to the principles of the previous chapters if the decisions made are not properly documented. New members may have a tendency to rely on those who have the most experience to remember past actions. There is no doubt that their memories are valuable, but their recall may not be complete. The only reliable method of documenting actions is the written word and exhibits.

Meeting Minutes

§ 42 In smaller communities, keeping minutes may be one of the least glamorous parts of building a written record. The task of keeping minutes should be taken seriously. There are no firm rules or formats for minutes, but there are some basic principles. As a minimum, section 9 of the Open Meetings Act, MCL 15.269, requires the minutes to show the date, time, place, members present, members absent, any decisions made and all roll call votes taken. In general, minutes should contain enough detail so that a person not present can understand:

- What matters were discussed (the nature of the request, applicant, location);

- Receipt of any correspondence or other communications on the matter (including name and address, if known, and general content);
- Who spoke at the meeting and the general content of his or her comments (including name and address);
- What action was taken by the ZBA (including the motion, vote and any conditions attached to approved applications); and
- Why an action was taken and how the standards of review of the zoning ordinance were or were not met, i.e., the detailed findings that support the decision.

One of the reasons that minutes are especially important has to do with the appeal procedure that occurs once the ZBA has made its decision. As noted earlier, there are no other levels of review by the community itself after the zoning board of appeals. The next avenue of appeal is to the circuit court of the county in which the property is located.

The zoning enabling act directs the circuit court to decide an appeal on the basis of the record presented by the ZBA and the applicant. In other words, the only information seen by the court will be the written record created at the ZBA hearing. Accordingly, it is essential that the ZBA provide a suitable written record of the proceedings.

Motions

§ 43 One of the important features of documenting decisions is the record of the action taken, as evidenced by the specific motion and vote. There are several essential elements of a motion:

- a maker and seconder;
- a description of the nature of the request;

- the action taken (approval, approval with conditions, denial, postponement of the decision);
- any conditions attached to affirmative decisions; and,
- the reasons for the action taken (the standards of review and how they were or were not satisfied) based upon the facts and evidence presented at the hearing—the findings that support the decision.

Some ZBAs have found it useful to have a blank format to help them word their motions. This can be an effective practice, as long as the motions are not completed prior to the meeting. Having staff or legal counsel prepare a motion or several motions in advance can create the perception that decisions have already been made if a case is highly controversial, and is likely to go to court, there may be a desire to have legal counsel assist in formulating the language of the decision. If such assistance does occur, consideration should be given to seeking such assistance on a decision granting the relief requested as well as a decision denying the relief.

Some hints about motions:

§ 44

- Be sure everyone is clear on the motion by restating it. Do not ask the person writing the minutes to “clean it up later,” or say, “you know what we want to say.” Take the time to get the wording right. Have the person who is writing down the motion read it back to ensure its accuracy.
- Include specific references to the ordinance’s review standards. If discussion on the issue is thoroughly documented and referenced in the minutes, they may be adequate to represent information related to

compliance with the standards of the ordinance. Otherwise, a summary of the discussion on the standards is appropriate.

- Properly stated and supported motions are particularly important. Simply referring to the standards of review is not enough; saying a standard is met doesn't make it so. A motion that states "this variance is approved (or denied) because it meets (or does not meet) the standards of Section ____" is not sufficient. There must be enough information presented to indicate specifically which standards were or were not met, and the reasons, in terms of the specific facts and evidence presented, the ZBA made the finding.
- Conditions may be imposed on any affirmative decision. Conditions attached to a decision should have a clear purpose: to ensure that the standards used to make the decision are met. In other words, the condition should strengthen the decision to grant relief. Any condition placed on an approval must have a direct relationship to one or more of the specifications stated in the zoning enabling act for conditions.

One informal way to test the appropriateness of a proposed condition is to review the decision without the condition in place. For example, one of the review standards noted in Chapter 3 is "(T)he variance will not be injurious to the neighborhood or otherwise detrimental to the general welfare." If, during their deliberations, the board members become concerned that the approval of a variance could have an adverse affect on adjacent

properties, a possible condition might be a requirement that a fence or landscaping be installed. If the fence or landscaping were not required, this review standard would not be met. Accordingly, this condition would be an appropriate one to attach to the approval.

- If the motion includes the need for further action, it should state who will be responsible to see that action completed. For example, the required landscaping shall be reviewed and approved by the zoning administrator."

Findings of Fact

§ 45 It is worth emphasizing the obligation to make Findings of Fact. Findings of Fact are embodied in a concise statement of the action taken by the members, and include the reasons for the decision, including the specific facts and evidence supporting the decision. In the absence of such findings, it is quite difficult for a reviewing court to sustain the decision of the ZBA.

The Findings, which are part of the minutes, are not official until reviewed and adopted by the ZBA at the next meeting, or certified as approved at the same meeting. One reason this is important is that the applicant or other person disagreeing with the decision has a specific time limit in which to file an appeal to the circuit court (30 days). The clock on the time limit does not begin ticking until the minutes of the meeting at which the action was taken are officially approved.

If the ZBA only meets on demand, or infrequently, another option would be to schedule a meeting after the minutes are completed to review and adopt them.

Post-Decision Documentation

§ 46 Once the decision is made, some administrative steps should be taken to help complete the record. The applicant and

secretary of the ZBA should each sign and date 2-3 copies of the site plan or sketch submitted as part of the application. The applicant should keep one copy and the community at least one other. This provides a record of what was approved and when.

A copy of the minutes should be sent to the applicant following review by the approving bodies along with a letter specifically noting the action taken by the ZBA, including any conditions placed on the approval, if appropriate.

This letter may include further instructions regarding the proposal. For example, if a variance was granted, the letter may state that a site plan approval by the planning commission is necessary prior to issuance of a building permit.

Record Retention

§ 47 The community's records for each application should include, at a minimum:

- Relevant pages of minutes at which the proposal was discussed;
- Staff notes, meeting notes, correspondence, telephone conversation notes, etc.;
- Copy of the application and supporting material;
- Approved/signed copy of the site plan; and
- Follow-up correspondence (as noted above).

If You Build It, We Will Come...

§ 48 ...to make sure it complies with the approvals that were granted. Someone should be given the direct responsibility to make sure that any conditions or changes required by the zoning board of appeals are accomplished. Sending the building official and zoning administrator a copy of the approved application and meeting minutes could help this process.

Remember, building a complete record is important. Should a decision be legally

challenged, the written record will provide the background needed to help defend the decision of the ZBA. Also, a suitable record of past actions is needed to ensure that decisions are implemented and that they are enforced over a long period of time.

Reliance on someone with a good memory is not enough.

Chapter 3 - Making the Tough Decisions

§ 49 In these days of increasing litigation and public participation, it is not enough to approve or deny an application for a variance or appeal because of a vague notion that the request is or is not a good idea, or that it will hurt the neighborhood, or make things better. If challenged, any decision must have a solid, well-supported foundation.

Decisions related to zoning are rarely easy. And, they are not usually a matter of right or wrong. The duties of the zoning board of appeals require a balancing of the needs of the community and the rights of a private property owner.

- The community has a strong interest in maintaining the integrity of the rules under which zoning operates, through the zoning ordinance. Variances granted without proper foundation can eventually, or even quickly in some cases, lead to a weakening of the ordinance.
- On the other hand, private property owners do have certain rights to use their property and the inappropriate application of the zoning ordinance to that property should not deprive them of those rights.

Proper decision making starts with the basics: knowledge of the zoning ordinance, knowledge of relevant case facts and using review standards to reach a decision.

Knowledge of the zoning ordinance

§ 50 While it is not necessary for each member to know the intimate workings and details of a zoning ordinance, they must

be familiar with the relevant parts of the ordinance when reviewing applications. But more important, it is essential that each member understands the purpose and need for the regulation being discussed.

Intent and Purpose

A front yard setback variance is being considered by the ZBA. A new member asks, "Why can't the building be built all the way to the property line?"
What would be your answer?

One of the standards of review typically applied to variance requests asks that the decision not impair the intent and purpose of the ordinance. If the intent and purpose of the regulation would be materially affected, it is possible that the variance would not be appropriate. For example, one of the recognized purposes of a side yard setback is to provide access for safety personnel to the rear of a building. Should a variance be permitted that eliminates this access, the intent and purpose of the ordinance would not be fulfilled.

Knowledge of Relevant Case Facts

§ 51 Facts are critical to good decision making. Sources of facts include:

- a) The application and supporting materials;
- b) The master plan or other relevant governmental plans;
- c) Staff and agency reports regarding impacts on public services, natural resources, character of the area, traffic and parking, and others;

- d) A visit to the site to see the physical characteristics of the property and adjacent parcels (see Chapter 2) and;
- e) Public hearing comments.

However, what is a fact is not always clear. Sometimes it will be necessary for the members to use their own experience and common sense (a concept not often applied to zoning).

Use of Ordinance Standards

§ 52 Following an effective and consistent decision making process is one of the most important methods of supporting your decisions. Proper and consistent use of the standards of the zoning ordinance or other ordinances is essential. If all ordinance standards and state law standards are met, the application must be approved. Before any variance should be approved, the applicant should be required to demonstrate that either a practical difficulty or unnecessary hardship exists. While these terms are sometimes used interchangeably, they are, in fact, distinct and different terms.

- *Practical difficulty* is applied only to nonuse, or dimensional variances;
- *Unnecessary hardship* is relevant only for use variances.

The wording and number of standards will often differ from one community to another, but the following standards have been considered by various court decisions and are common to ordinances.

Standards for Nonuse or Dimensional Variances

§ 53 Granting of a nonuse variance requires the existence of a practical difficulty, which is demonstrated by showing that:

1. *Special or unique conditions and circumstances exist which are peculiar to the land, structure, or*

building involved and which are not generally applicable to other lands, structures, or buildings in the same district.

§ 54 Meeting this standard requires the requested variance to be related to the characteristics of the property and not to the personal situation of the applicant. Should a variance be granted because of a perceived special condition related to the applicant, that condition would no longer exist if the applicant leaves the property. But the variance remains with the land.

Similarly, trying to distinguish between individual circumstances related to individuals is nearly impossible. Nearly every person has some situation that may consider unique. You are not expected to be able to draw a line between various applicants' special conditions.

This dilemma cannot be resolved by restricting the approval to a particular individual. Variances, like other zoning approvals, cannot be restricted solely to the benefit of or use by a specific person. Variances, once granted, run with the land, not with the property owner.

Special conditions or circumstances that are related to the property are generally physical characteristics that may normally include:

- exceptional narrowness, shallowness or shape;
- exceptional topographic conditions or other extraordinary situations related to the property; or
- use or development of the property immediately adjoining the property in question.

Also, the characteristics of the property asserted as the basis for relief must not be common among other properties in the same district or vicinity. As with all

variances, the principle is that the variance is needed to relieve a practical difficulty caused by the unique conditions present on the land. Common conditions or situations should be addressed by a change in the text of the ordinance, rather than by the granting of individual variance applications.

2. A literal interpretation of the provisions of this ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance; and that the variance is the minimum necessary.

§ 55 Property owners are given certain rights to use their property within the limits allowed by the zoning ordinance. If the conditions present on the property are such that owners are deprived of these rights, the zoning board of appeals should find this standard (but not necessarily the variance) in favor of the applicant. However, this does not entitle the applicant to the maximum benefit that might be available. For example, while the ordinance provides that property owners may have accessory buildings, it does not grant the authority to allow any size building desired by the applicant.

This standard also permits the ZBA to modify the request of the applicant to accommodate the special condition or circumstance but only approve the amount of variance that is necessary to do so. For example, an applicant may wish to construct a garage closer to the lot line to avoid a large tree. The ZBA could approve a variance that would miss the tree, but in order to protect an adjoining property, not come as close to the property line as requested.

3. The special conditions and circumstances do not result from the actions of the applicant.

§ 56 This standard, often referred to as self-created, is often misunderstood and the subject of differing opinions. There are circumstances when the applicant has clearly taken some action creating a need for the variance. For example, if an applicant splits a lot which previously conformed to the requirements of the zoning ordinance into two smaller ones, one or both of which then do not meet the ordinance, the action is clearly self-created.

On the other hand, a buyer of a lot that cannot be developed without a variance may ask that the ZBA grant a variance to allow use of the lot. In this case, the applicant did not take an affirmative action by creating the lot. Accordingly, this standard should not be used as a reason for denial (although the variance still must meet the other standards of the ordinance).

4. The granting of the variance will be in harmony with the general purpose and intent of this ordinance.

§ 57 While the intent and purpose portion of this standard may sometimes seem like a catchall phrase, it does have meaning. The construction of the zoning ordinance was a carefully considered process that was begun by the planning commission, reviewed by the public and adopted by the legislative body. Each provision of the ordinance has a reason for its existence and it is important that the ZBA understand that reason and not act to impair that purpose.

Whether the ZBA agrees or disagrees with any provision in the ordinance is irrelevant. The ZBA's function is to enforce the provisions of the ordinance, except in very specific instances where conditions

exist that would make compliance with the requirements impractical. Those conditions are defined by the review standards of the ordinance.

It is equally important that the zoning ordinance be reviewed frequently to ensure it is kept current and relevant to today's conditions. This includes making sure that binding court rulings are included and new legislation recognized. Often, an outdated ordinance will tend to generate additional variance requests.

One way the ZBA can help keep the ordinance current is to review its decisions at the end of each year to determine if there are provisions of the ordinance that are consistently being requested for variances. If the review highlights some particular parts of the ordinance, it may be an indication that these provisions need to be updated.

A joint meeting with the planning commission to discuss these provisions will be useful. One of two outcomes is possible. The planning commission may agree that a provision needs updating and begin the actions necessary to amend the ordinance. Or, the commission may determine that the ordinance does not need to be updated and that the provision should remain unchanged. If this is the outcome, the ZBA should respect that decision and only approve variances in those cases where the standards of review are clearly met.

5. The variance will not be injurious to the neighborhood or otherwise detrimental to the general welfare.

§ 58 As with any zoning action, the result of the proposed variance should not be harmful to adjacent properties. Potential harm could be in the form of restricted access or view, noise, lights or any other effect not normally experienced by property owners in similar circumstances.

While the opinions of surrounding property owners are useful, they should not be given absolute weight. The role of the public is not to give their blessing or veto, but to provide the ZBA with information useful to its decision making process. As an illustration, a current adjoining property owner may be a relative or close friend and not object to a variance. But since the variance goes with the land, the next property owners may find themselves with an objectionable situation.

On the other hand, it is appropriate for the ZBA to take the comments of the public into consideration to determine whether or not the variance may adversely affect nearby property or the neighborhood. (See Chapter 2.) Note, however, that simply because a variance is not harmful to the neighborhood does not mean that it meets all of the other applicable standards.

6. The spirit of this ordinance shall be observed, public safety secured and substantial justice done.

§ 59 The concepts of this standard, though broad, are important. Observing the spirit of the ordinance will mean that the ZBA understands the potential effects one or several variances could have on the effectiveness of the zoning ordinance. For example, if the ZBA's reputation is one of easy approvals, applicants are more likely to seek variances in other than special conditions and circumstances.

"Public safety secured" indicates that the variance, if approved, will not create an unsafe condition.

While "substantial justice" directly addresses fairness to the applicant, it also applies to others who might be affected by the variance, such as neighboring property owners. Often the initial expectations of neighbors are that the ZBA will follow the

requirements of the zoning ordinance. The substantial justice requirement dictates that the variance should not be granted if it would undermine the purpose and intent of the zoning ordinance as it relates to adjoining properties. This includes a consideration of the extent of variance to be granted. In this context, substantial justice requires the variance to be the minimum necessary to afford relief.

The ZBA's Reputation

A zoning board of appeals known for easy approvals may find itself barraged with variance requests. As the word spreads that the ZBA grants almost any variance, the attitude among builders, attorneys, planners, and others who frequently advise property owners is, "Don't bother trying to meet the zoning ordinance, All you need to do is apply for a variance and you will get it."

Standards for Use Variances

§ 60 As noted in Chapter 1, a use variance allows a use of land that is not permitted in the district in which the property is placed. Because this type of relief is so significant, granting of a use variance requires the existence of an unnecessary hardship, which is demonstrated by showing that:

1. *The property could not be used (be put to a reasonable use) for the purposes permitted in that zone district.*

§ 61 The principle behind a use variance is that it is necessary because the property is not usable as it is zoned. Therefore, a thorough review is needed to first establish that none of the uses currently allowed in the district, either as permitted by right or through a special land use, are appropriate

for the property. While it is true that financial considerations are not generally the subject of review for variances, this standard may be satisfied by a finding that the property would essentially be valueless if an attempt were made to develop it as zoned.

Part of this review will require determining if the property can be reasonably used for any of the uses permitted in the district. This does not mean that the use has to be the most profitable, or the use proposed by the applicant. It only requires a finding that there is one or more uses permitted in the district which could reasonably be placed on the property.

2. *The plight is due to unique circumstances peculiar to the property and not to general neighborhood conditions.*

§ 62 This standard is generally similar to that for nonuse variances, particularly with respect to the necessity for having unique circumstances that are specific to a property and not related to the applicant's personal situation. The other important aspect is the requirement that the situation on the property not be common in the area. If conditions are common to the area, a use variance would not be appropriate because the area should be reviewed by the planning commission to determine if the zoning for the entire area should be changed. But that is the function of the planning commission and not that of the zoning board of appeals.

The use would not alter the essential character of the area.

§ 63 Probably the most difficult aspect of this standard is determining what the essential character of an area is, and if the

use variance is approved, what effect might the variance have on that character.

One of the easiest ways to determine the essential character of an area is through a site visit to examine the area and see the various land uses that exist.

In some cases the character may be evidenced simply by the dominance of one land use over any others. In others it may not be as obvious. For example, some areas may have a wide variety of uses, occupying different sizes of lots. Viewing the area may not directly lead to a conclusion as to the character of the area and may require some degree of judgement.

What is the "area" affected by a use variance?

The "area" which may be affected by a use variance will depend on the nature of the request and the size of the property that is the subject of the requested use variance. For example, a small residential lot requesting a use variance for an office will affect a smaller area than a request on a large site for an intensive commercial use.

Another way to determine the character of an area and the possible effect of a use variance is to examine the community's master plan. The plan may clearly indicate the existing or intended character of an area. The ZBA may also seek the advice of the planning commission to help interpret the master plan, or to provide guidance when there is no plan or if it is out-of-date. Any opinion of the commission is simply advice, and should be considered only as input to the ZBA's deliberations.

After determining the essential character, the next step is to evaluate

whether or not approval of the use variance would alter that character. This decision might hinge on whether or not the proposed use variance may tip the scales in one direction or another. If an area appears to be in transition from a residential to commercial area, for example, a commercial use variance may be appropriate. However, if the specific character of the area is unclear, a use variance may not be appropriate since it could tend to establish a specific character. This type of decision will require the exercise of discretion by members of the ZBA, as assisted by staff and consultants.

4. The problem is not self-created.

§ 64 This standard is essentially the same as that for nonuse variances. If the applicant created a particular situation that made a property essentially unusable as zoned, that applicant would not be entitled to relief by approval of a use variance. For example, if a property owner subdivides a large, residentially zoned property, leaving a corner lot as an isolated parcel, an argument that the parcel should only be used for nonresidential purposes could fail because the parcel was created by the direct action of the applicant.

5. The other general requirements are met.

§ 65 As in the case of nonuse variances, an applicant must show that the variance meets the state law requirements, that the spirit of the ordinance shall be observed, public safety secured and substantial justice done.

Use Variances and Rezonings - The Paragon Rule

§ 66 Understanding use variances was made

more important by a 1996 decision of the Michigan Supreme Court, *Paragon Properties Company v City of Novi*, (452 Mich 568, 550 NW2d 772 (1996)) in which the court required a “final decision” of the municipality. Under the *Paragon* decision, it will not be deemed that a final decision has been rendered by the municipality until the property owner seeks a use variance from the zoning board of appeals. The *Paragon* decision, therefore, requires submission of a use variance application following a rezoning request denial by the legislative body before any legal disputes may be brought before the court.

The Michigan Zoning Enabling Act allows a community to choose whether or not it wishes to have a use variance procedure in its ordinance. Therefore, if the use variance procedure was not available, the applicant would not have to exhaust this remedy, and *Paragon* would not apply.

Even if provided for by statute, some communities have language in their zoning ordinances that prohibits consideration of use variances. Often this language is in the form of not permitting the zoning board of appeals to hear variances that would have the effect of changing land use or zoning.

For those communities that continue to hear use variances further definition of the meaning of the *Paragon* decision will likely require additional litigation and clarification.

In general, the full effect of this decision has yet to be felt and the interpretation of its language will likely result in some confusion as individual county circuit courts utilize this case.

What about precedents?

§ 67 One of the concerns often expressed by ZBA members is the fear that by approving or not approving a request they may be setting or violating a precedent. This concern can be real if the ZBA is not

using the standards of review of the zoning ordinance. Failure to use these standards consistently requires the ZBA to make up the rules as they go. As a result, future applicants gain the right to be considered by the same considerations used by the ZBA in previous meetings.

Consequently, the way to avoid setting a precedent is to base every decision on the standards of review of the zoning ordinance, and include findings of fact that distinguish cases from one another. When the standards are used and findings made consistently, the ZBA is less likely to be bound by past decisions because the facts of each case are different. On the other hand, where the facts are very similar the same decision should be reached, not because of a precedent but because the same facts were applied against a consistent set of review standards.

Therefore, consistent and faithful use of the review standards for variances allows the ZBA to reach decisions based on the facts of each individual case. This, together with the detailed findings of fact, helps ensure consistency and fair treatment for every applicant by avoiding the arbitrary and capricious labels often given to zoning decisions that are not well supported.

As each application is debated, each of the applicable standards should be specifically reviewed and individual findings made for each. No approvals should be granted until the members clearly agree that all the standards of review are satisfied. Zoning decisions are permanent. Care must be taken to ensure that each decision is well supported. It is essential that the decisions are well documented and that the records pertaining to all applications are complete.

How to Avoid Litigation

§ 68 The short answer to avoiding litigation is simple—you can't! Governments are

always open to lawsuits, regardless of the quality of their decisions. Far too often, disappointed applicants or neighbors look to the courts to solve their problems. As a result, the ZBA cannot be overly influenced by threats or concerns about whether a decision will result in a lawsuit, provided, of course, that the ZBA has acted properly and thoroughly supported and documented the decision.

However, there are some actions that can strengthen the ZBA's legal position should any decision be challenged.

- Follow a standard decision making process. The zoning process involves a wide variety of technical, administrative and judgmental factors. Making sure that the requirements of the ordinance are followed, including proper notices, use of standards of review and proper documentation of decisions is a good start.
- Use review standards and make findings. The most important step you can take is the proper use of the review standards provided in the zoning ordinance to guide your decisions. These standards outline a clear path to reaching fair and consistent decisions. All decisions must be based on these standards and the facts that are used to apply them. Therefore, apply and make findings on each review standard.
- Follow proper procedures. The community should ensure that adequate procedures are in place to ensure that application procedures are clear, notices are properly completed, and adequate records are kept. The ZBA should ensure that proper hearing procedures are followed.

This includes creating a suitable record of the actions taken and the reasons for those actions as part of the ZBA minutes.

MICHIGAN ZONING ENABLING ACT
Act 110 of 2006

AN ACT to codify the laws regarding local units of government regulating the development and use of land; to provide for the adoption of zoning ordinances; to provide for the establishment in counties, townships, cities, and villages of zoning districts; to prescribe the powers and duties of certain officials; to provide for the assessment and collection of fees; to authorize the issuance of bonds and notes; to prescribe penalties and provide remedies; and to repeal acts and parts of acts.

History: 2006, Act 110, Eff. July 1, 2006.

The People of the State of Michigan enact:

ARTICLE I
GENERAL PROVISIONS

125.3101 Short title.

Sec. 101. This act shall be known and may be cited as the "Michigan zoning enabling act".

History: 2006, Act 110, Eff. July 1, 2006.

125.3102 Definitions.

Sec. 102. As used in this act:

(a) "Agricultural land" means substantially undeveloped land devoted to the production of plants and animals useful to humans, including, but not limited to, forage and sod crops, grains, feed crops, field crops, dairy products, poultry and poultry products, livestock, herbs, flowers, seeds, grasses, nursery stock, fruits, vegetables, Christmas trees, and other similar uses and activities.

(b) "Airport" means an airport licensed under section 86 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.86.

(c) "Airport approach plan" and "airport layout plan" mean a plan, or an amendment to a plan, filed with the zoning commission under section 151 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.151.

(d) "Airport manager" means that term as defined in section 2 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL 259.2.

(e) "Airport zoning regulations" means airport zoning regulations under the airport zoning act, 1950 (Ex Sess) PA 23, MCL 259.431 to 259.465, for an airport hazard area that lies in whole or part in the area affected by a zoning ordinance under this act.

(f) "Conservation easement" means that term as defined in section 2140 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.2140.

(g) "Coordinating zoning committee" means a coordinating zoning committee as described under section 307.

(h) "Development rights" means the rights to develop land to the maximum intensity of development authorized by law.

(i) "Development rights ordinance" means an ordinance, which may comprise part of a zoning ordinance, adopted under section 507.

(j) "Family child care home" and "group child care home" mean those terms as defined in section 1 of 1973 PA 116, MCL 722.111, and only apply to the bona fide private residence of the operator of the family or group child care home.

(k) "Greenway" means a contiguous or linear open space, including habitats, wildlife corridors, and trails, that links parks, nature reserves, cultural features, or historic sites with each other, for recreation and conservation purposes.

(l) "Improvements" means those features and actions associated with a project that are considered necessary by the body or official granting zoning approval to protect natural resources or the health, safety, and welfare of the residents of a local unit of government and future users or inhabitants of the proposed project or project area, including roadways, lighting, utilities, sidewalks, screening, and drainage. Improvements do not include the entire project that is the subject of zoning approval.

(m) "Intensity of development" means the height, bulk, area, density, setback, use, and other similar characteristics of development.

(n) "Legislative body" means the county board of commissioners of a county, the board of trustees of a township, or the council or other similar elected governing body of a city or village.

(o) "Local unit of government" means a county, township, city, or village.

(p) "Other eligible land" means land that has a common property line with agricultural land from which development rights have been purchased and is not divided from that agricultural land by a state or federal limited access highway.

(q) "Person" means an individual, partnership, corporation, association, governmental entity, or other legal entity.

(r) "Population" means the population according to the most recent federal decennial census or according to a special census conducted under section 7 of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.907, whichever is later.

(s) "Qualified residential treatment program" means that term as defined in section 1 of 1973 PA 116, MCL 722.111.

(t) "Site plan" includes the documents and drawings required by the zoning ordinance to ensure that a proposed land use or activity is in compliance with local ordinances and state and federal statutes.

(u) "State licensed residential facility" means a structure constructed for residential purposes that is licensed by the state under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, or 1973 PA 116, MCL 722.111 to 722.128, and provides residential services for 6 or fewer individuals under 24-hour supervision or care.

(v) "Undeveloped state" means a natural state preserving natural resources, natural features, scenic or wooded conditions, agricultural use, open space, or a similar use or condition. Land in an undeveloped state does not include a golf course but may include a recreational trail, picnic area, children's play area, greenway, or linear park. Land in an undeveloped state may be, but is not required to be, dedicated to the use of the public.

(w) "Zoning commission" means a zoning commission as described under section 301.

(x) "Zoning jurisdiction" means the area encompassed by the legal boundaries of a city or village or the area encompassed by the legal boundaries of a county or township outside the limits of incorporated cities and villages. The zoning jurisdiction of a county does not include the areas subject to a township zoning ordinance.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2007, Act 219, Imd. Eff. Dec. 28, 2007;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008;—Am. 2022, Act 206, Imd. Eff. Oct. 7, 2022.

125.3103 Notice; publication; mail or personal delivery; requirements.

Sec. 103. (1) Except as otherwise provided under this act, if a local unit of government conducts a public hearing required under this act, the local unit of government shall publish notice of the hearing in a newspaper of general circulation in the local unit of government not less than 15 days before the date of the hearing.

(2) Notice required under this act shall be given as provided under subsection (3) to the owners of property that is the subject of the request. Notice shall also be given as provided under subsection (3) 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. Notification need not be given to more than 1 occupant of a structure, except that if a structure contains more than 1 dwelling unit or spatial area owned or leased by different persons, 1 occupant of each unit or spatial area shall be given notice. If a single structure contains more than 4 dwelling units or other distinct spatial areas owned or leased by different persons, notice may be given to the manager or owner of the structure, who shall be requested to post the notice at the primary entrance to the structure.

(3) The notice under subsection (2) is considered to be given when personally delivered or when deposited during normal business hours for delivery with the United States postal service or other public or private delivery service. The notice shall be given not less than 15 days before the date the request will be considered. If the name of the occupant is not known, the term "occupant" may be used for the intended recipient of the notice.

(4) A notice under this section shall do all of the following:

(a) Describe the nature of the request.

(b) Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the property. Street addresses do not need to be created and listed if no such addresses currently exist within the property. If there are no street addresses, other means of identification may be used.

(c) State when and where the request will be considered.

(d) Indicate when and where written comments will be received concerning the request.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008.

ARTICLE II
ZONING AUTHORIZATION AND INITIATION

125.3201 Regulation of land development and establishment of districts; provisions; uniformity of regulations; designations; limitations.

Sec. 201. (1) A local unit of government may provide by zoning ordinance for the regulation of land development and the establishment of 1 or more districts within its zoning jurisdiction which regulate the use of land and structures to meet the needs of the state's citizens for food, fiber, energy, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to ensure that use of the land is situated in appropriate locations and relationships, to limit the inappropriate overcrowding of land and congestion of population, transportation systems, and other public facilities, to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements, and to promote public health, safety, and welfare.

(2) Except as otherwise provided under this act, the regulations shall be uniform for each class of land or buildings, dwellings, and structures within a district.

(3) A local unit of government may provide under the zoning ordinance for the regulation of land development and the establishment of districts which apply only to land areas and activities involved in a special program to achieve specific land management objectives and avert or solve specific land use problems, including the regulation of land development and the establishment of districts in areas subject to damage from flooding or beach erosion.

(4) A local unit of government may adopt land development regulations under the zoning ordinance designating or limiting the location, height, bulk, number of stories, uses, and size of dwellings, buildings, and structures that may be erected or altered, including tents and recreational vehicles.

History: 2006, Act 110, Eff. July 1, 2006.

125.3202 Zoning ordinance; determination by local legislative body; amendments or supplements; notice of proposed rezoning.

Sec. 202. (1) The legislative body of a local unit of government may provide by ordinance for the manner in which the regulations and boundaries of districts or zones shall be determined and enforced or amended or supplemented. 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.

(2) Except as provided in subsection (3), the zoning commission shall give a notice of a proposed rezoning in the same manner as required under section 103.

(3) For any group of adjacent properties numbering 11 or more that is proposed for rezoning, the requirements of section 103(2) and the requirement of section 103(4)(b) that street addresses be listed do not apply to that group of adjacent properties.

(4) An amendment to a zoning ordinance by a city or village is subject to a protest petition under section 403.

(5) An amendment to conform a provision of the zoning ordinance to the decree of a court of competent jurisdiction as to any specific lands may be adopted by the legislative body and the notice of the adopted amendment published without referring the amendment to any other board or agency provided for under this act.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008.

125.3203 Zoning ordinance; plan; incorporation of airport layout plan or airport approach plan; zoning ordinance adopted before or after March 28, 2001; applicability of public transportation facilities.

Sec. 203. (1) A zoning ordinance shall be based upon a plan designed to promote the public health, safety, and general welfare, to encourage the use of lands in accordance with their character and adaptability, to limit the improper use of land, to conserve natural resources and energy, to meet the needs of the state's residents for food, fiber, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land, to ensure that uses of the land shall be situated in appropriate locations and relationships, to avoid the overcrowding of population, to provide adequate light and air, to lessen congestion on the public roads and streets, to reduce hazards to life and property, to facilitate adequate provision for a system of transportation including, subject to subsection (5), public transportation, sewage disposal, safe and adequate water supply, education, recreation, and other public requirements, and to conserve the expenditure of funds for public improvements and services to conform with the most advantageous uses of land, resources, and

properties. A zoning ordinance shall be made with reasonable consideration of the character of each district, its peculiar suitability for particular uses, the conservation of property values and natural resources, and the general and appropriate trend and character of land, building, and population development.

(2) If a local unit of government adopts or revises a plan required under subsection (1) after an airport layout plan or airport approach plan has been filed with the local unit of government, the local unit of government shall incorporate the airport layout plan or airport approach plan into the plan adopted under subsection (1).

(3) In addition to the requirements of subsection (1), a zoning ordinance adopted after March 28, 2001 shall be adopted after reasonable consideration of both of the following:

(a) The environs of any airport within a district.

(b) Comments received at or before a public hearing under section 306 from the airport manager of any airport.

(4) If a zoning ordinance was adopted before March 28, 2001, the zoning ordinance is not required to be consistent with any airport zoning regulations, airport layout plan, or airport approach plan. A zoning ordinance amendment adopted or variance granted after March 28, 2001 shall not increase any inconsistency that may exist between the zoning ordinance or structures or uses and any airport zoning regulations, airport layout plan, or airport approach plan. This section does not limit the right to petition for submission of a zoning ordinance amendment to the electors under section 402 or the right to file a protest petition under section 403.

(5) The reference to public transportation facilities in subsection (1) only applies to a plan that is adopted or substantively amended more than 90 days after the effective date of the amendatory act that added this subsection.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2010, Act 305, Imd. Eff. Dec. 17, 2010.

125.3204 Single-family residence; instruction in craft or fine art as home occupation.

Sec. 204. A zoning ordinance adopted under this act shall provide for the use of a single-family residence by an occupant of that residence for a home occupation to give instruction in a craft or fine art within the residence. This section does not prohibit the regulation of noise, advertising, traffic, hours of operation, or other conditions that may accompany the use of a residence under this section.

History: 2006, Act 110, Eff. July 1, 2006.

125.3205 Zoning ordinance subject to certain acts; regulation or control of oil or gas wells; prohibition; extraction of valuable natural resource; challenge to zoning decision; serious consequences resulting from extraction; factors; regulations not limited.

Sec. 205. (1) A zoning ordinance is subject to all of the following:

(a) The electric transmission line certification act, 1995 PA 30, MCL 460.561 to 460.575.

(b) The regional transit authority act, 2012 PA 387, MCL 124.541 to 124.558.

(c) The small wireless communications facilities deployment act.

(2) A county or township shall not regulate or control the drilling, completion, or operation of oil or gas wells or other wells drilled for oil or gas exploration purposes and shall not have jurisdiction with reference to the issuance of permits for the location, drilling, completion, operation, or abandonment of such wells.

(3) An ordinance shall not prevent the extraction, by mining, of valuable natural resources from any property unless very serious consequences would result from the extraction of those natural resources. Natural resources shall be considered valuable for the purposes of this section if a person, by extracting the natural resources, can receive revenue and reasonably expect to operate at a profit.

(4) A person challenging a zoning decision under subsection (3) has the initial burden of showing that there are valuable natural resources located on the relevant property, that there is a need for the natural resources by the person or in the market served by the person, and that no very serious consequences would result from the extraction, by mining, of the natural resources.

(5) In determining under this section whether very serious consequences would result from the extraction, by mining, of natural resources, the standards set forth in *Silva v Ada Township*, 416 Mich 153 (1982), shall be applied and all of the following factors may be considered, if applicable:

(a) The relationship of extraction and associated activities with existing land uses.

(b) The impact on existing land uses in the vicinity of the property.

(c) The impact on property values in the vicinity of the property and along the proposed hauling route serving the property, based on credible evidence.

(d) The impact on pedestrian and traffic safety in the vicinity of the property and along the proposed hauling route serving the property.

(e) The impact on other identifiable health, safety, and welfare interests in the local unit of government.

(f) The overall public interest in the extraction of the specific natural resources on the property.

(6) Subsections (3) to (5) do not limit a local unit of government's reasonable regulation of hours of operation, blasting hours, noise levels, dust control measures, and traffic, not preempted by part 632 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.63201 to 324.63223. However, such regulation shall be reasonable in accommodating customary mining operations.

(7) This act does not limit state regulatory authority under other statutes or rules.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2011, Act 113, Imd. Eff. July 20, 2011;—Am. 2012, Act 389, Eff. Mar. 28, 2013;—Am. 2018, Act 366, Eff. Mar. 12, 2019.

125.3205a Amateur radio service station antenna structures.

Sec. 205a. (1) 47 CFR 97.15 provides that owners of certain amateur radio service station antenna structures more than 60.96 meters (200 feet) above ground level at the site or located near or at a public use airport must notify the federal aviation administration and register with the federal communications commission as required by 47 CFR part 17.

(2) An amateur radio service station antenna structure may be erected at heights and dimensions sufficient to accommodate amateur radio service communications. Regulation of an amateur radio service station antenna structure by a local unit of government must not preclude amateur radio service communications. Rather, it must reasonably accommodate those communications and must constitute the minimum practicable regulation to accomplish the local unit of government's legitimate purpose.

(3) To obtain information about the regulation of amateur radio service station antenna structures, a person may contact any advisory board that is jointly established by the Michigan section of the American radio relay league and 1 or more state organizations representing local units of government.

History: Add. 2014, Act 556, Imd. Eff. Jan. 15, 2014.

125.3205d Zoning ordinance; prohibition or regulation of commemorative signs.

Sec. 205d. (1) A zoning ordinance shall not regulate or prohibit a sign that is located on or within a building and that commemorates any of the following:

(a) Any of the following who die in the line of duty:

(i) Police officers.

(ii) Firefighters.

(iii) Medical first responders.

(iv) Members of the United States Armed Forces.

(v) Corrections officers.

(b) Veterans of the United States Armed Forces.

(2) As used in this section, "medical first responder" means that term as defined in section 20906 of the public health code, 1978 PA 368, MCL 333.20906.

History: Add. 2018, Act 506, Eff. Mar. 28, 2019.

125.3206 Residential use of property; adult foster care facilities; family, group child care homes, or qualified residential treatment programs.

Sec. 206. (1) Except as provided in subsection (2), each of the following is a residential use of property for the purposes of zoning and a permitted use in all residential zones and is not subject to a special use or conditional use permit or procedure different from those required for other dwellings of similar density in the same zone:

(a) A state licensed residential facility.

(b) A facility in use as described in section 3(4)(k) of the adult foster care facility licensing act, 1979 PA 218, MCL 400.703.

(c) A qualified residential treatment program that provides services for 10 or fewer individuals.

(2) Subsection (1) does not apply to adult foster care facilities licensed by a state agency for care and treatment of persons released from or assigned to adult correctional institutions.

(3) For a county or township, a family child care home is a residential use of property for the purposes of zoning and a permitted use in all residential zones and is not subject to a special use or conditional use permit or procedure different from those required for other dwellings of similar density in the same zone.

(4) For a county or township, a group child care home shall be issued a special use permit, conditional use permit, or other similar permit if the group child care home meets all of the following standards:

(a) Is located not closer than 1,500 feet to any of the following:

(i) Another licensed group child care home.

(ii) An adult foster care small group home or large group home licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737.

(iii) A facility offering substance use disorder services to 7 or more people that is licensed under part 62 of the public health code, 1978 PA 368, MCL 333.6230 to 333.6251.

(iv) A community correction center, resident home, halfway house, or other similar facility that houses an inmate population under the jurisdiction of the department of corrections.

(b) Has appropriate fencing for the safety of the children in the group child care home as determined by the local unit of government.

(c) Maintains the property consistent with the visible characteristics of the neighborhood.

(d) Does not exceed 16 hours of operation during a 24-hour period. The local unit of government may limit but not prohibit the operation of a group child care home between the hours of 10 p.m. and 6 a.m.

(e) Meets regulations, if any, governing signs used by a group child care home to identify itself.

(f) Meets regulations, if any, requiring a group child care home operator to provide off-street parking accommodations for his or her employees.

(5) For a city or village, a group child care home may be issued a special use permit, conditional use permit, or other similar permit.

(6) A licensed or registered family or group child care home that operated before March 30, 1989 is not required to comply with this section.

(7) This section does not prohibit a local unit of government from inspecting a family or group child care home for the home's compliance with and enforcing the local unit of government's zoning ordinance. For a county or township, an ordinance shall not be more restrictive for a family or group child care home than 1973 PA 116, MCL 722.111 to 722.128.

(8) The establishment of any of the facilities listed under subsection (4)(a) after issuance of a special use permit, conditional use permit, or other similar permit pertaining to the group child care home does not affect renewal of that permit.

(9) This section does not prohibit a local unit of government from issuing a special use permit, conditional use permit, or other similar permit to a licensed group child care home that does not meet the standards listed under subsection (4).

(10) The distances required under subsection (4)(a) shall be measured along a road, street, or place maintained by this state or a local unit of government and generally open to the public as a matter of right for the purpose of vehicular traffic, not including an alley.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2007, Act 219, Imd. Eff. Dec. 28, 2007;—Am. 2018, Act 513, Eff. Mar. 28, 2019;—Am. 2022, Act 206, Imd. Eff. Oct. 7, 2022.

125.3207 Zoning ordinance or decision; effect as prohibiting establishment of land use.

Sec. 207. A zoning ordinance or zoning decision shall not have the effect of totally prohibiting the establishment of a land use within a local unit of government in the presence of a demonstrated need for that land use within either that local unit of government or the surrounding area within the state, unless a location within the local unit of government does not exist where the use may be appropriately located or the use is unlawful.

History: 2006, Act 110, Eff. July 1, 2006.

125.3208 Nonconforming uses or structures.

Sec. 208. (1) If the use of a dwelling, building, or structure or of the land is lawful at the time of enactment of a zoning ordinance or an amendment to a zoning ordinance, then that use may be continued although the use does not conform to the zoning ordinance or amendment. This subsection is intended to codify the law as it existed before July 1, 2006 in section 16(1) of the former county zoning act, 1943 PA 183, section 16(1) of the former township zoning act, 1943 PA 184, and section 3a(1) of the former city and village zoning act, 1921 PA 207, as they applied to counties, townships, and cities and villages, respectively, and shall be construed as a continuation of those laws and not as a new enactment.

(2) The legislative body may provide in a zoning ordinance for the completion, resumption, restoration, reconstruction, extension, or substitution of nonconforming uses or structures upon terms and conditions provided in the zoning ordinance. In establishing terms for the completion, resumption, restoration, reconstruction, extension, or substitution of nonconforming uses or structures, different classes of nonconforming uses may be established in the zoning ordinance with different requirements applicable to each class.

(3) The legislative body may acquire, by purchase, condemnation, or otherwise, private property or an interest in private property for the removal of nonconforming uses and structures. The legislative body may

provide that the cost and expense of acquiring private property may be paid from general funds or assessed to a special district in accordance with the applicable statutory provisions relating to the creation and operation of special assessment districts for public improvements in local units of government. Property acquired under this subsection by a city or village shall not be used for public housing.

(4) The elimination of the nonconforming uses and structures in a zoning district is declared to be for a public purpose and for a public use. The legislative body may institute proceedings for condemnation of nonconforming uses and structures under 1911 PA 149, MCL 213.21 to 213.25.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008;—Am. 2010, Act 330, Imd. Eff. Dec. 21, 2010.

125.3209 Township zoning ordinance not subject to county ordinance, rule, or regulation.

Sec. 209. Except as otherwise provided under this act, a township that has enacted a zoning ordinance under this act is not subject to an ordinance, rule, or regulation adopted by a county under this act.

History: 2006, Act 110, Eff. July 1, 2006.

125.3210 Ordinance as controlling.

Sec. 210. Except as otherwise provided under this act, an ordinance adopted under this act shall be controlling in the case of any inconsistencies between the ordinance and an ordinance adopted under any other law.

History: 2006, Act 110, Eff. July 1, 2006.

125.3211 Appointment of zoning commission by legislative body; purposes; petition; initiation of action to formulate zoning commission and zoning ordinance.

Sec. 211. (1) The legislative body may proceed with the adoption of a zoning ordinance containing land development regulations and establishing zoning districts under this act upon appointment of a zoning commission as provided in section 301.

(2) The legislative body may appoint a zoning commission for purposes of formulating a zoning ordinance on its own initiative or upon receipt of a petition requesting that action as provided under subsection (3).

(3) Upon receipt of a petition signed by a number of qualified and registered voters residing in the zoning jurisdiction equal to not less than 8% of the total votes cast within the zoning jurisdiction for all candidates for governor at the last preceding general election at which a governor was elected, filed with the clerk of the local unit of government requesting the legislative body to appoint a zoning commission for purposes of formulating a zoning ordinance, the legislative body, at the next regular meeting, may initiate action to formulate a zoning commission and zoning ordinance under this act.

History: 2006, Act 110, Eff. July 1, 2006.

ARTICLE III ZONING COMMISSION

125.3301 Zoning commission; creation; transfer of powers to planning commission; resolution; membership; terms; successors; vacancy; limitation; removal of member; officers.

Sec. 301. (1) Each local unit of government in which the legislative body exercises authority under this act shall create a zoning commission unless 1 of the following applies:

(a) A county zoning commission created under former 1943 PA 183, a township zoning board created under former 1943 PA 184, or a city or village zoning commission created under former 1921 PA 207 was in existence in the local unit of government as of June 30, 2006. Unless abolished by the legislative body, that existing board or commission shall continue as and exercise the powers and perform the duties of a zoning commission under this act, subject to a transfer of power under subsection (2).

(b) A planning commission was, as of June 30, 2006, in existence in the local unit of government and pursuant to the applicable planning enabling act exercising the powers and performing the duties of a county zoning commission created under former 1943 PA 185, of a township zoning board created under former 1943 PA 184, or of a city or village zoning commission created under former 1921 PA 207. Unless abolished by the legislative body, that existing planning commission shall continue and exercise the powers and perform the duties of a zoning commission under this act.

(c) The local unit of government has created a planning commission on or after July 1, 2006 and transferred the powers and duties of a zoning commission to the planning commission pursuant to the applicable planning enabling act.

(2) Except as otherwise provided under this subsection, if the powers and duties of the zoning commission have been transferred to the planning commission as provided by law, the planning commission shall function as the zoning commission of the local unit of government. By July 1, 2011, the legislative body shall transfer the powers and duties of the zoning commission to the planning commission. Except as provided under this subsection, beginning July 1, 2011, a zoning commission's powers or duties under this act or an ordinance adopted under this act shall only be exercised or performed by a planning commission.

(3) If a zoning commission is created on or after July 1, 2006, the zoning commission shall be created by resolution and be composed of not fewer than 5 or more than 11 members appointed by the legislative body. Not fewer than 2 of the members of a county zoning commission shall be recommended for membership by the legislative bodies of townships that are, or will be, subject to the county zoning ordinance. This requirement may be met as vacancies occur on a county zoning commission that existed on June 30, 2006.

(4) The members of a zoning commission shall be selected upon the basis of the members' qualifications and fitness to serve as members of a zoning commission.

(5) The first zoning commission appointed under subsection (3) shall be divided as nearly as possible into 3 equal groups, with terms of each group as follows:

- (a) One group for 1 year.
- (b) One group for 2 years.
- (c) One group for 3 years.

(6) Upon the expiration of the terms of the members first appointed, successors shall be appointed in the same manner for terms of 3 years each. A member of the zoning commission shall serve until a successor is appointed and has been qualified.

(7) A vacancy on a zoning commission shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(8) An elected officer of a local unit of government shall not serve simultaneously as a member or an employee of the zoning commission of that local unit of government, except that 1 member of the legislative body may be a member of the zoning commission.

(9) The legislative body shall provide for the removal of a member of a zoning commission for misfeasance, malfeasance, or nonfeasance in office upon written charges and after public hearing.

(10) A zoning commission shall elect from its members a chairperson, a secretary, and other officers and establish such committees it considers necessary and may engage any employees, including for technical assistance, it requires. The election of officers shall be held not less than once in every 2-year period.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008.

125.3302 Expenses; compensation.

Sec. 302. Members of the zoning commission may be reimbursed for reasonable expenses actually incurred in the discharge of their duties and may receive compensation as fixed by the legislative body.

History: 2006, Act 110, Eff. July 1, 2006.

125.3303 Planning expert; compensation.

Sec. 303. (1) With the approval of the legislative body, the zoning commission may engage the services of a planning expert. Compensation for the planning expert shall be paid by the legislative body.

(2) The zoning commission shall consider any information and recommendations furnished by appropriate public officials, departments, or agencies.

History: 2006, Act 110, Eff. July 1, 2006.

125.3304 Regular meetings; notice; zoning commission subject to open meetings act.

Sec. 304. The zoning commission shall hold a minimum of 2 regular meetings annually, giving notice of the time and place by publication in a newspaper of general circulation in the zoning jurisdiction. Notice shall be given not less than 15 days before the meeting. The zoning commission is subject to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

History: 2006, Act 110, Eff. July 1, 2006.

125.3305 Recommendations of zoning commission; adoption and filing.

Sec. 305. The zoning commission shall adopt and file with the legislative body the following recommendations:

- (a) A zoning plan for the areas subject to zoning of the local unit of government.
- (b) The establishment of zoning districts, including the boundaries of those districts.
- (c) The text of a zoning ordinance with the necessary maps and zoning regulations to be adopted for a

zoning district or the zoning jurisdiction as a whole.

(d) The manner of administering and enforcing the zoning ordinance.

History: 2006, Act 110, Eff. July 1, 2006.

125.3306 Recommendations of zoning commission; submission to legislative body; public hearing; notice; examination of proposed text and maps.

Sec. 306. (1) Before submitting its recommendations for a proposed zoning ordinance to the legislative body, the zoning commission shall hold at least 1 public hearing. Notice of the time and place of the public hearing shall be given in the same manner as required under section 103(1) for the initial adoption of a zoning ordinance or section 202 for any other subsequent zoning text or map amendments.

(2) Notice of the time and place of the public hearing shall also be given by mail to each electric, gas, and pipeline public utility company, each telecommunication service provider, each railroad operating within the district or zone affected, and the airport manager of each airport, that registers its name and mailing address with the clerk of the legislative body for the purpose of receiving the notice of public hearing.

(3) The notices required under this section shall include the places and times at which the proposed text and any maps of the zoning ordinance may be examined.

History: 2006, Act 110, Eff. July 1, 2006.

125.3307 Review and recommendations after hearing; submission to township; submission to coordinating zoning committee; waiver of right to review.

Sec. 307. (1) Following the hearing required in section 306, a township shall submit for review and recommendation the proposed zoning ordinance, including any zoning maps, to the zoning commission of the county in which the township is situated if a county zoning commission has been appointed as provided under this act.

(2) If there is not a county zoning commission or county planning commission, the proposed zoning ordinance shall be submitted to the coordinating zoning committee. The coordinating zoning committee shall be composed of either 3 or 5 members appointed by the legislative body of the county for the purpose of coordinating the zoning ordinances proposed for adoption under this act with the zoning ordinances of a township, city, or village having a common boundary with the township.

(3) The county will have waived its right for review and recommendation of an ordinance if the recommendation of the county zoning commission, planning commission, or coordinating zoning committee has not been received by the township within 30 days from the date the proposed ordinance is received by the county.

(4) The legislative body of a county by resolution may waive its right to review township ordinances and amendments under this section.

History: 2006, Act 110, Eff. July 1, 2006.

125.3308 Summary of public hearing comments; transmission to legislative body by zoning commission; report.

Sec. 308. (1) Following the required public hearing under section 306, the zoning commission shall transmit a summary of comments received at the hearing and its proposed zoning ordinance, including any zoning maps and recommendations, to the legislative body of the local unit of government.

(2) Following the enactment of the zoning ordinance, the zoning commission shall at least once per year prepare for the legislative body a report on the administration and enforcement of the zoning ordinance and recommendations for amendments or supplements to the ordinance.

History: 2006, Act 110, Eff. July 1, 2006.

ARTICLE IV

ZONING ADOPTION AND ENFORCEMENT

125.3401 Public hearing to be held by legislative body; conditions; notice; approval of zoning ordinance and amendments by legislative body; filing; notice of ordinance adoption; notice mailed to airport manager; information to be included in notice; other statutory requirements superseded.

Sec. 401. (1) After receiving a zoning ordinance under section 308(1) or an amendment under sections 202 and 308(1), the legislative body may hold a public hearing if it considers it necessary or if otherwise required.

(2) Notice of a public hearing to be held by the legislative body shall be given in the same manner as required under section 103(1) for the initial adoption of a zoning ordinance or section 202 for any zoning text

or map amendments.

(3) The legislative body may refer any proposed amendments to the zoning commission for consideration and comment within a time specified by the legislative body.

(4) The legislative body shall grant a hearing on a proposed ordinance provision to an interested property owner who requests a hearing by certified mail, addressed to the clerk of the legislative body. A hearing under this subsection is not subject to the requirements of section 103, except that notice of the hearing shall be given to the interested property owner in the manner required in section 103(3) and (4).

(5) After any proceedings under subsections (1) to (4), the legislative body shall consider and vote upon the adoption of a zoning ordinance, with or without amendments. A zoning ordinance and any amendments shall be approved by a majority vote of the members of the legislative body.

(6) Except as otherwise provided under section 402, a zoning ordinance shall take effect upon the expiration of 7 days after publication as required by subsection (7) or at such later date after publication as may be specified by the legislative body or charter.

(7) Following adoption of a zoning ordinance or any subsequent amendments by the legislative body, the zoning ordinance or subsequent amendments shall be filed with the clerk of the legislative body, and a notice of ordinance adoption shall be published in a newspaper of general circulation in the local unit of government within 15 days after adoption.

(8) A copy of the notice required under subsection (7) shall be mailed to the airport manager of an airport entitled to notice under section 306.

(9) The notice required under this section shall include all of the following information:

(a) In the case of a newly adopted zoning ordinance, the following statement: "A zoning ordinance regulating the development and use of land has been adopted by the legislative body of the [county, township, city, or village] of _____."

(b) In the case of an amendment to an existing zoning ordinance, either a summary of the regulatory effect of the amendment, including the geographic area affected, or the text of the amendment.

(c) The effective date of the ordinance or amendment.

(d) The place where and time when a copy of the ordinance or amendment may be purchased or inspected.

(10) The filing and publication requirements under this section supersede any other statutory or charter requirements relating to the filing and publication of county, township, city, or village ordinances.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008.

125.3402 Notice of intent to file petition.

Sec. 402. (1) Within 7 days after publication of a zoning ordinance under section 401, a registered elector residing in the zoning jurisdiction of a county or township may file with the clerk of the legislative body a notice of intent to file a petition under this section.

(2) If a notice of intent is filed under subsection (1), the petitioner shall have 30 days following the publication of the zoning ordinance to file a petition signed by a number of registered electors residing in the zoning jurisdiction not less than 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, with the clerk of the legislative body requesting the submission of a zoning ordinance or part of a zoning ordinance to the electors residing in the zoning jurisdiction for their approval.

(3) Upon the filing of a notice of intent under subsection (1), the zoning ordinance or part of the zoning ordinance adopted by the legislative body shall not take effect until 1 of the following occurs:

(a) The expiration of 30 days after publication of the ordinance, if a petition is not filed within that time.

(b) If a petition is filed within 30 days after publication of the ordinance, the clerk of the legislative body determines that the petition is inadequate.

(c) If a petition is filed within 30 days after publication of the ordinance, the clerk of the legislative body determines that the petition is adequate and the ordinance or part of the ordinance is approved by a majority of the registered electors residing in the zoning jurisdiction voting on the petition at the next regular election or at any special election called for that purpose. The legislative body shall provide the manner of submitting the zoning ordinance or part of the zoning ordinance to the electors for their approval or rejection and determining the result of the election.

(4) A petition and an election under this section are subject to the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

History: 2006, Act 110, Eff. July 1, 2006.

125.3403 Amendment to zoning ordinance; filing of protest petition; vote.

Sec. 403. (1) An amendment to a zoning ordinance by a city or village is subject to a protest petition as

required by this subsection. If a protest petition is filed, approval of the amendment to the zoning ordinance shall require a 2/3 vote of the legislative body, unless a larger vote, not to exceed a 3/4 vote, is required by ordinance or charter. The protest petition shall be presented to the legislative body of the city or village before final legislative action on the amendment and shall be signed by 1 or more of the following:

- (a) The owners of at least 20% of the area of land included in the proposed change.
 - (b) The owners of at least 20% of the area of land included within an area extending outward 100 feet from any point on the boundary of the land included in the proposed change.
- (2) Publicly owned land shall be excluded in calculating the 20% land area requirement under subsection (1).

History: 2006, Act 110, Eff. July 1, 2006.

125.3404 Interim zoning ordinance.

Sec. 404. (1) To protect the public health, safety, and general welfare of the inhabitants and the lands and resources of a local unit of government during the period required for the preparation and enactment of an initial zoning ordinance under this act, the legislative body of a local unit of government may direct the zoning commission to submit, within a specified period of time, recommendations as to the provisions of an interim zoning ordinance.

(2) Before presenting its recommendations to the legislative body, the zoning commission of a township shall submit the interim zoning ordinance, or an amendment to the ordinance, to the county zoning commission or the coordinating zoning committee, for the purpose of coordinating the zoning ordinance with the zoning ordinances of a township, city, or village having a common boundary with the township. The ordinance shall be considered approved 15 days from the date the zoning ordinance is submitted to the legislative body.

(3) After approval, the legislative body, by majority vote of its members, may give the interim ordinance or amendments to the interim ordinance immediate effect. An interim ordinance and subsequent amendments shall be filed and published as required under section 401.

(4) The interim ordinance, including any amendments, shall be limited to 1 year from the effective date and to not more than 2 years of renewal thereafter by resolution of the local unit of government.

History: 2006, Act 110, Eff. July 1, 2006.

125.3405 Use and development of land as condition to rezoning.

Sec. 405. (1) An owner of land may voluntarily offer in writing, and the local unit of government may approve, certain use and development of the land as a condition to a rezoning of the land or an amendment to a zoning map.

(2) In approving the conditions under subsection (1), the local unit of government may establish a time period during which the conditions apply to the land. Except for an extension under subsection (4), if the conditions are not satisfied within the time specified under this subsection, the land shall revert to its former zoning classification.

(3) The local government shall not add to or alter the conditions approved under subsection (1) during the time period specified under subsection (2) of this section.

(4) The time period specified under subsection (2) may be extended upon the application of the landowner and approval of the local unit of government.

(5) A local unit of government shall not require a landowner to offer conditions as a requirement for rezoning. The lack of an offer under subsection (1) shall not otherwise affect a landowner's rights under this act, the ordinances of the local unit of government, or any other laws of this state.

History: 2006, Act 110, Eff. July 1, 2006.

125.3406 Zoning permits; fees; effect of delinquent payment of fine, costs, or assessment.

Sec. 406. (1) The legislative body may charge reasonable fees for zoning permits as a condition of granting authority to use, erect, alter, or locate dwellings, buildings, and structures, including tents and recreational vehicles, within a zoning district established under this act.

(2) A zoning ordinance adopted by a city may provide that a person is not eligible to apply for a rezoning, site plan approval, special land use approval, planned unit development approval, variance, or other zoning authorization if the person is delinquent in paying a civil fine, costs, or a justice system assessment imposed by an administrative hearings bureau established in that city pursuant to section 4q of the home rule city act, 1909 PA 279, MCL 117.4q.

(3) A zoning ordinance provision adopted under subsection (2) does not apply to an applicant for a zoning authorization if the applicant became the owner of the property by foreclosure or by taking a deed in lieu of

foreclosure and is 1 of the following:

(a) A government-sponsored enterprise. As used in this subdivision, "government-sponsored enterprise" means that term as defined in 2 USC 622(8), or the Michigan state housing development authority created under the state housing development authority act of 1966, 1966 PA 346, MCL 125.1401 to 125.1499c.

(b) A financial institution. As used in this subdivision, "financial institution" means that term as defined in section 4(c) of the Michigan strategic fund act, 1984 PA 270, MCL 125.2004.

(c) A mortgage servicer, as that term is defined in section 1a of the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651a, that is subject to the mortgage brokers, lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to 445.1684.

(d) A credit union service organization that is organized under the laws of this state or the United States.

(4) Subsection (2) does not apply to a zoning authorization if the authorization will correct, in whole or in part, the blight violation that was the subject of the delinquent payment referred to in subsection (2).

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2013, Act 189, Eff. Mar. 14, 2014.

125.3407 Certain violations as nuisance per se.

Sec. 407. Except as otherwise provided by law, a use of land or a dwelling, building, or structure, including a tent or recreational vehicle, used, erected, altered, razed, or converted in violation of a zoning ordinance or regulation adopted under this act is a nuisance per se. The court shall order the nuisance abated, and the owner or agent in charge of the dwelling, building, structure, tent, recreational vehicle, or land is liable for maintaining a nuisance per se. The legislative body shall in the zoning ordinance enacted under this act designate the proper official or officials who shall administer and enforce the zoning ordinance and do 1 of the following for each violation of the zoning ordinance:

(a) Impose a penalty for the violation.

(b) Designate the violation as a municipal civil infraction and impose a civil fine for the violation.

(c) Designate the violation as a blight violation and impose a civil fine or other sanction authorized by law. This subdivision applies only to a city that establishes an administrative hearings bureau pursuant to section 4q of the home rule city act, 1909 PA 279, MCL 117.4q.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008.

ARTICLE V SPECIAL ZONING PROVISIONS

125.3501 Submission and approval of site plan; procedures and requirements.

Sec. 501. (1) The local unit of government may require the submission and approval of a site plan before authorization of a land use or activity regulated by a zoning ordinance. The zoning ordinance shall specify the body or official responsible for reviewing site plans and granting approval.

(2) If a zoning ordinance requires site plan approval, the site plan, as approved, shall become 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 is agreed to by the landowner and the body or official that initially approved the site plan.

(3) The procedures and requirements for the submission and approval of site plans shall be specified in the zoning ordinance. Site plan submission, review, and approval shall be required for special land uses and planned unit developments.

(4) A decision rejecting, approving, or conditionally approving a site plan shall be based upon requirements and standards contained in the zoning ordinance, other statutorily authorized and properly adopted local unit of government planning documents, other applicable ordinances, and state and federal statutes.

(5) A site plan shall be approved if it contains the information required by the zoning ordinance and is in compliance with the conditions imposed under the zoning ordinance, other statutorily authorized and properly adopted local unit of government planning documents, other applicable ordinances, and state and federal statutes.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008.

125.3502 Special land uses; review and approval; application; notice of request; public hearing; incorporation of decision in statement of findings and conclusions.

Sec. 502. (1) The legislative body may provide in a zoning ordinance for special land uses in a zoning district. A special land use shall be subject to the review and approval of the zoning commission, the planning commission, an official charged with administering the zoning ordinance, or the legislative body as required

by the zoning ordinance. The zoning ordinance shall specify all of the following:

(a) The special land uses and activities eligible for approval and the body or official responsible for reviewing and granting approval.

(b) The requirements and standards for approving a request for a special land use.

(c) The procedures and supporting materials required for the application, review, and approval of a special land use.

(2) Upon receipt of an application for a special land use which requires a discretionary decision, the local unit of government shall provide notice of the request as required under section 103. The notice shall 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.

(3) At the initiative of the body or official responsible for approving the special land use or upon the request of the applicant, 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, a public hearing shall be held before a discretionary decision is made on the special land use request.

(4) The body or official designated to review and approve special land uses may deny, approve, or approve with conditions a request for special land use approval. The decision on a special land use shall be incorporated in a statement of findings and conclusions relative to the special land use which specifies the basis for the decision and any conditions imposed.

History: 2006, Act 110, Eff. July 1, 2006.

125.3503 Planned unit development.

Sec. 503. (1) As used in this section, "planned unit development" includes such terms as cluster zoning, planned development, community unit plan, and planned residential development and other terminology denoting zoning requirements designed to accomplish the 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.

(2) The legislative body may establish planned unit development requirements in a zoning ordinance that permit flexibility in the regulation of land development, encourage innovation in land use and variety in design, layout, and type of structures constructed, achieve economy and efficiency in the use of land, natural resources, energy, and the provision of public services and utilities, encourage useful open space, and provide better housing, employment, and shopping opportunities particularly suited to the needs of the residents of this state. The review and approval of planned unit developments shall be by the zoning commission, an individual charged with administration of the zoning ordinance, or the legislative body, as specified in the zoning ordinance.

(3) Within a land development project designated as a planned unit development, regulations relating to the use of land, including, but not limited to, permitted uses, lot sizes, setbacks, height limits, required facilities, buffers, open space areas, and land use density, shall be determined in accordance with the planned unit development regulations specified in the zoning ordinance. The planned unit development regulations need not be uniform with regard to each type of land use if equitable procedures recognizing due process principles and avoiding arbitrary decisions are followed in making regulatory decisions. Unless explicitly prohibited by the planned unit development regulations, if requested by the landowner, a local unit of government may approve a planned unit development with open space that is not contiguous with the rest of the planned unit development.

(4) The planned unit development regulations established by the local unit of government shall specify all of the following:

(a) The body or official responsible for the review and approval of planned unit development requests.

(b) The conditions that create planned unit development eligibility, the participants in the review process, and the requirements and standards upon which applicants will be reviewed and approval granted.

(c) The procedures required for application, review, and approval.

(5) Following receipt of a request to approve a planned unit development, the body or official responsible for the review and approval shall hold at least 1 public hearing on the request. A zoning ordinance may provide for preapplication conferences before submission of a planned unit development request and the submission of preliminary site plans before the public hearing. Notification of the public hearing shall be given in the same manner as required under section 103.

(6) Within a reasonable time following the public hearing, the body or official responsible for approving planned unit developments shall meet for final consideration of the request and deny, approve, or approve with conditions the request. The body or official shall prepare a report stating its conclusions, its decision, the

basis for its decision, and any conditions imposed on an affirmative decision.

(7) If amendment of a zoning ordinance is required by the planned unit development regulations of a zoning ordinance, the requirements of this act for amendment of a zoning ordinance shall be followed, except that the hearing and notice required by this section shall fulfill the public hearing and notice requirements of section 306.

(8) If the planned unit development regulations of a zoning ordinance do not require amendment of the zoning ordinance to authorize a planned unit development, the body or official responsible for review and approval shall approve, approve with conditions, or deny a request.

(9) Final approval may be granted on each phase of a multiphased planned unit development if each phase contains the necessary components to insure protection of natural resources and the health, safety, and welfare of the users of the planned unit development and the residents of the surrounding area.

(10) In establishing planned unit development requirements, a local unit of government may incorporate by reference other ordinances or statutes which regulate land development. The planned unit development regulations contained in zoning ordinances shall encourage complementary relationships between zoning regulations and other regulations affecting the development of land.

History: 2006, Act 110, Eff. July 1, 2006.

125.3504 Special land uses; regulations and standards; compliance; conditions; record of conditions.

Sec. 504. (1) If the zoning ordinance authorizes the consideration and approval of special land uses or planned unit developments under section 502 or 503 or otherwise provides for discretionary decisions, the regulations and standards upon which those decisions are made shall be specified in the zoning ordinance.

(2) The standards shall be consistent with and promote the intent and purpose of the zoning ordinance and shall insure that the land use or activity authorized shall be compatible with adjacent uses of land, the natural environment, and the capacities of public services and facilities affected by the land use. The standards shall also insure that the land use or activity is consistent with the public health, safety, and welfare of the local unit of government.

(3) A request for approval of a land use or activity shall be approved if the request is in compliance with the standards stated in the zoning ordinance, the conditions imposed under the zoning ordinance, other applicable ordinances, and state and federal statutes.

(4) Reasonable conditions may be required with the approval of a special land use, planned unit development, or other land uses or activities permitted by discretionary decision. The conditions may include conditions necessary to insure that public services and facilities affected by a proposed land use or activity will be capable of accommodating increased service and facility loads caused by the land use or activity, to protect the natural environment and conserve natural resources and energy, to insure compatibility with adjacent uses of land, and to promote the use of land in a socially and economically desirable manner. Conditions imposed shall meet all of the following requirements:

(a) Be designed to protect natural resources, the health, safety, and welfare, as well as the social and economic well-being, of those who will use the land use or activity under consideration, residents and landowners immediately adjacent to the proposed land use or activity, and the community as a whole.

(b) Be related to the valid exercise of the police power and purposes which are affected by the proposed use or activity.

(c) Be necessary to meet the intent and purpose of the zoning requirements, be related to the standards established in the zoning ordinance for the land use or activity under consideration, and be necessary to insure compliance with those standards.

(5) The conditions imposed with respect to the approval of a land use or activity shall be recorded in the record of the approval action and remain unchanged except upon the mutual consent of the approving authority and the landowner. The approving authority shall maintain a record of conditions which are changed.

History: 2006, Act 110, Eff. July 1, 2006.

125.3505 Performance guarantee.

Sec. 505. (1) To ensure compliance with a zoning ordinance and any conditions imposed under a zoning ordinance, a local unit of government may require that a cash deposit, certified check, irrevocable letter of credit, or surety bond acceptable to the local unit of government covering the estimated cost of improvements be deposited with the clerk of the legislative body to insure faithful completion of the improvements. The performance guarantee shall be deposited at the time of the issuance of the permit authorizing the activity or project. The local unit of government may not require the deposit of the performance guarantee until it is

prepared to issue the permit. The local unit of government shall establish procedures by which a rebate of any cash deposits in reasonable proportion to the ratio of work completed on the required improvements shall be made as work progresses.

(2) This section shall not be applicable to improvements for which a cash deposit, certified check, irrevocable bank letter of credit, or surety bond has been deposited under the land division act, 1967 PA 288, MCL 560.101 to 560.293.

History: 2006, Act 110, Eff. July 1, 2006.

125.3506 Open space preservation.

Sec. 506. (1) Subject to subsection (4) and section 402, a qualified local unit of government shall provide in its zoning ordinance that land zoned for residential development may be developed, at the option of the landowner, with the same number of dwelling units on a smaller portion of the land than specified in the zoning ordinance, but not more than 50% for a county or township or 80% for a city or village, that could otherwise be developed, as determined by the local unit of government under existing ordinances, laws, and rules on the entire land area, if all of the following apply:

(a) The land is zoned at a density equivalent to 2 or fewer dwelling units per acre or, if the land is served by a public sewer system, 3 or fewer dwelling units per acre.

(b) A percentage of the land area specified in the zoning ordinance, but not less than 50% for a county or township or 20% for a city or village, will remain perpetually in an undeveloped state by means of a conservation easement, plat dedication, restrictive covenant, or other legal means that runs with the land, as prescribed by the zoning ordinance.

(c) The development does not depend upon the extension of a public sewer or public water supply system, unless development of the land without the exercise of the option provided by this subsection would also depend upon the extension.

(d) The option provided under this subsection has not previously been exercised with respect to that land.

(2) After a landowner exercises the option provided under subsection (1), the land may be rezoned accordingly.

(3) The development of land under subsection (1) is subject to other applicable ordinances, laws, and rules, including rules relating to suitability of groundwater for on-site water supply for land not served by public water and rules relating to suitability of soils for on-site sewage disposal for land not served by public sewers.

(4) Subsection (1) does not apply to a qualified local unit of government if both of the following apply:

(a) On or before October 1, 2001, the local unit of government had in effect a zoning ordinance provision providing for both of the following:

(i) Land zoned for residential development may be developed, at the option of the landowner, with the same number of dwelling units on a smaller portion of the land that, as determined by the local unit of government, could otherwise be developed under existing ordinances, laws, and rules on the entire land area.

(ii) If the landowner exercises the option provided by subparagraph (i), the portion of the land not developed will remain perpetually in an undeveloped state by means of a conservation easement, plat dedication, restrictive covenant, or other legal means that runs with the land.

(b) On or before December 15, 2001, a landowner exercised the option provided under the zoning ordinance provision referred to in subdivision (a) with at least 50% of the land area for a county or township or 20% of the land area for a city or village, remaining perpetually in an undeveloped state.

(5) The zoning ordinance provisions required by subsection (1) shall be cited as the "open space preservation" provisions of the zoning ordinance.

(6) As used in this section, "qualified local unit of government" means a county, township, city, or village that meets all of the following requirements:

(a) Has adopted a zoning ordinance.

(b) Has a population of 1,800 or more.

(c) Has land that is not developed and that is zoned for residential development at a density described in subsection (1)(a).

History: 2006, Act 110, Eff. July 1, 2006.

125.3507 Purchase of development rights program; adoption of ordinance; limitations; agreements with other local governments.

Sec. 507. (1) As used in this section and sections 508 and 509, "PDR program" means a purchase of development rights program.

(2) The legislative body may adopt a development rights ordinance limited to the establishment, financing, and administration of a PDR program, as provided under this section and sections 508 and 509. The PDR

program may be used only to protect agricultural land and other eligible land. This section and sections 508 and 509 do not expand the condemnation authority of a local unit of government as otherwise provided for in this act.

(3) A PDR program shall not acquire development rights by condemnation. This section and sections 508 and 509 do not limit any authority that may otherwise be provided by law for a local unit of government to protect natural resources, preserve open space, provide for historic preservation, or accomplish similar purposes.

(4) A legislative body shall not establish, finance, or administer a PDR program unless the legislative body adopts a development rights ordinance. If the local unit of government has a zoning ordinance, the development rights ordinance may be adopted as part of the zoning ordinance under the procedures for a zoning ordinance under this act. A local unit of government may adopt a development rights ordinance in the same manner as required for a zoning ordinance.

(5) A legislative body may promote and enter into agreements with other local units of government for the purchase of development rights, including cross-jurisdictional purchases, subject to applicable development rights ordinances.

History: 2006, Act 110, Eff. July 1, 2006.

125.3508 PDR program; purchase of development rights by local unit of government; conveyance; notice; requirements for certain purchases.

Sec. 508. (1) A development rights ordinance shall provide for a PDR program. Under a PDR program, the local unit of government purchases development rights, but only from a willing landowner. A development rights ordinance providing for a PDR program shall specify all of the following:

(a) The public benefits that the local unit of government may seek through the purchase of development rights.

(b) The procedure by which the local unit of government or a landowner may by application initiate purchase of development rights.

(c) The development rights authorized to be purchased subject to a determination under standards and procedures required by subdivision (d).

(d) The standards and procedures to be followed by the legislative body for approving, modifying, or rejecting an application to purchase development rights, including the determination of all the following:

(i) Whether to purchase development rights.

(ii) Which development rights to purchase.

(iii) The intensity of development permitted after the purchase on the land from which the development rights are purchased.

(iv) The price at which development rights will be purchased and the method of payment.

(v) The procedure for ensuring that the purchase or sale of development rights is legally fixed so as to run with the land.

(e) The circumstances under which an owner of land from which development rights have been purchased under a PDR program may repurchase those development rights and how the proceeds of the purchase are to be used by the local unit of government.

(2) If the local unit of government has a zoning ordinance, the purchase of development rights shall be consistent with the plan referred to in section 203 upon which the zoning ordinance is based.

(3) Development rights acquired under a PDR program may be conveyed only as provided under subsection (1)(e).

(4) A county shall notify each township, city, or village, and a township shall notify each village, in which is located land from which development rights are proposed to be purchased of the receipt of an application for the purchase of development rights and shall notify each township, city, or village of the disposition of that application.

(5) A county shall not purchase development rights under a development rights ordinance from land subject to a township, city, or village zoning ordinance unless all of the following requirements are met:

(a) The development rights ordinance provisions for the PDR program are consistent with the plan upon which the township, city, or village zoning is based.

(b) The legislative body of the township, city, or village adopts a resolution authorizing the PDR program to apply in the township, city, or village.

(c) As part of the application procedure for the specific proposed purchase of development rights, the township, city, or village provides the county with written approval of the purchase.

History: 2006, Act 110, Eff. July 1, 2006.

125.3509 PDR program; financing sources; bonds or notes; special assessments.

Sec. 509. (1) A PDR program may be financed through 1 or more of the following sources:

- (a) General appropriations by the local unit of government.
- (b) Proceeds from the sale of development rights by the local unit of government subject to section 508(3).
- (c) Grants.
- (d) Donations.
- (e) Bonds or notes issued under subsections (2) to (5).
- (f) General fund revenue.
- (g) Special assessments under subsection (6).
- (h) Other sources approved by the legislative body and permitted by law.

(2) The legislative body may borrow money and issue bonds or notes under the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821, subject to the general debt limit applicable to the local unit of government. The bonds or notes may be revenue bonds or notes, general obligation limited tax bonds or notes, or, subject to section 6 of article IX of the state constitution of 1963, general obligation unlimited tax bonds or notes.

(3) The legislative body may secure bonds or notes issued under this section by mortgage, assignment, or pledge of property, including, but not limited to, anticipated tax collections, revenue sharing payments, or special assessment revenues. A pledge made by the legislative body is valid and binding from the time the pledge is made. The pledge immediately shall be subject to the lien of the pledge without a filing or further act. The lien of the pledge shall be valid and binding as against parties having claims in tort, contract, or otherwise against the local unit of government, irrespective of whether the parties have notice of the lien. Filing of the resolution, the trust agreement, or another instrument by which a pledge is created is not required.

(4) Bonds or notes issued under this section are exempt from all taxation in this state except inheritance and transfer taxes, and the interest on the bonds or notes is exempt from all taxation in this state.

(5) The bonds and notes issued under this section may be invested in by the state treasurer and all other public officers, state agencies, and political subdivisions, insurance companies, financial institutions, investment companies, and fiduciaries and trustees and may be deposited with and received by the state treasurer and all other public officers and the agencies and political subdivisions of this state for all purposes for which the deposit of bonds or notes is authorized. The authority granted by this section is in addition to all other authority granted by law.

(6) A development rights ordinance may authorize the legislative body to finance a PDR program by special assessments. In addition to meeting the requirements of section 508, the development rights ordinance shall include in the procedure to approve and establish a special assessment district both of the following:

(a) The requirement that there be filed with the legislative body a petition containing all of the following:

(i) A description of the development rights to be purchased, including a legal description of the land from which the purchase is to be made.

(ii) A description of the proposed special assessment district.

(iii) The signatures of the owners of at least 66% of the land area in the proposed special assessment district.

(iv) The amount and duration of the proposed special assessments.

(b) The requirement that the legislative body specify how the proposed purchase of development rights will specially benefit the land in the proposed special assessment district.

History: 2006, Act 110, Eff. July 1, 2006.

125.3513 Biofuel production facility as permitted use of property; requirements; special land use approval; application; hearing; conditions; applicability of subsections (2) to (5); authority of local unit of government; definitions.

Sec. 513. (1) A biofuel production facility with an annual production capacity of not more than 100,000 gallons of biofuel is a permitted use of property and is not subject to special land use approval if all of the following requirements are met:

(a) The biofuel production facility is located on a farm.

(b) The biofuel production facility is located not less than 100 feet from the boundary of any contiguous property under different ownership than the property on which the biofuel production facility is located and meets all applicable setback requirements of the zoning ordinance.

(c) On an annual basis, not less than 75% of the feedstock for the biofuel production facility is produced on the farm where the biofuel production facility is located, and not less than 75% of the biofuel or another

product or by-product produced by the biofuel production facility is used on that farm.

(2) Subject to subsections (6) and (7), each of the following is a permitted use of property if it receives special land use approval under subsections (3) to (5):

(a) A biofuel production facility with an annual production capacity of not more than 100,000 gallons of biofuel that meets the requirements of subsection (1)(a) and (b) but that does not meet the requirements of subsection (1)(c).

(b) A biofuel production facility with an annual production capacity of more than 100,000 gallons but not more than 500,000 gallons of biofuel that meets the requirements of subsection (1)(a) and (b).

(3) An application for special land use approval for a biofuel production facility described in subsection (2) shall include all of the following:

(a) A site plan as required under section 501, including a map of the property and existing and proposed buildings and other facilities.

(b) A description of the process to be used to produce biofuel.

(c) The number of gallons of biofuel anticipated to be produced annually.

(d) An emergency access and fire protection plan that has been reviewed and approved by the appropriate responding police and fire departments.

(e) For an ethanol production facility that will produce more than 10,000 proof gallons annually, completed United States department of the treasury, alcohol and tobacco tax and trade bureau, forms 5000.29 (environmental information) and 5000.30 (supplemental information on water quality considerations under 33 USC 1341(a)), or successor forms, required to implement regulations under the national environmental policy act of 1969, 42 USC 4321 to 4347, and the federal water pollution control act, 33 USC 1251 to 1387.

(f) Information that demonstrates that the biofuel production facility will comply with the requirements of subsections (2) and (5).

(g) Any additional information requested by the body or official responsible for granting special land use approval and relevant to compliance with a zoning ordinance provision described in section 502(1) or 504.

(4) A local unit of government shall hold a hearing on an application for special land use approval under subsection (2) not more than 60 days after the application is filed. For the purposes of this section, the notice required under section 502(2) shall provide notice of the hearing, rather than notice of a right to request a hearing.

(5) Special land use approval of a biofuel production facility described in subsection (2) shall be made expressly conditional on the facility's meeting all of the following requirements before the facility begins operation and no additional requirements:

(a) Buildings, facilities, and equipment used in the production or storage of biofuel comply with local, state, and federal laws.

(b) The owner or operator of the biofuel production facility provides the local unit of government with proof that all necessary approvals have been obtained from the department of environmental quality and other state and federal agencies that are involved in permitting any of the following aspects of biofuel production:

(i) Air pollution emissions.

(ii) Transportation of biofuel or additional products resulting from biofuel production.

(iii) Use or reuse of additional products resulting from biofuel production.

(iv) Storage of raw materials, fuel, or additional products used in, or resulting from, biofuel production.

(c) The biofuel production facility includes sufficient storage for both of the following:

(i) Raw materials and fuel.

(ii) Additional products resulting from biofuel production or the capacity to dispose of additional products through land application, livestock consumption, sale, or other legal use.

(6) Subsections (2) to (5) do not apply to a biofuel production facility if the zoning ordinance provides different criteria for special land use approval of a biofuel production facility located on a farm. An amendment to a zoning ordinance adopted only to provide such criteria is not subject to a protest petition under section 403.

(7) A local unit of government may authorize a biofuel production facility described in subsection (2) as a permitted use of property not subject to a special land use approval.

(8) This section does not affect the authority of a local unit of government to prohibit or authorize biofuel production facilities that are not located on farms.

(9) As used in this section:

(a) "Biofuel" means any renewable fuel product, whether solid, liquid, or gas, that is derived from recently living organisms or their metabolic by-products and meets applicable quality standards, including, but not limited to, ethanol and biodiesel. Biofuel does not include methane or any other fuel product from an anaerobic digester.

(b) "Ethanol" means a substance that meets the ASTM international standard in effect on the effective date of this section as the D-4806 specification for denatured fuel grade ethanol for blending with gasoline.

(c) "Farm" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(d) "Proof gallon" means that term as defined in 27 CFR 19.907.

History: Add. 2011, Act 97, Imd. Eff. July 19, 2011.

125.3514 Wireless communications equipment as permitted use of property; application for special land use approval; approval or denial; authorization by local unit of government; definitions; applicability to small cell wireless communications facilities.

Sec. 514. (1) Wireless communications equipment is a permitted use of property and is not subject to special land use approval or any other approval under this act if all of the following requirements are met:

(a) The wireless communications equipment will be collocated on an existing wireless communications support structure or in an existing equipment compound.

(b) The existing wireless communications support structure or existing equipment compound is in compliance with the local unit of government's zoning ordinance or was approved by the appropriate zoning body or official for the local unit of government.

(c) The proposed collocation will not do any of the following:

(i) Increase the overall height of the wireless communications support structure by more than 20 feet or 10% of its original height, whichever is greater.

(ii) Increase the width of the wireless communications support structure by more than the minimum necessary to permit collocation.

(iii) Increase the area of the existing equipment compound to greater than 2,500 square feet.

(d) The proposed collocation complies with the terms and conditions of any previous final approval of the wireless communications support structure or equipment compound by the appropriate zoning body or official of the local unit of government.

(2) Wireless communications equipment that meets the requirements of subsection (1)(a) and (b) but does not meet the requirements of subsection (1)(c) or (d) is a permitted use of property if it receives special land use approval under subsections (3) to (6).

(3) An application for special land use approval of wireless communications equipment described in subsection (2) shall include all of the following:

(a) A site plan as required under section 501, including a map of the property and existing and proposed buildings and other facilities.

(b) Any additional relevant information that is specifically required by a zoning ordinance provision described in section 502(1) or 504.

(4) After an application for a special land use approval is filed with the body or official responsible for approving special land uses, the body or official shall determine whether the application is administratively complete. Unless the body or official proceeds as provided under subsection (5), the application shall be considered to be administratively complete when the body or official makes that determination or 14 business days after the body or official receives the application, whichever is first.

(5) If, before the expiration of the 14-day period under subsection (4), the body or official responsible for approving special land uses notifies the applicant that the application is not administratively complete, specifying the information necessary to make the application administratively complete, or notifies the applicant that a fee required to accompany the application has not been paid, specifying the amount due, the running of the 14-day period under subsection (4) is tolled until the applicant submits to the body or official the specified information or fee amount due. The notice shall be given in writing or by electronic notification. A fee required to accompany any application shall not exceed the local unit of government's actual, reasonable costs to review and process the application or \$1,000.00, whichever is less.

(6) The body or official responsible for approving special land uses shall approve or deny the application not more than 60 days after the application is considered to be administratively complete. If the body or official fails to timely approve or deny the application, the application shall be considered approved and the body or official shall be considered to have made any determination required for approval.

(7) Special land use approval of wireless communications equipment described in subsection (2) may be made expressly conditional only on the wireless communications equipment's meeting the requirements of other local ordinances and of federal and state laws before the wireless communications equipment begins operation.

(8) If a local unit of government requires special land use approval for wireless communications equipment that does not meet the requirements of subsection (1)(a) or for a wireless communications support structure,

subsections (4) to (6) apply to the special land use approval process, except that the period for approval or denial under subsection (6) is 90 days.

(9) A local unit of government may authorize wireless communications equipment as a permitted use of property not subject to a special land use approval.

(10) This section does not apply to an activity or use that is regulated by the small cell wireless communications facilities deployment act.

(11) As used in this section:

(a) "Colocate" means to place or install wireless communications equipment on an existing wireless communications support structure or in an existing equipment compound. "Collocation" has a corresponding meaning.

(b) "Equipment compound" means an area surrounding or adjacent to the base of a wireless communications support structure and within which wireless communications equipment is located.

(c) "Wireless communications equipment" means the set of equipment and network components used in the provision of wireless communications services, including, but not limited to, antennas, transmitters, receivers, base stations, equipment shelters, cabinets, emergency generators, power supply cables, and coaxial and fiber optic cables, but excluding wireless communications support structures.

(d) "Wireless communications support structure" means a structure that is designed to support, or is capable of supporting, wireless communications equipment, including a monopole, self-supporting lattice tower, guyed tower, water tower, utility pole, or building.

History: Add. 2012, Act 143, Imd. Eff. May 24, 2012;—Am. 2018, Act 366, Eff. Mar. 12, 2019.

ARTICLE VI ZONING BOARD OF APPEALS

125.3601 Zoning board of appeals; appointment; procedural rules; membership; composition; alternate member; per diem; expenses; removal; terms of office; vacancies; conduct of meetings; conflict of interest.

Sec. 601. (1) A zoning ordinance shall create a zoning board of appeals. A zoning board of appeals in existence on June 30, 2006 may continue to act as the zoning board of appeals subject to this act. Subject to subsection (2), members of a zoning board of appeals shall be appointed by majority vote of the members of the legislative body serving.

(2) The legislative body of a city or village may act as a zoning board of appeals and may establish rules to govern its procedure as a zoning board of appeals.

(3) A zoning board of appeals shall be composed of not fewer than 5 members if the local unit of government has a population of 5,000 or more or not fewer than 3 members if the local unit of government has a population of less than 5,000. The number of members of the zoning board of appeals shall be specified in the zoning ordinance.

(4) In a county or township, 1 of the regular members of the zoning board of appeals shall be a member of the zoning commission, or of the planning commission if the planning commission is functioning as the zoning commission. In a city or village, 1 of the regular members of the zoning board of appeals may be a member of the zoning commission, or of the planning commission if the planning commission is functioning as the zoning commission, unless the legislative body acts as the zoning board of appeals under subsection (2). A decision made by a city or village zoning board of appeals before February 29, 2008 is not invalidated by the failure of the zoning board of appeals to include a member of the city or village zoning commission or planning commission, as was required by this subsection before that date.

(5) The remaining regular members of a zoning board of appeals, and any alternate members under subsection (7), shall be selected from the electors of the local unit of government residing within the zoning jurisdiction of that local unit of government or, in the case of a county, residing within the county but outside of any city or village. The members selected shall be representative of the population distribution and of the various interests present in the local unit of government.

(6) Subject to subsection (2), 1 regular or alternate member of a zoning board of appeals may be a member of the legislative body. Such a member shall not serve as chairperson of the zoning board of appeals. An employee or contractor of the legislative body may not serve as a member of the zoning board of appeals.

(7) The legislative body may appoint to the zoning board of appeals not more than 2 alternate members for the same term as regular members. An alternate member may be called as specified in the zoning ordinance to serve as a member of the zoning board of appeals in the absence of a regular member if the regular member will be unable to attend 1 or more meetings. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which the member has abstained for reasons of conflict of

interest. The alternate member appointed shall serve in the case until a final decision is made. An alternate member serving on the zoning board of appeals has the same voting rights as a regular member.

(8) A member of the zoning board of appeals may be paid a reasonable per diem and reimbursed for expenses actually incurred in the discharge of his or her duties.

(9) A member of the zoning board of appeals may be removed by the legislative body for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. A member shall disqualify himself or herself from a vote in which the member has a conflict of interest. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest constitutes malfeasance in office.

(10) The terms of office for an appointed member of the zoning board of appeals shall be 3 years, except for a member serving because of his or her membership on the zoning commission or legislative body, whose term shall be limited to the time he or she is a member of that body. When members are first appointed, appointments may be for less than 3 years to provide for staggered terms. A successor shall be appointed not more than 1 month after the term of the preceding member has expired.

(11) A vacancy on the zoning board of appeals shall be filled for the remainder of the unexpired term in the same manner as the original appointment.

(12) A zoning board of appeals shall not conduct business unless a majority of the regular members of the zoning board of appeals are present.

(13) A member of the zoning board of appeals who is also a member of the zoning commission, the planning commission, or the legislative body shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the zoning commission, the planning commission, or the legislative body. However, the member may consider and vote on other unrelated matters involving the same property.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008;—Am. 2010, Act 330, Imd. Eff. Dec. 21, 2010.

125.3602 Meetings; call of the chairperson; oaths; attendance of witnesses; record of proceedings.

Sec. 602. (1) Meetings of the zoning board of appeals shall be held at the call of the chairperson and at other times as the zoning board of appeals in its rules of procedure may specify. The chairperson or, in his or her absence, the acting chairperson may administer oaths and compel the attendance of witnesses.

(2) The zoning board of appeals shall maintain a record of its proceedings which shall be filed in the office of the clerk of the legislative body.

History: 2006, Act 110, Eff. July 1, 2006.

125.3603 Zoning board of appeals; powers; concurring vote of majority of members.

Sec. 603. (1) The zoning board of appeals shall hear and decide questions that arise in the administration of the zoning ordinance, including the interpretation of the zoning maps, and may adopt rules to govern its procedures sitting as a zoning board of appeals. The zoning board of appeals shall 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 adopted under this act. It shall 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 adopted under this act. 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.

(2) The concurring vote of a majority of the members of the zoning board of appeals is necessary to reverse an order, requirement, decision, or determination of the administrative official or body, to decide in favor of the applicant on a matter upon which the zoning board of appeals is required to pass under the zoning ordinance, or to grant a variance in the zoning ordinance.

History: 2006, Act 110, Eff. July 1, 2006.

125.3604 Zoning board of appeals; procedures.

Sec. 604. (1) An appeal to the zoning board of appeals may be taken by a person aggrieved or by an officer, department, board, or bureau of this state or the local unit of government. In addition, a variance in the zoning ordinance may be applied for and granted under section 4 of the uniform condemnation procedures act, 1980 PA 87, MCL 213.54, and as provided under this act. The zoning board of appeals shall state the grounds of any determination made by the board.

(2) An appeal under this section shall be taken within such time as prescribed by the zoning board of

appeals by general rule, by filing with the body or officer from whom the appeal is taken and with the zoning board of appeals a notice of appeal specifying the grounds for the appeal. The body or officer from whom the appeal is taken shall immediately transmit to the zoning board of appeals all of the papers constituting the record upon which the action appealed from was taken.

(3) An appeal to the zoning board of appeals stays all proceedings in furtherance of the action appealed. However, if the body or officer from whom the appeal is taken certifies to the zoning board of appeals after the notice of appeal is filed that, by reason of facts stated in the certificate, a stay would in the opinion of the body or officer cause imminent peril to life or property, proceedings may be stayed only by a restraining order issued by the zoning board of appeals or a circuit court.

(4) Following receipt of a written request for a variance, the zoning board of appeals shall fix a reasonable time for the hearing of the request and give notice as provided in section 103.

(5) If the zoning board of appeals receives a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, the zoning board of appeals shall conduct a public hearing on the request. Notice shall be given as required under section 103. However, if the request does not involve a specific parcel of property, notice need only be published as provided in section 103(1) and given to the person making the request as provided in section 103(3).

(6) At a hearing under subsection (5), a party may appear personally or by agent or attorney. The zoning board of appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit.

(7) If there are practical difficulties for nonuse variances as provided in subsection (8) or unnecessary hardship for use variances as provided in subsection (9) in the way of carrying out the strict letter of the zoning ordinance, the zoning board of appeals may grant a variance in accordance with this section, so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice done. The ordinance shall establish procedures for the review and standards for approval of all types of variances. The zoning board of appeals may impose conditions as otherwise allowed under this act.

(8) The zoning board of appeals of all local units of government shall have the authority to grant nonuse variances relating to the construction, structural changes, or alteration of buildings or structures related to dimensional requirements of the zoning ordinance or to any other nonuse-related standard in the ordinance.

(9) The authority to grant variances from uses of land is limited to the following:

(a) Cities and villages.

(b) Townships and counties that as of February 15, 2006 had an ordinance that uses the phrase "use variance" or "variances from uses of land" to expressly authorize the granting of use variances by the zoning board of appeals.

(c) Townships and counties that granted a use variance before February 15, 2006.

(10) The authority granted under subsection (9) is subject to the zoning ordinance of the local unit of government otherwise being in compliance with subsection (7) and having an ordinance provision that requires a vote of 2/3 of the members of the zoning board of appeals to approve a use variance.

(11) The authority to grant use variances under subsection (9) is permissive, and this section does not require a local unit of government to adopt ordinance provisions to allow for the granting of use variances.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008.

125.3605 Decision as final; appeal to circuit court.

Sec. 605. The decision of the zoning board of appeals shall be final. A party aggrieved by the decision may appeal to the circuit court for the county in which the property is located as provided under section 606.

History: 2006, Act 110, Eff. July 1, 2006.

125.3606 Circuit court; review; duties.

Sec. 606. (1) Any party aggrieved by a decision of the zoning board of appeals may appeal to the circuit court for the county in which the property is located. The circuit court shall review the record and decision to ensure that the decision meets all of the following requirements:

(a) Complies with the constitution and laws of the state.

(b) Is based upon proper procedure.

(c) Is supported by competent, material, and substantial evidence on the record.

(d) Represents the reasonable exercise of discretion granted by law to the zoning board of appeals.

(2) If the court finds the record inadequate to make the review required by this section or finds that additional material evidence exists that with good reason was not presented, the court shall order further proceedings on conditions that the court considers proper. The zoning board of appeals may modify its findings and decision as a result of the new proceedings or may affirm the original decision. The

supplementary record and decision shall be filed with the court. The court may affirm, reverse, or modify the decision.

(3) 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.

(b) Twenty-one days after the zoning board of appeals approves the minutes of its decision.

(4) The court may affirm, reverse, or modify the decision of the zoning board of appeals. The court may make other orders as justice requires.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008;—Am. 2010, Act 330, Imd. Eff. Dec. 21, 2010.

125.3607 Party aggrieved by order, determination, or decision; circuit court review; proper party.

Sec. 607. (1) Any party aggrieved by any order, determination, or decision of any officer, agency, board, commission, zoning board of appeals, or legislative body of any local unit of government made under section 208 may obtain a review in the circuit court for the county in which the property is located. The review shall be in accordance with section 606.

(2) Any person required to be given notice under section 604(4) of the appeal of any order, determination, or decision made under section 208 shall be a proper party to any action for review under this section.

History: 2006, Act 110, Eff. July 1, 2006.

ARTICLE VII
STATUTORY COMPLIANCE AND REPEALER

125.3701 Compliance with open meetings act; availability of writings to public.

Sec. 701. (1) All meetings subject to this act shall be conducted in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275.

(2) A writing prepared, owned, used, in the possession of, or retained as required by this act shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: 2006, Act 110, Eff. July 1, 2006.

125.3702 Repeal of MCL 125.581 to 125.600, 125.201 to 125.240, and 125.271 to 125.310; construction of section.

Sec. 702. (1) The following acts and parts of acts are repealed:

(a) The city and village zoning act, 1921 PA 207, MCL 125.581 to 125.600.

(b) The county zoning act, 1943 PA 183, MCL 125.201 to 125.240.

(c) The township zoning act, 1943 PA 184, MCL 125.271 to 125.310.

(2) This section does not alter, limit, void, affect, or abate any pending litigation, administrative proceeding, or appeal that existed on June 30, 2006 or any ordinance, order, permit, or decision that was based on the acts repealed under subsection (1). The zoning ordinance need not be readopted but is subject to the requirements of this act, including, but not limited to, the amendment procedures set forth in this act.

History: 2006, Act 110, Eff. July 1, 2006;—Am. 2008, Act 12, Imd. Eff. Feb. 29, 2008.

Article 6: Administration

Division 3: Zoning Board of Appeals

SECTION 6.30 ESTABLISHMENT

A Zoning Board of Appeals (ZBA), hereinafter in this Article sometimes referred to as the "board," is hereby established pursuant to the [Michigan Zoning Enabling Act \(Public Act 110 of 2006\)](#), as amended. The terms of the statute shall prevail, except as modified by the terms of the Code of Ordinances and the Charter which are not in direct conflict thereto.

SECTION 6.31 MEMBERSHIP, QUORUM, AND ALTERNATE MEMBERS

- a. The ZBA shall consist of seven (7) members appointed by majority vote of the members of the City Commission. In the first instance the City Commission shall appoint two (2) members for a one-year term, two (2) members for a two-year term, and three (3) members for a three-year term, respectively. Thereafter, each member shall be appointed to hold office for the full three (3) year term. A vacancy on the ZBA shall be filled by the City Commission for the remainder of the unexpired term in the same manner as the original appointment.
- b. Five (5) members shall constitute a quorum.
- c. The City Commission may, if desired, appoint two (2) alternate members for three (3) year terms.
 1. One (1) or both alternate members may be called by the chairman, or in the absence of the chairman by the vice-chairman, or, in the absence of the vice-chairman, by the secretary to sit as a regular member of the ZBA if a regular member is absent from or unable to attend one (1) or more meetings.
 2. An alternate member may also be called to serve in the place of a regular member for the purpose of reaching a decision on a case in which the regular member has abstained for reasons of conflict of interest.
 3. The alternate member having been appointed shall serve in the case until a final decision has been made. While serving, the alternate member shall have the same voting rights as a regular member of the ZBA.
- d. A member who has abstained for reasons of conflict of interest shall take no part in the discussion or voting of the hearing. An abstaining member may remain in attendance in the audience during the hearing.

SECTION 6.32 QUALIFICATIONS OF MEMBERS

- a. Members of the board shall be residents of the City.
 1. At least one (1) member shall be knowledgeable in the construction of buildings.
 2. One (1) of the regular members or an alternate member of the ZBA may be a member of the City Commission, but that member shall not serve as chairperson of

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- the ZBA.
3. One (1) of the regular members of the ZBA shall be a member of the Planning Commission.
 - b. An employee or contractor of the City Commission may not serve as a member of the ZBA.

SECTION 6.33 PROCEDURAL MATTERS, PUBLIC HEARINGS, AND VOTE REQUIRED

- a. The ZBA is hereby authorized and empowered to establish its own rules of procedure and to elect its own officers subject to the provision that it shall, at its organizational meeting, elect a chairperson, a vice-chairman, and a secretary. In establishing rules of procedure and election of officers, a majority of those in attendance and constituting a quorum shall be required.
- b. Prior to the ZBA making a decision in a specific case, the ZBA shall conduct a public hearing. Written notice of the hearing shall be in accordance with [Section 6.23, Public Hearings](#).
- c. A concurring vote of a majority of the members of the ZBA shall be necessary to reverse an order, requirement, decision, or determination of an administrative official or body, or to decide in favor of the applicant, a matter upon which the board is required to pass under this Article or other Articles of the Code of Ordinances, except that a concurring vote of two-thirds (2/3) of the members of the ZBA shall be necessary to grant a variance from uses of land permitted in this Ordinance.
- d. A member of the ZBA who a member of the Planning Commission or the City Commission is also shall not participate in a public hearing on or vote on the same matter that the member voted on as a member of the Planning Commission or the City Commission. However, the member may consider and vote on other unrelated matters involving the same property.

SECTION 6.34 JURISDICTION, DUTIES AND RESPONSIBILITIES

The ZBA shall have all jurisdiction and powers granted by the [Michigan Zoning Enabling Act \(Public Act 110 of 2006\)](#), as amended, and the following specific jurisdiction and powers:

- a. To hear and decide appeals from and review any order, requirements, permit, decision, or determination made by the Building Official or any other administrative official or body in enforcing the provisions of this Ordinance.
 1. The ZBA may reverse or affirm, wholly or in part, or may modify the order, requirement, permit, decision, or determination as in the ZBA's opinion ought to be made in the premises, and to that end shall have all the powers of the administrative official or body from whom the appeal is taken.

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- b. To hear and decide matters referred to it or upon which it is required to pass under any ordinance adopted pursuant to [Michigan Zoning Enabling Act 110 of 2006](#), as amended, of the state, or by other Articles of the Code of Ordinances.
- c. If there are practical difficulties (for nonuse variances) or unnecessary hardship (for use variances) in the way of carrying out the strict letter of the Zoning Ordinance, the ZBA may grant a variance in accordance with this section, so that the spirit of the Zoning Ordinance is observed, public safety secured, and substantial justice done.
 - 1. The ZBA may impose conditions and vary or modify any of its rules, regulations or provisions relating to the construction, structural changes in, equipment, or alteration of buildings or structures or the uses of land, buildings, or structures, so that the spirit of the particular Article shall be preserved, public safety secured, and substantial justice done.
- d. The ZBA may grant dimensional or other site plan related variances for Special Land Uses, however the ZBA shall not have the power to reverse or modify the Planning Commission decision to approve or deny a Special Land Use permit nor grant variances to any Special Land Use standards or conditions of Special Land Use approval.
- e. The ZBA shall not have the authority to hear any appeal from a decision on an application for a Planned Unit Development.
- f. The ZBA shall have the authority to hear and decide on a request for a use variance.

SECTION 6.35 GRANTING OF VARIANCES

The ZBA shall prescribe appropriate conditions and safeguards to carry out the requirements of this subsection and shall not grant any variance unless it shall have made a finding of fact based upon the evidence as presented to it in each specific case as specified below:

- a. Dimensional Variance. The ZBA may grant a dimensional variance only upon finding that practical difficulties exist. A dimensional variance is a variance from any dimensional standard or requirement of this Ordinance, such as, but not limited to, a deviation from density, height, bulk, setback, or parking, landscaping and sign standards and requirements. A finding of practical difficulties shall require demonstration by the applicant of all of the following:
 - 1. Strict compliance with restrictions governing area, setback, frontage, height, bulk, density, or other "non-use" matters will unreasonably prevent the owner from using the property for a permitted purpose or will be unnecessarily burdensome. The variance will do substantial justice to the applicant, as well as to other property owners.
 - 2. A lesser variance than that requested will not give substantial relief to the applicant and/or be consistent with justice to other property owners.
 - 3. The need for the variance is due to unique circumstances or conditions peculiar to

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- the property and not generally applicable in the area or to other properties in the same zoning district such as exceptional narrowness, shallowness, shape, topography, or area.
4. The problem and resulting need for the variance has not been self-created by the applicant and/ or the applicant's predecessor may or may not be considered depending upon whether the practical difficulty would have existed regardless of the action.
 5. The variance will not alter the essential character of the area. In determining whether the effect the variance will have on the character of the area, the established type and pattern of land uses in the area and the natural characteristics of the site and surrounding area will be considered.
 6. The granting of the variance will not materially impair the intent and purpose of this Ordinance.
 7. A simple majority of the ZBA membership is required to grant a dimensional variance.
- b. Use Variance. The ZBA may grant a use variance only upon a finding that an unnecessary hardship exists. A use variance is a variance that permits a use that is otherwise not provided for in a zoning district. A finding of an unnecessary hardship shall require demonstration by the applicant of all of the following:
1. The property cannot be reasonably used for any purpose permitted in the zoning district without the variance. There must be financial proof of the applicant's inability to realize any reasonable return; speculation or a qualitative assessment is inadequate.
 2. The need for the variance is due to unique circumstances peculiar to the property and not generally applicable in the area or to other properties in the same zoning district. The applicant must prove that there are certain features or conditions of the land that are not generally applicable throughout the zone and that these features make it impossible to earn a reasonable return without some adjustment. In those situations where the difficulty is shared by others, the board may find that relief should be accomplished by an amendment to the Zoning Ordinance, not a variance.
 3. The problem and resulting need for the variance has not been self-created by the applicant and/ or the applicant's predecessors.
 4. The variance will not alter the essential character of the area. In determining whether the effect the variance will have on the character of the area, the established type and pattern of land uses in the area and the natural characteristics of the site and surrounding area will be considered.
 5. A two-thirds (2/3) majority of the ZBA membership is required to grant a use variance.

SECTION 6.36 APPEALS

- a. An appeal to the ZBA, as provided in [Section 6.34, Jurisdiction, Duties and Responsibilities](#), shall be taken within such reasonable time as shall be prescribed by

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the ZBA by general rule, and if no general rule has been adopted, within sixty (60) days of the decision, requirements or determination of an administrative official or body, by the filing with the Zoning Administrator and with the board of a notice of appeal specifying the grounds thereof.

- b. The Zoning Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. Filing with the secretary of the ZBA the notice of appeal, or, in the absence of the secretary filing of the same with the chairperson or presiding officer, shall satisfy the provision of this section that a copy of the notice of appeal be filed with the board.
- c. An appeal stays all proceedings in furtherance of the action appealed from, unless the Building Official certifies to the ZBA after the notice of appeal, shall have been filed with the Official, that by reason of facts stated in the certificate, a stay would in the Official's opinion cause imminent peril to life or property, in which case proceedings shall not be stayed other than by a restraining order which may be granted by the board or by the circuit court for the county, on application, on notice to the Building Official and on due cause shown.
- d. The ZBA shall fix a reasonable time for the hearing of the appeal.
- e. Any interested party may appear and be heard at the hearing in person or by an agent or attorney.
- f. The ZBA shall not have the power to alter or change the zoning district classification of any property.

SECTION 6.37 FLOOD HAZARD AREA OVERLAY ZONE MAPPING DISPUTES

- a. Where disputes arise as to the location of the flood hazard area boundary or the limits of the floodway, the Zoning Board of Appeals shall resolve the dispute and establish the boundary location.
- b. In all cases, the decision of the Zoning Board of Appeals shall be based upon the most current floodplain studies issued by the Federal Insurance Administration.
- c. Where Federal Insurance Administration information is not available, the best available floodplain information should be utilized.
- d. Where a dispute involves an allegation that the boundary is incorrect as mapped and Federal Insurance Administration floodplain studies are being questioned, the Zoning Board of Appeals shall modify the boundary of the flood hazard area or the floodway only upon receipt of an official letter of map amendment issued by the Federal Insurance Administration.

- e. All parties to a map dispute may submit technical evidence to the Zoning Board of Appeals.

SECTION 6.38 DECISIONS

- a. Matters coming before the ZBA shall be decided within a reasonable time.
- b. An appeal from a decision of the ZBA shall be filed within whichever the following deadlines comes first:
 - 1. Thirty (30) days after the ZBA issues its decision in writing by the chairperson, if there is a chairperson, or signed by members of the ZBA, if there is no chairperson.
 - 2. Twenty-one (21) days after the ZBA approves the minutes of its decision.
 - 3. The ZBA shall maintain a record of proceedings.
 - 4. Decisions of the ZBA may be appealed by an aggrieved person to the circuit court.

SECTION 6.39 ORDERS, VALIDITY, AND LIMITATIONS

No order of the ZBA permitting the erection or alteration of buildings shall be valid for a period longer than one (1) year unless a building permit for such erection or alteration is obtained within such period and such erection or alteration is commenced and proceeds to a completion in accordance with the terms of such permit.

SECTION 6.40 COURT APPEALS

An appeal from a decision of a ZBA shall be filed within thirty (30) days after the ZBA issues its decision in writing signed by the chairperson or within twenty-one (21) days after the ZBA approves the minutes of its decision.

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ROBERT'S RULES

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Introduction

- Published in 1876, *Robert's Rules of Order* was originally written by U.S. Army Brigadier General Henry Robert
- Robert wanted to write a manual for parliamentary procedure after presiding over a church meeting for which he felt he was woefully unprepared
- In his work, Robert discovered that people from different regions of the country have different ideas of parliamentary procedure, resulting in organizations focused more on the procedure and less on the substance of their work
- As a result of his *Rules of Order*, people could belong to many organizations without needing to learn new procedural rules at every new organization

• *Robert's Rules of Order* are based on those used in the U.S. House of Representatives (*Jefferson's Manual*), but adapted for smaller organizations and societies

NOTE: "Parliamentary law" is not actual law in the sense that it is not codified or used in a court proceeding; instead, "parliamentary law" and *Robert's Rules of Order* should be seen less as binding on an assembly and more as a set of strong guidelines an assembly can mold to its own needs

Robert intended his *Rules of Order* to be adopted by organizations, assemblies, and clubs to use as their parliamentary, or procedural, authority; following the procedures for adopting bylaws then, these *Rules of Order* become binding upon the organization to establish its procedural rules of order

Preliminaries

Kinds of Assemblies

Deliberative assemblies convene meetings; they are groups of people who come together with a common agenda: **the meeting**; the different types of deliberative assemblies are:

- **Mass meetings:** Open and unorganized meetings with a purpose defined by the meetings' sponsors (e.g., political or social rallies)
- **Conventions:** Meetings of delegates chosen to enact or debate decisions affecting a large group of people (e.g., the meetings by political parties to choose their nomination for the U.S. presidency)
 - **Legislative bodies:** Lawmaking bodies chosen by a group of people for a fixed period of time (e.g., Congress)
- **Boards:** Administrative or managerial bodies with an assigned, specific function (e.g., a Board of Trustees of a university)
- **Committees:** Bodies that are usually very small and subordinate to an assembly or board (e.g., a congressional committee)

Mass Meetings

A special kind of meeting that is publicized and open to the public is a **mass meeting**; it usually takes on a "town hall meeting" format; to prepare for a mass meeting, the sponsors must:

- Choose who they prefer as a chairperson
- Choose who calls the meeting to order and nominates the chairperson
- Choose who should be nominated for secretary and by whom
- Decide the rules that will be proposed for the meeting
- Choose who makes the initial speech opening the meeting and explaining its purpose

To conduct business, the assembly at the meeting should adopt **resolutions**; these resolutions may be drafted before the meeting, or the assembly can appoint a committee to draft the resolutions at the meeting

Conventions

A **convention** is an assembly of **delegates**, or representatives of the assembly or constituency, sitting as a single body and acting in the name of the larger group; an assembly may call a convention any time the bylaws authorize the assembly to call one; the bylaws that govern a convention should outline:

- The authorization for a periodic convention
- The powers and duties for the convention and the delegates
- The quorum for the convention
- The voting members
- Qualifications for the delegates and alternates and their election
- Anything the convention needs for its organization and operation

A **caucus** is a meeting the delegates hold before the actual convention where they decide how they will deal with certain procedural matters of the convention. Planning a convention requires a lot of preparation that usually starts months in advance; the established society should create committees for the convention to help organize the convention; usually the organization needs:

- A **credentials committee**, which performs the following duties:
 - Distributes information for attending the convention
 - Distributes information for being a delegate
 - Examines all applications to verify the eligibility of the members who wish to be delegates
 - Compiles the list of eligible members
 - Arranges for registration to take place at the convention, usually starting one or two days before the convention starts
 - Handles registration
 - Prepares the committee's first report
 - Continues until the convention ends
- A **committee on standing rules**, which drafts rules for the convention, including:
 - Parliamentary rules
 - Rules for conducting business at the convention
 - Any other non-parliamentary rules that the committee feels should be added
- A **program committee**, which plans the schedule of meetings, proceedings, and convention events
- A **convention arrangements committee**, which makes the arrangements for the site of the convention and any hotel arrangements for the members
- A **resolutions committee**, which screens all the main motions that are about to come in front of the convention

Legislative Bodies

A **legislative body** is a constitutionally established public body of representatives chosen by an electorate for a fixed term of office, charged with making laws; each legislative body is specific to its own laws, procedural rules, and decorum; therefore, *Robert's Rules of Order* does not delve into the parliamentary procedure of legislative bodies

Boards & Officers

A **board** is the administrative and judicial body of the assembly with the power to act on behalf of the organization; usually the members of the board are elected or appointed

Officers are leaders of an assembly and are usually elected; there are three main officers that are essential to an organized group, especially a large group:

- **President or chairperson**, although if the president is acting as the chairperson for the meeting, he/she is referred to as the chairperson
- **Vice president**, who serves as the president or chairperson, if needed
- **Secretary**, who keeps the minutes (or notes) of each meeting and is the records keeper for the assembly

The president or chairperson has many important duties in running the meetings and the assembly; they include:

- Opening a meeting on time and calling it to order
- Announcing the order of business and keeping to the stated order
- Recognizing members to speak on the floor
- Keeping tabs on voting procedures and announcing the legitimate results of each vote
- Refusing to honor frivolous motions and ensuring that all members act with decorum
- Handling business in the most efficient way possible
- Deciding questions of order and responding to members' questions about parliamentary procedure
- Authenticating his/her signature
- Properly adjourning the meeting



Committees

Committees, or bodies of one or more elected or appointed people who consider, investigate, or take action on specific matters, can take many forms:

- **Ordinary committee:** A small number of people to whom the assembly gives a specific task, such as the Senate Judiciary Committee, which is charged with vetting Supreme Court candidates
 - **Committee of the whole:** A whole assembly charged with acting as an ordinary committee; this is usually used only in larger legislative assemblies, when a motion to commit passes
 - **Standing committee:** Committees that continue to exist, such as a committee created by the bylaws
 - **Special committees:** Committees that stop existing when they finish the task they were assigned; an example is the Watergate committee, which investigated President Nixon
- Committees are created through the bylaws or through a main motion; there are various methods of appointing or electing members to the committee:
- **Election by ballot**, where the assembly nominates the committee members and votes according to a ballot

- **Nominations from the floor**, where the assembly nominates the committee members without the secrecy of ballot voting
 - **Nominations by the chair**, if the chairperson has special knowledge and judgment about the committee's tasks
 - **Appoint by adoption of a motion naming members to a committee**, where the assembly adopts a motion to create the committee that includes the committee members' names
- Committee meetings follow the same parliamentary procedure as do the larger assembly meetings, including the rules outlined in the bylaws

Committee of the Whole

A **committee of the whole** and its alternate forms are procedural devices that allow the full assembly to consider a matter deeply as a committee would

- A **committee of the whole** is usually used in larger assemblies; any voting results are used as recommendations to the assembly and not as a final decision of the assembly

- A **quasi-committee of the whole** is usually used in medium-sized assemblies; the voting operates the same as in a committee of the whole, except that the chairperson of the assembly remains as the chairperson of the committee
 - **Informal consideration** is best suited for a small assembly; it lifts the formal speaking and debating requirements
- Even though a committee of the whole (or quasi-committee of the whole) acts like the general assembly, important exceptions include:
- Committees of the whole cannot create subcommittees or comment on another committee's work
 - Appeals from the decision of the chair must be directly voted on
 - Debate can be closed or limited by the assembly only before going into committee of the whole
 - Committees of the whole cannot order roll call or ballot votes
 - Committees of the whole cannot impose disciplinary measures; they may only report the facts to the assembly
 - Committees of the whole cannot adjourn or recess

NOTE: Permanent Society = Club = Organization = Assembly; *Robert's Rules of Order* uses these terms interchangeably

Starting a Permanent Society

Organizing a **permanent society** starts much the same way as a mass meeting, but the invitations are limited to interested people; anyone may organize a permanent society, and the organizer should choose the interested people to begin the organization; at the first organizational meeting, the proposed members should accomplish these tasks:

- Elect temporary officers
- Adopt a resolution to form an organization or society
- Provide background information for the organization or society
- Give opinions as to the direction the organization should take
- Introduce and adopt a motion to form a committee to draft bylaws
- Introduce and adopt a motion to fix the meeting dates and times for the report of the bylaws committee
- Introduce and adopt a motion authorizing the bylaws committee to reproduce copies of the complete draft for everyone

At the second organizational meeting, the members should:

- Read and approve the minutes from the first meeting
- Receive the report from the bylaws committee
- Read each article and section from the bylaws
- Vote to adopt the bylaws
- Decide the date and time for the next meeting

Combining or Ending Organizations

- When two existing organizations wish to combine, they may **merge**, where one organization loses its independent identity, or **consolidate**, where each organization keeps its independent identity, and they form a new organization to absorb the two organizations' assets and liabilities
- When an organization ends, it **dissolves**; an incorporated organization must dissolve according to the laws of the state in which it is incorporated, through a resolution

Procedural Rules & Bylaws for All Types of Organizations

Assemblies and organizations need **procedural rules** to guide parliamentary procedure; the different kinds of rules assemblies and organizations can adopt are:

- **Corporate charters:** Legal instruments needed for incorporating an assembly or organization under the laws of a particular state
 - **Constitution/bylaws:** A society's own basic rules for itself as an organization, such as its name, purpose, and committees
 - **Rules of order:** Rules of parliamentary procedure for running ordinary business while in meetings
 - **Standing rules:** Rules for the administration of the organization instead of parliamentary procedure
- Bylaws** are the rules that the organization uses for its own administration; usually an organization appoints a committee to draft the bylaws before implementation; the basic way to structure bylaws is:
- **Article 1 – Name:** Describes the name of the organization if not already done in a corporate charter or constitution
 - **Article 2 – Object:** Describes the society's objective and the reason behind its creation
 - **Article 3 – Members:** Describes the different types of members, qualifications for membership, and any dues or fees that must be paid
 - **Article 4 – Officers:** Describes the offices, their duties, and how the officers will take their office
 - **Article 5 – Meetings:** Describes the dates and times for regular meetings or how the assembly will schedule meetings
 - **Article 6 – Executive Board:** States which offices are included in the executive board, delineates the powers of the board, and describes any rules for the board to conduct its business
 - **Article 7 – Committees:** Establishes standing committees as well as their functions and procedures
 - **Article 8 – Parliamentary Authority:** Describes the process through which the organization adopts its rules of order
 - **Article 9 – Amendment of Bylaws:** Describes the procedure for amending the bylaws

Organizations may always add additional articles if needed to describe the duties of officers, financial obligations, etc.

Amending Bylaws

Bylaws are amended through the main motion **amend something previously adopted**; the procedure for raising the motion is the same as any other motion except:

- The bylaws may specify any special rules for the motion's adoption, although the bylaws must include notice and a two-thirds vote for adoption of the amendment
- The notice of the motion for amendment must limit the permissible primary and secondary amendments
- The organization cannot reconsider affirmative votes on the motion to amend the bylaws
- Even though the motion is a main motion, other main motions may be pending at the same time for changes to the bylaws

Depending on the length of the bylaws, the organization amends them through:

- **Isolated changes**, made by motion, could include multiple changes in one motion
- **General revisions**, made by substituting a whole new revised set of bylaws if the revisions are extensive enough

The procedure for considering many amendments at one time is the same as amending a motion by seriatim, or by paragraph:

1. The assembly is given notice of each individual amendment, even if two or more are competing
2. The chairperson organizes each amendment as though the assembly were to fill in the blanks of the bylaws
3. The chairperson reads the first submission, and it is explained by its proponent
4. The chairperson then asks if there is any debate on the amendment
5. Once debate has ended, the assembly votes on the amendment
6. Once all amendments have been voted upon, the chairperson opens the entire document for amendments, and the process starts over if needed
7. Once all amendments are made and included, the chairperson presents the amended rule and asks for a vote for the entire document
8. The assembly votes on the entire document

Amendments to bylaws take effect immediately upon adoption; the bylaws should specify the margin by which an amendment must win

Procedures for Conducting a Meeting

Major vocabulary terms for meetings:

- A **meeting** is an assembly of members in a single room to conduct business
- A **session** is a series of connected meetings for a single order of business or agenda
- A **recess**, taken in the middle of a meeting, is a short break having no effect on the business of the meeting, after which the meeting is resumed where it left off
- An **adjournment** ends a meeting
- An **adjournment sine die** ends a session or a series of meetings

The assembly and its bylaws decide how many meetings and sessions to hold and their frequency; when a meeting ends, the assembly should decide when and where to hold the next meeting

Assemblies must finish any pending business before adjourning a session; the assembly in the following session is not tied to any business that was not discussed in the previous session

There are different types of meetings an assembly can hold:

- A **regular meeting** is a meeting held on the date and time specified in the bylaws to discuss any business that arises within the scope of the assembly
- A **special meeting** is a meeting that is not held at the regular time and date to deal with urgent business that cannot wait until the following regular meeting
- An **adjourned meeting** is one that continues the previous session or special meeting, taking up the business that was interrupted at the adjournment of the last meeting
- An **annual meeting** is a meeting held once each year, usually to give the various reports of officers and committees
 - An **executive session** is a secret meeting for executive business
 - A **public session** is the opposite of an executive session and must be open to the public, even if the public is not a member of the assembly

Starting a Meeting

To start a meeting, the chairperson of the meeting must **call the meeting to order** by taking his/her position (usually at the front of the room) and saying, "The meeting will come to order"; once the chairperson calls the meeting to order, the meeting can begin on the **order of business**; this order is usually:

1. Reading and approval of minutes
2. Reports of officers, boards, and committees
3. Reports of special committees, or committees appointed to exist for a specific task
4. Special orders, or business that has a special priority, such as committee reports left over from the previous meeting
5. Unfinished business and general orders, or business left over from the previous meeting
6. New business

Meeting business is usually handled with **motions**; to bring a motion before the assembly, the steps are:

1. The member must be recognized by the chairperson, usually by standing and waiting to be called upon
2. He/she then makes the motion by saying, "I move to..."
3. Another member seconds the motion, saying, "Seconded"
4. The chair repeats the motion; at this time, the motion is **pending**, or open to discussion

Motions usually made at the beginning of meetings are:

- **Call for the orders of the day**, in which the assembly adopts its agenda or order of business
- **Fix the time to which to adjourn**, where the assembly decides when the meeting will end and sets a time for the next meeting

Minutes

The **minutes** are the record of the meeting's procedures and what was accomplished at the meeting; minutes generally include:

- The name of the assembly and the kind of meeting
- The date and time of the meeting
- Who was present at the meeting and who operated as the chairperson
- The approval of the previous meeting's minutes, if needed
- All main motions, their topics, and who proffered them
- Whether the main motions were approved or denied and the number of votes for each side
- All secondary motions when needed for clarity or completeness
- All notices of motions
- All points of order and appeals and their dispositions
- When the meeting adjourned

Reports

Reports of officers are reports of an officer's administrative duties; examples of these reports include:

- **Reports of executive officers**, which usually contain information or recommendations for actions
- **Treasurer's reports**, which report on the financial state of the organization
- **Reports of other officers**, which are usually made annually and for informational purposes only

Reports of boards and committees are official statements formally adopted by the body as information for the assembly (e.g., a report of the committee for drafting the bylaws would include drafts of the bylaws); the reports must contain only information that has been legally agreed to in the board or committee meeting

Quorum

To hold a meeting and conduct business, there must be a **quorum**, or a certain number of members present, at the meeting; the number is usually a percentage of the total members and can be fixed by the assembly or by rules

If a quorum does not exist at a meeting, the meeting must immediately adjourn, as all business completed without a quorum would be illegal

Decorum in Debate

Once there is a quorum and the chair calls the meeting to order, members can be recognized for motions:

1. To obtain the floor, the member must stand and address the chairperson by saying, "Mr./Madam Chairperson"
2. The chairperson recognizes the member by saying the member's name
3. The member may then introduce a motion for **debate**; the general rules of debate are:
 - The speaker must be recognized by the chairperson before speaking
 - The speaker cannot usually speak for more than ten minutes unless the members decide otherwise



- Members should not speak more than twice on a motion
- The chairperson cannot close debate before every member who wishes to speak is able, within a reasonable period of time
- Everyone must adhere to **decorum**, carrying on the debate in an orderly manner without personal attacks on other members

Members can adhere to decorum by:

- Confining their statements and remarks to the merits of the pending question and not outside the scope of the question
- Not attacking a member's motives for speaking for or against or presenting a motion
- Addressing all statements and remarks through the chairperson
- Addressing the speaker or the chairperson correctly (never use "you," but always refer to the speaker or the chairperson in the third person)
- Avoiding the use of members' names
- Not speaking adversely on a prior action that isn't pending and has already been finalized
- Refraining from speaking against his/her own motion
- Reading from reports or quotations only without objection or with permission; a member may read from reports or quotations with the chairperson's permission as long as no other member objects
- Continuing to stand when the chairperson addresses him/her directly during an interruption
- Refraining from disturbing the assembly during debate

The chairperson has guidelines for decorum as well:

- The chairperson always refers to him/herself in the third person
- When reporting in his/her presidential capacity, the chairperson may speak of him/herself as "Your President"
- The chairperson does not refer to a member's name, only referring to him/her in the third person (e.g., "Will the speaker...")
- The chairperson may refer to a member by name when assigning the floor, however
- The chairperson must not participate in the debate except through the vice president

Recognition Preference

The preference rules for recognizing a member when there is a debatable question pending on the floor are:

1. A member can stand to give previous notice of a different motion
2. The member who presents the motion and who has not yet spoken on the motion, including:
 - The reporting member's motion to implement a recommendation from a committee report
 - The member who moved to un-table a motion that was previously laid on the table
 - The member who made a motion to reconsider
3. Members who have not yet spoken on the question; if everyone who wishes to speak on the question has, members may speak again

4. The chairperson should recognize alternating opinions on the question or motion

The preference rules for recognizing a member when there is no debatable question pending on the floor are:

1. A member assigned to offer a motion or an important prearranged main motion
2. When a set of motions is presented in a series, the member presenting the motions has preference to present each motion in turn
3. A member who offers a similar motion to one that the assembly voted down at the member's suggestion
4. A member may be recognized over a member offering a main motion when a member rises:
 - To move to reconsider and enter on the minutes
 - To move to reconsider a vote
 - To call up a motion to reconsider
 - To give previous notice
 - To move to un-table an issue

Members cannot interrupt each other, except in some urgent situations:

- A call for the orders of the day when they are not followed
- Raising a question of privilege
- Raising a point of order, brought by a member who believes the chair has breached the parliamentary rules
- The chair calling to a member's attention that he/she is not observing the speaking rules
- Calling for a separate vote on a set of resolutions on different subjects that were included in one motion
- A request that requires an immediate response
- An appeal
- An objection to the consideration of a question
- A division of the assembly

At the end of the interruption, the member who had the floor regains it when the chairperson asks him/her to stand to regain his/her position on the floor

Assemblies may set their own rules for debate in their bylaws; some general guidelines that assemblies should use when creating their debating rules are:

- Speeches should be no longer than ten minutes each
- The member speaking should immediately conclude his/her speech when the chairperson rises
- If the member needs only a minute more for his/her speech, the chairperson need not dismiss the member immediately
- No member should speak more than twice per question per day
- Members are not allowed to yield their unelapsed time to another member to allow one member a particularly long speech
- Merely asking a question or making a brief suggestion is not speaking in debate and should not be counted against a member for his/her daily speech limit

Motions

Main Motions

Original main motions are motions that bring a substantive question to the assembly for debate and action; these are different from *incidental main motions*, which are motions dealing with the procedure of the assembly, like the *call for the orders of the day* motion

Characteristics of main motions:

- Every other motion takes precedence over the main motion
 - Main motions cannot be applied to any other motions
 - They must be seconded
 - There can be only one main motion on the floor at a time
 - They are debatable, amendable, and can be reconsidered
 - They mostly require a majority vote
- After a member brings a motion to the assembly, the assembly must either consider the motion or dispose of the motion; to fully consider a motion:
- The assembly debates the motion, unless no one in the assembly wants to debate the motion
 - The chairperson puts the motion to a vote
 - The chairperson announces the results of the vote

10 Easy Steps for Making Motions

1. The member asks permission from the chairperson for the floor
2. The chairperson grants permission
3. The member makes the motion, stating, "I move to..."
4. The chairperson asks for any seconds
5. Members may stand and call out "Second," or they may simply call out "Second"; if there is no second, the motion fails immediately
6. If there is a second, the chairperson states the question of the motion; this opens debate
7. The assembly debates the motion; during this time, the motion may be amended or tabled for further debate at a later time
8. When debate is finished, the chairperson puts the motion to a vote
9. The chairperson counts the votes
10. The chairperson announces the votes and enacts or defeats the motion

Subsidiary Motions

There are different types of motions; *subsidiary motions* deal with the original main motion, such as:

- **Postpone indefinitely**, which kills the original main motion without a direct vote on it
- **Amend**, which modifies something in the main motion before the assembly acts on the motion (NOTE: The assembly must agree to amend the motion and then agree on the amendment before the amendment can be thought of as the main motion)
- **Commit or refer**, which assigns the motion to a committee for investigation or a report
- **Postpone definitely**, which puts off the question until an expressed time
- **Limit or extend debate**, which either shortens or lengthens the time for debate on a motion if the assembly needs it
- **Previous question**, which closes debate and amendments, bringing the assembly to a vote on the motion
- **Lay on the table**, which interrupts the current business to introduce urgent business immediately

Subsidiary motions have four characteristics that make them subsidiary:



- These motions always apply to motions and do something to them, or change their status
- They may be applied to any main motion
- They fit an order of preference (as listed previously)
- They may be applied at any time from the point when the chairperson states a question upon which they may be applied to the time when the question is voted upon

Privileged Motions

Privileged motions do not relate to any business, but they take precedence over everything else in the assembly; these motions include:

- **Call for the orders of the day**, which need not be seconded
- **Raising a question of privilege**, which permits an emergency motion or question dealing with the rights and privileges of the members
- **Recess**, which gives the assembly a short break
- **Adjourn**, which closes the meeting
- **Fix the time to which to adjourn**, which sets the time for the meeting to end

Privileged motions are privileged because they take precedence over debate to deal with urgent procedural matters; they take the order of preference as listed previously

Incidental Motions

Incidental motions do not necessarily relate to business but answer questions of procedure with regard to motions; they are in order only when they are legitimately incidental to another pending motion or to other business at hand, at which point they take precedence over any other pending motions; they must be decided before business can continue; these motions include:

- **Point of order**, which asks the chairperson for a ruling and enforcement of the rules when a member thinks the rules were broken, which need not be seconded
- **Appeal**, which takes away a decision from the chairperson and gives it to the assembly if a member thinks the chairperson's decision was wrong
- **Suspend the rules**, which suspends the rules when the assembly wants to do something it cannot do without breaking the rules
- **Objection to the consideration of a question**, which avoids a main motion if the assembly thinks the motion should have never come before it
- **Division of a question**, which separates different parts of a question or motion that can stand on their own
- **Consideration by paragraph or seriatim**, which permits debate on different parts of a long motion or question without putting the different parts into question
- **Division of the assembly**, which requires the chairperson to take a vote by each member rising to give his/her vote

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- **Motions relating to nominations**, which must be raised if the bylaws do not outline mechanics for nominations and an election
 - **Request to be excused from duty**, which relieves the member from an obligation he/she holds
- While the incidental motions look like subsidiary motions, none of the incidental motions has all four characteristics of the subsidiary motions; it should be noted that each incidental motion is applicable only in the specific period of time in which it is raised; generally, incidental motions deal with procedural questions arising out of:
- Another pending motion
 - Another motion or business item that:
 - The motion attempts to introduce
 - Has been made but not yet repeated by the chairperson
 - Was just pending

Requests and inquiries are special types of incidental motions that connect to the business at hand; they include:

- **Parliamentary inquiry**, which directs a question on parliamentary procedure or the organization's rules to the chairperson, which need not be seconded
- **Point of information**, which requests information from the chairperson about the matter at hand, which need not be seconded
- **Request for permission to withdraw or modify a motion**, which asks the chairperson for permission to withdraw or modify a motion already stated by the chairperson
- **Request to read papers**, which asks the chairperson for permission to read excerpts from his/her papers, which is not usually allowed in debate

Motions That Bring a Question Again Before an Assembly

Motions that bring a question again before an assembly are special motions that do not fit anywhere else; they include:

- **Take from the table**, or **un-table**, which takes up a motion or an order of business that was earlier laid on the table
 - **Rescind**, which takes back a main motion, amendment, bylaw, section, or paragraph that was presented and adopted
 - **Amend something previously adopted**, which modifies a motion, amendment, bylaw, section, or paragraph that was presented and adopted if rescinding is too much
 - **Discharge a committee**, which takes a matter out of a committee's hands before they have made a report on their findings so the assembly may act on it or the matter may be dropped
 - **Reconsider**, which prompts the assembly to reconsider a motion that was adopted earlier that day, but new information or a changed situation makes it clear that the true will of the assembly would not be followed with the previous course
- The reason why these motions are separate is because they relate to the following principles of parliamentary procedure:
- During a session or meeting when the assembly decides a question, it cannot be brought up again except through special circumstances
 - When an assembly disposes of a question without finally acting on it, no similar or conflicting motion that would restrict the assembly in acting on the first motion may be introduced
 - Changing something the assembly already adopted requires more than what was necessary to adopt it in the first place

Enacting Motions

For an assembly to enact or approve the motion, the assembly needs to *vote* on it; usually a majority of votes is needed to enact or approve the motion; however, certain motions require a two-thirds majority of voters to approve the motion; these include motions that:

- Suspend or modify a rule of order
- Prevent the introduction of a question for consideration
- Close, limit, or extend the limits of debate
- Close nominations, polls, or otherwise limit voting
- Take away membership or an office

Special Note on Amendments

Amending a motion (or the bylaws) modifies the wording of the motion; the motion to amend:

- Must always be germane to the motion, meaning the assembly cannot amend a motion that is not pending
- Does not modify the motion if the amendment fails
- Can be applied to any main motion, but it cannot be applied to itself
- Must always be seconded
- Is out of order when another motion has the floor
- Is debatable when the motion that is being amended is debatable; if the motion is not debatable, then the motion to amend is not debatable
- May be amended, but secondary amendments are not allowed
- Requires a majority vote
- Can be reconsidered
- When applied to a main motion, takes precedence over the main motion and the motion to postpone indefinitely but gives way to all other motions
- When applied to a non-main motion, takes precedence over the motion that it seeks to amend but gives way to any other motion that would take precedence over the motion

Improper amendments include amendments that:

- Are not germane to the motion
- Have the effect of rejecting the main question
- Have the effect of repeating a question the assembly has already decided
- Change one parliamentary procedure into another
- Change the form of another amendment
- Strike out enacting words, such as "resolved"
- Are frivolous, or do not otherwise follow the rules of decorum
- Make the motion or question incomprehensible or incoherent
- Would convert the motion to an improper form
- Change the preamble of a resolution without finally amending the subsequent paragraphs or clauses

An amendment can take one of five forms:

- Inserts or adds words or paragraphs according to the following rules:
 - The motion for amendment must specify exactly where the words or paragraphs are to go by naming the words or paragraphs before and after the insertion
 - After words have been inserted or added, they cannot be removed unless there is a reconsideration or a new motion:
 - > to strike out the entire paragraph where the words were inserted or added
 - > to strike out a portion of the paragraph where the words were inserted or added
 - > to substitute an entire paragraph for the one in which the words were inserted
 - > to strike out a portion of the paragraph and enter in new words or a new paragraph that presents a different question

- If a motion to insert words is voted down, it may still be revived through a motion:
 - > to insert part of the words
 - > to insert part of the words in a different place
 - > to insert the same words in place of others
 - > to insert the same words in a different place where the effect will be different
- Strikes out words or paragraphs according to the following rules:
 - The motion must specify the location of the words
 - Only consecutive words may be struck out
 - If a motion to strike words fails, it may still be revived through a motion:
 - > to strike out only part of the words
 - > to strike out the words with some others
 - > to strike out all or a part of the same words and substitute them for others
 - > to strike out all or some of the same words together with some others and substitute them for others

- A motion to strike a paragraph may be open to a secondary amendment in any form that is available to striking words
- A struck-out paragraph cannot be inserted again unless the wording is changed to present a different question
- Strikes out and inserts according to the rules above
- Substitutes, also according to the rules above
- Fills in blanks, using one of three ways:
 - To fill a blank with a name, the chairperson takes nominations for the name and the assembly votes on them until one receives a majority
 - To fill a blank with an amount of money, the chairperson takes nominations for the amount and arranges the amounts so that the least acceptable amount is voted upon first
 - To fill a blank with a place, date, or number, use one of the above methods depending on the circumstances

When an amendment needs to be amended, or an amendment is applied to itself, a **secondary amendment**, or an amendment to the amendment, results

Voting

Putting the question is when a chairperson calls for a vote on a motion after clarifying to the assembly upon what they are voting; an assembly votes using the following methods:

- **Voice**, which is the usual method
 - **Rising**, which is used to determine the winner of an inconclusive voice vote
 - **Show of hands**, which is used instead of rising, usually in smaller groups
- The chairperson then counts and announces the vote:
- Usually a motion needs a simple majority to pass, but some need a two-thirds (66%) majority to pass, as explained previously



- The assembly can decide if there are restrictions on who may vote, such as limiting votes to only those present at the meeting, or using another ratio of winning votes to pass a motion
- All members have a right to **abstain**, or decline from voting, if they have a personal interest in the outcome of the vote
- If the motion passes, it passes immediately
- A chairperson may vote when his/her vote will affect the result, such as to break a tie, but a chairperson may not vote twice

Nominations & Elections

A **nomination** is a motion to elect a person to a position; the methods of nomination are:

- **The chair**, where the chairperson nominates the candidate
- **From the floor**, where a member nominates the candidate
- **Ballot**, where members may nominate other members for an office on a ballot (note that this is not the same as a petition election, as described below)
- **Mail**, where members are too far away to meet together in one place; this acts much like a ballot nomination, but nominations are simply collected through the mail instead of in person
- **Petition**, where a group of members may nominate someone by a petition

Assemblies and organizations may have their own rules outlining how to run elections; some methods are:

- **Ballot election**, in which the assembly votes for the candidate on a ballot
 - **Viva-voce election**, in which the assembly votes for the candidate by a voice vote
 - **Roll-call election**, in which each member stands and states for which candidate he/she is voting
- Elected officers win their seats when they win the most votes; an elected officer takes his/her office immediately upon winning an election, unless the assembly's rules state otherwise

Disciplinary Procedures

Disciplinary procedures should be outlined in the bylaws so that every member has notice as to the procedures; a fair disciplinary procedure includes:

- A confidential investigation by a committee to determine if further disciplinary action is warranted (**NOTE:** This committee does not have power, if not delineated in the bylaws, to compel a member to appear in front of it)
- The committee prepares and presents a report on the investigation, either exonerating the member or recommending the charges for the guilty member
- The accused is formally notified, and his/her rights are suspended for the duration of the trial
- A trial, or formal hearing, on the charges at which the accused may appear to defend him/herself
- The assembly reviews the committee's findings if the trial was not held in front of the assembly

The procedure for running the trial should include:

1. The chair directs the secretary to read the charges aloud to the committee or the assembly
2. The chair asks the accused how he/she would plead (guilty or not guilty)
3. If the accused pleads guilty, the trial ends
4. If the accused pleads not guilty, the trial proceeds in this order:
 - Opening statements by both sides
 - Witness testimony
 - Testimony of defense witnesses
 - Rebuttal witnesses for the organization or society
 - Closing arguments by both sides
5. The accused leaves the room when both sides finish their closing arguments
6. The committee or the assembly deliberate as to the guilt or innocence of the accused member
7. When deliberations are complete, the chair states, "The question before the assembly is: Is the member guilty of the specifications against him/her?"
8. The assembly or the committee members vote
9. Any punishment must be decided by a ballot vote, by a two-thirds margin
10. When voting is done, the accused is called back into the hall and the result is delivered

Ending a Meeting

A chairperson ends a meeting by **adjourning**, or closing the meeting, after all debate and business are finished; if there is unfinished business, the assembly may take it up at the next meeting; before a meeting ends, the assembly should decide the date and time of the next meeting if it is not already decided in the bylaws

Before adjourning, the chairperson must:

- Inform the assembly of any unfinished business to give the assembly the opportunity to finish it before adjourning
- Make any important announcements
- Make any motions to reconsider a previous vote if needed
- Make a motion to reconsider and enter on the minutes
- Give notice of a motion that will be presented at the next meeting if the motion is one that requires notice
- Move to set a time for an adjourned meeting if there isn't one already scheduled
- Formally state that the meeting "is adjourned"

The motion to adjourn must, like all motions, be seconded and voted upon so that the chairperson cannot end a meeting without the assembly's consent. If all business is finished and the preselected hour to adjourn has arrived, the assembly need not move to adjourn; the chairperson may ask, "Is there any further business?"; if there is none, the chairperson may then say, "Then I hereby adjourn this meeting"; the meeting is then adjourned

Form of Popular Motions

When you want to make a motion to...	You say...
Postpone indefinitely	I move to postpone the motion indefinitely
Amend	I move to amend the motion by...
Commit or refer	I move to commit/refer the matter to...
Postpone definitely	I move to postpone the motion to...
Limit or extend debate	I move to limit/extend the time for debate
Previous question	I move for previous question
Table	I move to table...
Un-table	I move to un-table...
Orders of the day	I move for the orders of the day
Question of privilege	I rise for a question of privilege
Recess	I move for a recess
Adjourn	I move to adjourn
Fix the time to adjourn	I move to fix the time to adjourn
Point of order	Point of order, Chairperson, (question)
Point of information	Point of information, Chairperson, (question)
Rescind	I move to rescind my motion
Reconsider	I move for a reconsideration of...
Vote	I move to vote on...
Nominate	I move to nominate...
Suspend the rules	I move to suspend the rules and...
Divide the question	I move to divide the question
Divide the assembly	I move for a rising vote

How to Use the Book

- Go to the table of contents and search for the action for which you need help (the table of contents does not list page numbers; it lists section numbers)
- Go to the section to which the table of contents directs you; *Robert's Rules of Order* is written in prose, so you will have to read the whole section to get a comprehensive idea of what it contains
- Each individual section is part of a larger section, so it is beneficial to read other sections in the subheading if you need more direction; this is especially helpful if you do not know when the topic you are researching arises during a meeting
- If you find yourself in a part of the rules that provides little guidance, do not worry—the rules assume that your assembly will write its own bylaws to fit its own purposes
- **NOTE:** *Robert's Rules of Order* can be superseded by your assembly's bylaws; so, if *Robert's Rules of Order* does not fit your assembly's processes, there is no need to change your assembly's rules to fit those outlined in *Robert's Rules of Order*

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