

May 1, 2008

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## Sample Approach to Update a Zoning Ordinance to Comply With Michigan Zoning Enabling Act of 2006

This is one example of what needs to be done to a local zoning ordinance to comply with the P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et seq.*). When this act takes effect (July 1, 2006) all local governments with zoning must start following the procedures in this statute. This version of this flier includes amendments to the Michigan Zoning Enabling Act through February 12, 2008 (P.A. 12 of 2008).

Technically, as long as the community follows the new statutory requirements of the Michigan Zoning Enabling Act, no change must be made to the local zoning ordinance. However, to ensure that citizens, local officials and developers are not confused and make a mistake by following the zoning ordinance when the new statute has different requirements, it is a good idea to make the following changes to the zoning ordinance at the earliest opportunity. Advice is for communities to target a July 1, 2007 deadline to amend local zoning ordinances.

This flyer presents one example of how this can be done. Of course it is written generically, so will not be directly applicable to each zoning ordinance in Michigan. This outline is based on Public Act 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et. seq.*), and recommendations of Kurt H. Schindler, MSU Extension land use team member and Mark A. Wyckoff, Director of Planning and Zoning Center at MSU.

There are also separate procedural checklists for performing other zoning and planning functions. They are listed in the box on page 2.

The Michigan Zoning Enabling Act is a new statute, that changes how various zoning procedures are done. The entire purpose of this act was to create a single set of procedures to follow regardless if zoning is being done in a city, village, township, or county. This act replaces the following statutes. Only for matters that took place before July 1, 2006 should these old statutes still be referenced:

- P.A. 183 of 1943, as amended, (being the County Zoning Act, M.C.L. 125.201 *et seq.*) See MSU Extension Land Use Team's *Land Use Series* "Checklist # C2; For Adoption of a County Zoning Ordinance in Michigan".

*"Thirty seven million  
acres is all the Michigan  
we will ever have."*

Former Governor  
William G. Milliken

Michigan State University  
Extension Land Use Team

<http://ntweb11a.ais.msu.edu/luaoe/index.asp>

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- P.A. 184 of 1943, as amended, (being the Township Zoning Act, M.C.L. 125.271 *et seq.*) See MSU Extension Land Use Team's *Land Use Series* "Checklist # T2; For Adoption of a Township Zoning Ordinance in Michigan".
- P.A. 207 of 1921, as amended, (being the City and Village Zoning Act, M.C.L. 125.581 *et seq.*) See MSU Extension Land Use Team's *Land Use Series* "Checklist # M2; For Adoption of a City and Village Zoning Ordinance in

Michigan".

For any step of this process, the Michigan State University Extension members of the Land Use Area of Expertise team can assist with sample materials; coordinating efforts between the township, county, and the state; and providing guidelines.

This outline is not designed as a substitute for reading and understanding the Michigan Zoning Enabling Act. This outline is not a substitute for

## Related Publications

There are also separate procedural checklists for performing other planning and zoning functions. They are:

- *Land Use Series*: "Check List #1A; To Create a Planning Commission or Amend an Existing Planning Commission Ordinance."
- *Land Use Series*: "#1B; Sample Ordinance to create a planning commission"
- *Land Use Series*: "#1C; Summary of changes between new Michigan Planning Enabling Act and the three old planning acts: Municipal Planning Act, County Planning Act, and Township Planning Act."
- *Land Use Series*: "Checklist #1D; Steps to Transition an Existing Planning Commission to Comply with the Michigan Planning Enabling Act"
- *Land Use Series*: "#1E; Sample Bylaws for a planning commission."
- *Land Use Series*: "Checklist #1F; What Should be in a Master Plan"
- *Land Use Series*: "Checklist #1G; For Adoption of a Plan in Michigan"
- *Land Use Series*: "Checklist #1H; The Five Year Plan Review."
- *Land Use Series*: "Checklist #1I; For Adoption of an Amendment to a Plan"
- *Land Use Series*: "Checklist #1J; Adopting and Updating a Capital Improvement Program"
- *Land Use Series*: "Checklist #1K; Review of Infrastructure and Public Capital Expenditure"
- *Land Use Series*: "Checklist #1L; Adoption or Amendment of Subdivision Rules"
- *Land Use Series*: "#1M; How Governments Make Submissions on a Neighbor's or County's Proposed Plan"
- *Land Use Series*: "#1N; How a Planning Commission Should Respond to Submissions"
- *Land Use Series*, "Checklist #2; for Adoption of a Zoning Ordinance in Michigan."
- *Land Use Series*, "Checklist #3; for Adoption of an Interim Zoning Ordinance in Michigan."
- *Land Use Series*, "Checklist #4; for Adoption of a Zoning Ordinance Amendment (Including PUD) in Michigan"
- *Land Use Series*, "Checklist #5: for Processing a Special Use Permit (Including PUD) Application in Michigan."
- *Land Use Series*, "Checklist #6: for Processing a Zoning Appeal and Variance in Michigan."

All of these are available at [www.msue.msu.edu/lu/](http://www.msue.msu.edu/lu/).

## Glossary

The following terms are used in this publication, and have the following specific meanings.

**§** means the section number of Public Act 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et seq.*),

**Chief administrative official** means the manager or other highest nonelected administrative official of a city or village.

**Chief elected official** means the mayor of a city, president of a village, supervisor of a township, or chair of a county board of commissioners.

**Ex officio member** means a member of a planning commission, with full voting rights unless otherwise specified by city or village charter, by virtue of holding another office.

**Legislative Body** means the county board of commissioners of a county, the board of trustees of a township, the council of a city or village, or other similar duly elected representative body of a county, township, city, or village.

**Local Unit of Government** means a county, township, city, or village.

**Municipality** means a city, village or township.

**Plan** means any plan adopted under the Michigan Planning Enabling Act or one of the three former planning acts, regardless of what it is titled.

**Planning Commission** means the local unit of government planning commission created under the Michigan Planning Enabling Act or one of the three former planning acts, regardless of what it is titled. In a few communities it may still be a "zoning board" (townships) or "zoning commission" (city and villages). Has used here, the use of the term "planning commission" includes all of these terms.

**Zoning jurisdiction** means the area encompassed by one of the following:

- legal boundaries of a city or village for a city or village respectively;
- legal boundaries of a township outside the limits of a city(ies) and village(s) for a township;
- legal boundaries of a county outside the limits of a city(ies) and village(s); or the county including any city(ies) and village(s) which has adopted the county plan (See §209, M.C.L. 125.3209).

legal advice. There is no substitute for hiring an attorney. **Do not attempt to adopt or amend an ordinance without an attorney.**

It is **important** to document each step of the process in planning and zoning a community. Keep detailed minutes, affidavits of publication and mailing, open meeting notices, letters of transmittal, and communications all on file so years from now they are still available. Use of *Land Use Series*, “Checklist #4: For adoption of a Zoning Amendment in Michigan.” will help with the task of creating a file showing this documentation.

## Assumptions Made When Preparing This Flyer

The following assumptions were made when preparing the sample presented in this flyer. They are:

1. The municipality already has site plan review in its zoning ordinance.
2. The section numbering system follows the standard system of codification that is the sample presented in Michigan State University Extension’s *Land Use Series* “Organization and Codification of a Zoning Ordinance” available at <http://web1.msue.msu.edu/wexford/LU/>.
3. The municipality’s attorney will review any proposed amendments before they are adopted or will be the one to prepare the text for adoption.

## Summary of Changes

The Michigan Zoning Enabling Act does result in a number of changes when compared to the three old enabling acts. They can be broken down into six major changes and 11 minor ones.

- Six major changes:
  4. The act itself is structured and organized differently.
    1. There is now a phasing out of zoning boards over a five year period. (There is no need to reconstitute planning commissions).
    2. New procedures for all public hearing notices, especially for multiple unit structures and delivery of notices.

3. Ability to issue use variances is much more limited.
  4. The membership of appeals boards, and appeals board process (many listed as minor changes below)
  5. No more state review of county zoning ordinances and amendments.
- Eleven minor changes
    - Definitions – many new defined terms.
    - Differences between community types on some land uses.
    - Interim zoning and its relationship to zoning boards.
    - Growing importance of standards and findings of fact.
    - Nonfeasance, misfeasance, and malfeasance for removal of planning commission members.
    - Relationship of zoning to planning is now clearer, maybe stronger.
    - All zoning boards must publish a notice of their meetings in a newspaper, in addition to the open meeting act requirements.
    - Distinction between standards for granting use variances and standards for granting dimensional variances.
    - “Affected” versus “aggrieved” parties for appeals.
    - Distinction in public notice requirements on zoning interpretation questions.
    - Elimination of special provision to support taxes for zoning.

## Sample Zoning Amendments

The following are the sample zoning amendments with commentary.

The following, then is a short-form checklist of the changes that may apply to your zoning ordinance:

- Public Notice
  - New public notice requirements
- Zoning Board/Zoning Commission
  - Transfer duties from zoning board/zoning commission to the planning commission.
  - Misfeasance, Malfeasance or Nonfeasance.
  - Zoning board/zoning commission meeting

and multiple-unit structures notices and delivery of notices.

- Zoning Board of Appeals
  - Authority for use variances and vote requirements.
  - Standards for use variances and standards for dimensional variances.
  - Alternate appeals board members in counties and no county appeals board members may live within a city or village.
  - City and villages can now have three member appeals boards.
  - Appointments to vacancies must be made within one month after the preceding member's term has expired.
  - For all appeals boards, except in cities and villages where it is optional, one member shall be a member of the planning commission.
  - "Affected" versus "aggrieved" parties on appeals.
- Special Land Uses
  - Special land use decisions must include findings.
- Unique to Counties:
  - State review of county zoning is gone.
  - County ability for a zoning tax is gone.
- Other changes to zoning ordinance:
  - Nonconforming uses in townships and counties.
  - Discretion in application of standards for adult foster care facilities in cities and villages.
  - Interim zoning authority in cities and villages.
- Other documents to review:
  - Update rules of procedure (bylaws) for the planning commission, appeals board, or zoning board/zoning commission.
  - Update the resolution or ordinance which created the planning commission/zoning board/zoning commission.

In the sample zoning language in this pamphlet text in regular type (like this) is based on public notice requirements found in the new Michigan Zoning Enabling Act. Text in italics (*like this*) is

recommended optional text. Text in brackets and small caps ([LIKE THIS]) are notes which must be removed prior to adoption. Be sure to delete all existing out-dated language from the Zoning Ordinance when new language is added to the administration section of the Ordinance.

### Legal basis, citation

First, the legal citation for authority to have a zoning ordinance has changed. One of the following three amendments should be made:

- For an existing **township** zoning ordinance:
  - 103. Legal Basis**

This Ordinance is enacted pursuant to P.A. 184 of 1943, as amended, (being the Township Zoning Act, M.C.L. 125.271 *et seq.*). The continued administration of this Ordinance, amendments to this Ordinance, and all other matters concerning operation of this ordinance shall be done pursuant to P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et seq.*), hereinafter referred to as the "Zoning Act"
- For an existing **city and village** zoning ordinance:
  - 103. Legal Basis**

This Ordinance is enacted pursuant to P.A. 207 of 1921, as amended, (being the City and Village Zoning Act, M.C.L. 125.581 *et seq.*). The continued administration of this Ordinance, amendments to this Ordinance, and all other matters concerning operation of this ordinance shall be done pursuant to P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et seq.*) hereinafter referred to as the "Zoning Act"
- For an existing **county** zoning ordinance:
  - 103. Legal Basis**

This Ordinance is enacted pursuant to P.A. 183 of 1943, as amended, (being the County Zoning Act, M.C.L. 125.201 *et seq.*). The continued administration of this Ordinance, amendments to this Ordinance, and all other matters concerning operation of this ordinance shall be done pursuant to P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et seq.*), hereinafter referred to as the "Zoning Act"

In some zoning ordinances, reference to the

enabling statute is a defined term. In that case, the definition (section 503.) would also need to be amended:

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

Some communities keep an annotated copy of their amendment which would retain the old citation in the annotation notes.

Next, perform a *search and replace* throughout the rest of the zoning ordinance for citations of the old zoning statute<sup>1</sup> and replace them with “Zoning Act” or “the Zoning Act”.

## Zoning Board/Commission and Planning Commission

Some communities have a zoning board or zoning commission. On, or before July 1, 2011 the duties of the zoning commission or zoning board shall be transferred to a planning commission. Thus the zoning commission or zoning board will no longer exist (§301(2), M.C.L. 125.3301(2)).

It is also possible for a local government to create a zoning commission after the July 1, 2006 effective date of the Michigan Zoning Enabling Act. However by June 30, 2011 the duties of that zoning commission shall be transferred to a planning commission. Thus the zoning commission or zoning board will no longer exist (§301(3), M.C.L. 125.3301(3)). In the future, (as well as it can be done right now) a planning commission can be created in the first instance with all the zoning board/commission powers and duties.

If the zoning board, or zoning commission continues to exist, it must publish notice of their meetings. Section 304 (M.C.L.125.3304) requires newspaper notice of zoning board and zoning commission meetings not less than 15 days before the meeting. They are also subject to the Open Meetings Act (M.C.L. 15.261 *et seq.*). This is a new

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<sup>1</sup>The old citations to look for are: P.A. 183 of 1943, as amended, (being the County Zoning Act, M.C.L. 125.201 *et seq.*) or P.A. 184 of 1943, as amended, (being the Township Zoning Act, M.C.L. 125.271 *et seq.*) or P.A. 207 of 1921, as amended, (being the City and Village Zoning Act, M.C.L. 125.581 *et seq.*).

requirement and if the community has a zoning board or zoning commission, the ordinance should be changed accordingly.

An employee of the legislative body may be a member or employee of the zoning or planning commission. One member of the legislative body may be a member of the zoning commission. An elected officer of the local unit of government shall not serve simultaneously as member or employee of the zoning commission.

## Public Notices

All public notice requirements in cities, villages, townships and counties for all zoning activities have been consolidated into a single common set of requirements.

Review the zoning ordinance requirements for all public notices with §103 (M.C.L. 125.3103): Modified further for:

- zoning amendments by §306 (M.C.L. 125.3306) with cross reference to §202 (M.C.L. 125.3202), and by §401(2) (M.C.L. 125.3401(2) with cross reference to §202 (M.C.L. 125.3202);
- special use permits by §502(2)-502(3) (M.C.L. 125.3502(2)-125.3502(3));
- planned unit developments by §503(5) (M.C.L. 125.3503(5));
- planned unit development as a zoning amendment by §306 (M.C.L. 125.3306) with cross reference to §202 (M.C.L. 125.3202);
- purchase of a development rights by §508(4), (M.C.L. 125.3508(4)); and
- appeals board hearings by §604(4) (M.C.L. 125.3604(4) and §604(5) (M.C.L. 125.3604(5)).

Some zoning have public notice requirements in different parts of the zoning. The sample zoning text in this pamphlet assumes that approach. Starting on page 14 of this flyer is sample language which can be used as a consolidated notice section—so all notice requirements are found in one place in the zoning ordinance. One or the other system should be used, not both.

## Misfeasance, Malfeasance or Nonfeasance (Applicable to Zoning Boards, Zoning Commissions and Zoning Boards of Appeals)

The new act now provides:

“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.”

(§301(9) (M.C.L. 125.3301(9)))

This language is repeated for Zoning Board of Appeals.

The following language is also included:

“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.”

(§601(9) (M.C.L. 125.3601(9)))

If the zoning ordinance includes language relative to misdeeds of the zoning board, zoning commission or ZBA then it should be amended to reflect this language.

## Special Uses

Review the zoning ordinance requirements for special uses with §502 (M.C.L. 125.3502) and §504 (M.C.L. 125.3504). If there are any discrepancies between what your zoning ordinance reads and what the Michigan Zoning Enabling Act requires, then prepare an amendment to the zoning ordinance to comply with the statute. It is likely the discrepancy which will be found is the notice requirements for hearings or when a decision on a special use will be made.

The new Act has incorporated the Michigan Appellate Court distinction that a use variance requires a showing of “unnecessary hardship” while a dimensional variance (non-use variance) requires a showing of “practical difficulty” (§604(7) (M.C.L. 125.3604(7))). If your ordinance requires a showing of either or both, an ordinance change will be needed.

A written “statement of findings and conclusions relative to the special land use which specifies the basis for the decision and any conditions imposed” (§502(4) (M.C.L. 125.3502(4))) is now required with any special land use decision. The “findings”

language is new. The zoning ordinance should be amended to include this requirement.

The following is one example of zoning language that conforms to the Michigan Enabling Act notice requirements:

- For a special use permit, when the decision to issue the permit is made (a hearing is not contemplated) and an official (not a public body) makes the decision:

(Part of section 8505.)

- C. If the application is complete, the administrator shall notify the following persons of the application being considered, so the notice is sent not less than 15 days before the date that the application will be considered. The notice is considered to be given when personally delivered or when deposited during normal business hours for delivery with the U.S. Postal Service or other public or private delivery service. Notices shall be sent to:
  1. The applicant.
  2. The owner of the property, if different.
  3. The owners of all real property within 300 feet of the boundary for the property for which the approval has been requested, as shown by the latest assessment roll, regardless of whether the owner and property is located in the [NAME OF LOCAL GOVERNMENT] or not.
  4. One occupant of each structure, or each unit within multiple-unit structures, within 300 feet of the boundary for the property for which the approval has been requested, regardless of whether the owner and property is located in the [NAME OF LOCAL GOVERNMENT] or not. (For multiple-unit structures containing more than four dwelling units, only the manager of the structure needs to be notified and pass the information on to the tenants.)
  5. The general public by publication in a newspaper which circulates in the [NAME OF LOCAL GOVERNMENT].
- D. The notice shall include:
  1. The nature of the Special Use Permit being requested.
  2. The property(ies) for which the request has been made.

3. A listing of all existing street addresses within the property(ies) which is(are) subject of the special use. (Street addresses do not need to be created and listed if no such addresses currently exist. If there are no street addresses another means of identification may be used.)
  4. The location where the application documents can be viewed and copied prior to the date the application will be considered.
  5. The date and time when and location where the application will be considered.
  6. The address at which written comments should be directed prior to the consideration.
  7. An indication that a public hearing before the Commission on the Conditional Use Permit may be requested, in writing so the administrator receives the request prior to the date the application will be considered, by any property owner or the occupant of any structure located within 300 feet of the boundary of the property being considered for a Conditional Use Permit.
- For a special use permit (including PUD) where a hearing will be held and the planning commission will make the decision, or initial recommendation:

(Part of section 8605.)

- C. If the application is complete, the administrator shall notify the following persons of the application being considered, so the notice is sent not less than 15 days before the date that the application will be considered. The notice is considered to be given when personally delivered or when deposited during normal business hours for delivery with the U.S. Postal Service or other public or private delivery service. Notices shall be sent to:
  1. The applicant.
  2. The owner of the property, if different.
  3. The owners of all real property within 300 feet of the boundary for the property for which the approval has been requested, as shown by the latest assessment roll,

- regardless of whether the owner and property is located in the [NAME OF LOCAL GOVERNMENT] or not.
4. One occupant of each structure, or each unit within multiple-unit structures, within 300 feet of the boundary for the property for which the approval has been requested, regardless of whether the owner and property is located in the [NAME OF LOCAL GOVERNMENT] or not. (For multiple-unit structures containing more than four dwelling units, only the manager of the structure needs to be notified and pass the information on to the tenants.)
  5. The general public by publication in a newspaper which circulates in the [NAME OF LOCAL GOVERNMENT].
  6. The members of the planning commission.
- D. The notice shall include:
    1. The nature of the Special Use Permit being requested.
    2. The property(ies) for which the request has been made.
    3. A listing of all existing street addresses within the property(ies) which is(are) subject of the special use. (Street addresses do not need to be created and listed if no such addresses currently exist. If there are no street addresses another means of identification may be used.)
    4. The location where the application documents can be viewed and copied prior to the date the application will be considered.
    5. The date and time when and location where the hearing on application will take place.
    6. The address at which written comments should be directed prior to the consideration.
    7. For members of the Commission only, a complete copy of the special use permit application and supporting documents in the record.

For both the special use samples, consider adding additional agencies to the list of who should receive special use permit notices, such as,

- other governments (city, township, village, county, Indian tribal government) which is

located within one mile of the proposed special use;

- other governments and county road commission and county planning commission for where the proposed special use is located in;
- utility providers;
- Michigan Department of Transportation if within \_ distance of a state highway;
- Michigan Department of Environmental Quality if the proposed special use is on property with surface water, wetlands, sand dunes, etc.
- Others.

### Planned Unit Development

Review the zoning ordinance requirements for planned unit developments (PUD) with §503 (M.C.L. 125.3503) and §504 (M.C.L. 125.3504). If there are any discrepancies between your zoning ordinance and the Michigan Zoning Enabling Act, then prepare an amendment to the zoning ordinance to comply with the statute. It is likely the discrepancy which will be found is the notice requirements for hearings.

If the planned unit development is handled like a special use permit, then the sample language presented above for special use on which a hearing will be held can be used. If the planned unit development approval requires a zoning amendment, then the sample language presented below for zoning amendments can be used.

### Zoning Board of Appeals

Review the zoning ordinance requirements for zoning board of appeals with §601-607 (M.C.L. 125.3601-125.3607). If there are any discrepancies between what your zoning ordinance reads and what the Michigan Zoning Enabling Act requires, then prepare an amendment to the zoning ordinance to comply with the statute. It is likely one of the discrepancies which will be found concerns the membership of the appeals board.

An existing zoning board of appeals (on or before July 1, 2006) can continue to act as the zoning board of appeals subject to the Michigan Zoning Enabling Act. New appeals boards, or reorganized appeals boards shall have a membership

of:

- Five or more members if the local unit of government has a population of 5,000 or more (§601(3) (M.C.L. 125.3601(3))).
- Three or more members if the local unit of government has a population of less than 5,000 (§601(3) (M.C.L. 125.3601(3))).
- The fixed number of members shall be specified in the zoning ordinance.
- One member shall be a member of the planning commission in counties and townships. It continues to be optional in cities and villages. (§601(4) (M.C.L. 125.3601(4))). (It was always required in counties and townships.)
- The remaining members shall be selected from the electors residing in the zoning jurisdiction. (For a county members shall not live in a city or village.)
- Membership shall be representative of the population distribution and of the various interests present in the local unit of government.
- Terms are for three years, staggered. (Unless they are the member from the planning commission or legislative body. In those cases the term of office on the appeals board is the same as their term of office on the planning commission or legislative body.)
- Appointments to vacancies must be made within one month after the preceding member's term has expired. This is a new requirement for everyone. (§601(10) (M.C.L. 125.3601(10)))
- Up to two alternate members may be selected from the electors residing in the zoning jurisdiction. (Having the same term as regular members. Alternates are called to serve for the duration of a case when a regular member is absent for one or more meetings (absent due to illness, vacation, conflict of interest, etc.).) (§601(7) (M.C.L. 125.3601(7)))
- One member may be a member of the legislative body (but cannot be chair of the appeals board).
- Any member, or alternate member can be removed from office by the legislative body for misfeasance, malfeasance, or nonfeasance upon written charges and a public hearing.

It is no longer possible for a village or city

council to act as the zoning board of appeals (unless already in place prior to July 1, 2006).

## Affected Versus Aggrieved Parties for Appeals

If the ordinance uses the term “affected parties” when referring to appeals, it should be changed to “aggrieved parties” as that is the new uniform standard (§605 and §606 (M.C.L. 125.3605 and 125.3606)).

## Appeals Board Notices

It is likely another one of the discrepancies which will be found is the notice requirements for appeals/variance hearings. See the example of zoning language section 9606.E. under “Appeal and Variance Procedure and Standards,” below, as one example of zoning language that conforms to the Michigan Enabling Act notice requirements.

## Use Variances

The authority to grant use variances is now limited to cities and villages. It is also limited to townships and counties that, as of February 15, 2006, had a zoning ordinance provision that expressly authorized granting use variances (e.g., used the phrase “use variance” or “variances from uses of land”) or to a township and county that actually granted a use variance(s) before February 15, 2006. Without meeting the above criteria on or before February 15, 2006 then that township or county can not grant use variances.

If use variances are granted, the vote to do so requires a 2/3 majority of the members of the appeals board. Also any local unit of government (including cities and villages) may choose to not issue use variances.

Previously, only cities and villages had use variance authority. Three court of appeals opinions appear to interpret the old Township Zoning Act to allow use variances by township Zoning Board of Appeals without express statutory authority. As a result of these cases, some townships changed the zoning ordinance to specifically allow use variances, others simply began to allow the Appeals Board to

hear such cases. The overwhelming expert opinion is that zoning boards of appeals should not have use variance authority as it usurps the power of the legislative body since a use variance allows uses that otherwise are not permitted in the district. A rezoning or text amendment should be pursued instead. However, politically it was difficult to take this power away from cities and villages, since many rely on use variances as an expedient way to permit development, instead of keeping the zoning ordinance up-to-date. As a result, the legislature was reluctant to take the power away from cities and villages, and reluctant to allow it to be expanded to counties and townships. The compromise language adopted reflects this situation.

## Appeal and Variance Procedure and Standards

There must be standards in the zoning ordinance to guide the decision process concerning variances. This must be spelled out in the zoning ordinance. The following is one example of zoning language that conforms to the Michigan Enabling Act notice requirements:

9606. Appeals to the Appeals Board
- A. A demand for a zoning appeal is received by the zoning administrator. Appeals can be filed by:
    - 1. a person aggrieved, or
    - 2. an officer, department, board, or bureau of the state or local unit of government.
  - B. The Appeals Board shall have the authority to hear appeals concerning:
    - 1. All questions that arise in the administration of the zoning ordinance, including interpretation of the zoning map.
    - 2. All administrative orders, requirements, decision or determinations made by an administrative official or body charged with enforcement of the zoning ordinance.
    - 3. All decisions of the zoning administrator.
    - 4. All decisions concerning site plan review.
    - 5. [OPTIONAL] *All decisions of the planning commission concerning special use permits.*

6. [OPTIONAL] *All decisions of the planning commission concerning planned unit developments.*
- C. Upon receipt of a demand for appeal, the administrator will review the demand for appeal to insure it is complete and the fee is paid.
1. If the application is not complete, the administrator will return the application to the applicant with a letter that specifies the additional material required.
  2. If the application is complete, the administrator and chairman of the appeals board shall establish a date to hold a hearing on the appeal.
- D. The appeal stays all proceedings in furtherance of the action appealed, unless the body or officer from whom the appeal is taken certifies to the zoning board of appeals 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, in which case proceedings may be stayed by a restraining order issued by the zoning board of appeals or a circuit court.
- E. The notices shall be given not less than 15 days before the date of the hearing on an appeal. Notice is considered to be given when personally delivered or when deposited during normal business hours for delivery with the U.S. Postal Service or other public or private delivery service.
1. notices shall be sent to:
    - a. The individual demanding the appeal.
    - b. The owner (or other owners) of the property, if different.
    - c. The owners of all real property within 300 feet of the boundary for the property for which the approval has been requested, as shown by the latest assessment roll, regardless of whether the owner and property is located in the zoning jurisdiction or not.
    - d. One occupant of each structure, or each unit within multiple-unit structures, within 300 feet of the boundary for the property for which the approval has been requested, regardless of whether the owner and property is located in the zoning jurisdiction or not. (For multiple-unit structures containing more than four dwelling units, only the manager of the structure needs to be notified and post the information at the main entrance to the structure.)
  - e. The general public by publication in a newspaper which circulates in the [NAME OF LOCAL GOVERNMENT].
  - f. Members of the appeals board.
2. The notice shall include:
- a. The nature of the appeal being requested.
  - b. The property(ies) for which the appeal or variance has been made.
  - c. A listing of all existing street addresses within the property(ies) which is(are) subject of the appeal. (Street addresses do not need to be created and listed if no such addresses currently exist. If there are no street addresses another means of identification may be used.)
  - d. The location where the demand for appeal can be viewed and copied prior to the date of the hearing.
  - e. The date, time and location of when the hearing before the appeals board will take place.
  - f. The address at which written comments should be directed prior to the hearing.
  - g. For members of the appeals board only, a copy of the demand for appeal, the entire record on the case, the staff report, and supporting documents in the record.
- F. The appeals board shall hold a hearing on the demand for appeal.
1. Representation at Hearing - Upon the hearing, any party or parties may appear in person or by agent or by attorney.
  2. Standards for Variance Decisions by the Appeals Board:  
The Appeals Board shall base its decisions on variances from the

strict requirements of this Ordinance so that the spirit of the Ordinance is observed, public safety secured, and substantial justice done based on the following standards:

a. For Dimensional Variances: A dimensional variance may be granted by the Zoning Board of Appeals only in cases where the applicant demonstrates in the official record of the public hearing that practical difficulty exists by showing all of the following:

- (1) That the need for the requested variance is due to unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shape, water, or topography and is not due to the applicants personal or economic difficulty.
- (2) That the need for the requested variance is not the result of actions of the property owner or previous property owners (self-created).
- (3) That strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for a permitted purpose, or will render conformity with those regulations unnecessarily burdensome.
- (4) That the requested variance is the minimum variance necessary to do substantial justice to the applicant as well as to other property owners in the district.
- (5) That the requested variance will not cause an adverse impact on surrounding property, property values, or the use

and enjoyment of property in the neighborhood or zoning district.

b. For Use Variances: Under no circumstances shall the Appeals Board grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

**[OR, THIS SECOND OPTION, BELOW, IS AVAILABLE ONLY TO CITIES AND VILLAGES, TOWNSHIPS AND COUNTIES THAT, AS OF FEBRUARY 15, 2006 HAD A ZONING ORDINANCE PROVISION THAT EXPRESSLY AUTHORIZED GRANTING USE VARIANCES (E.G., USES THE PHRASE "USE VARIANCE" OR "VARIANCES FROM USES OF LAND"), OR TO A TOWNSHIP AND COUNTY THAT ACTUALLY GRANTED A USE VARIANCE(S) BEFORE FEBRUARY 15, 2006.]**

b. For Use Variances: A use variance may be granted by the Zoning Board of Appeals only in cases where the applicant demonstrates in the official record of the public hearing that undue hardship exists by showing all of the following:

- (1) The building, structure, or land cannot be reasonably used for any of the uses permitted by right or by special use permit in the zoning district in which it is located.
- (2) That the need for the requested variance is due to unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship.
- (3) That the proposed use will not alter the essential character of the neighborhood.
- (4) That the need for the requested variance is not the result of actions of the property owner or previous property owners (self-

- created).
- G. If the demand for appeal is for a variance the appeals board shall either grant, grant with conditions, or deny the application. The appeals board 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. A majority vote of the membership of the appeals board is necessary to grant a dimensional variance and rule on an interpretation of the ordinance. A  $\frac{2}{3}$  majority vote of the membership of the appeals board is necessary to grant a use variance. The decision shall be in writing and reflect the reasons for the decision.
1. At a minimum the record of the decision shall include:
    - a. Formal determination of the facts,
    - b. The conclusions derived from the facts (reasons for the decision)
    - c. The decision.
  2. Within eight days of the decision the record of the decision shall be certified and a copy delivered by first class mail to the person demanding the appeal, the administrator, and other parties.
- H. Any person having an interest affected by such decision shall have a right to appeal to Circuit Court within 30 days of the certified decision of the appeals board, as provided by law.

- A. The notices shall be given not less than 15 days before the date of the hearing on a proposed zoning amendment. Notice is considered to be given when personally delivered or when deposited during normal business hours for delivery with the U.S. Postal Service or other public or private delivery service. Notices shall be sent to:
1. The applicant.
  2. The owner (or other owners) of the property, if different.
  3. If the zoning amendment is for less than 11 adjacent properties: the owners of all real property within 300 feet of the boundary for the property for which the approval has been requested, as shown by the latest assessment roll, regardless of whether the owner and property is located in the zoning jurisdiction or not.
  4. If the zoning amendment involves less than 11 adjacent properties: One occupant of each structure, or each unit within multiple-unit structures, within 300 feet of the boundary for the property for which the approval has been requested, regardless of whether the owner and property is located in the zoning jurisdiction or not. (For multiple-unit structures containing more than four dwelling units, only the manager of the structure needs to be notified and post the information at the main entrance to the structure.)
  5. The general public by publication in a newspaper which circulates in the [NAME OF LOCAL GOVERNMENT].
  6. Members of the planning commission, or legislative body and planning commission if the hearing is being held by the legislative body.
- D. The notice shall include:
1. The nature of the zoning amendment being requested.
  2. The property(ies) for which the zoning amendment has been made.
  3. If the zoning amendment is for less than 11 adjacent properties: a listing of all existing street addresses within the property(ies) which is(are) subject of the zoning

## Zoning Amendments

Review the zoning ordinance requirements for zoning amendments with §306 (M.C.L. 125.3306) with cross reference to §202 (M.C.L. 125.3202), and by §401(2) (M.C.L. 125.3401(2) with cross reference to §202 (M.C.L. 125.3202). If there are any discrepancies between what your zoning ordinance reads and what the Michigan Zoning Enabling Act requires, then prepare an amendment to the zoning ordinance to comply with the statute. It is likely the discrepancy which will be found is the notice requirements for hearings. The following is one example of zoning language that conforms to the Michigan Enabling Act notice requirements: (Section 9802.)

amendment. (Street addresses do not need to be created and listed if no such addresses currently exist. If there are no street addresses another means of identification may be used.)

4. The location where the application documents can be viewed and copied prior to the date the zoning amendment hearing.
5. The date, time when and location where the hearing on the zoning amendment will take place.
6. The address at which written comments should be directed prior to the hearing on the zoning amendment.
7. For members of the planning commission only, a copy of the request for the zoning amendment, the draft of the zoning amendment, and supporting documents in the record.

For zoning amendments consider adding additional agencies to the list of who should receive amendment notices, such as,

- other governments (city, township, village, county, Indian tribal government) which are located within one mile of the proposed special use;
- other governments and county road commission and county planning commission for where the proposed special use is located in;
- utility providers;
- Michigan Department of Transportation if within \_ distance of a state highway;
- Michigan Department of Environmental Quality if the proposed special use is on property with surface water, wetlands, sand dunes, etc.
- Others.

## Other things to Review

The above cover the major changes for most communities. However there may be other minor issues concerning the following. In these cases the differences between the Michigan Zoning Enabling Act and your local ordinance may not reflect a change in the statute's requirements. It may simply be an historic problem. Now is a good time to

review these also, and make those corrections at the same time the above issues are updated.

## State Review of County Zoning

If your county has a zoning ordinance with a provision that recognizes state review and approval of county zoning amendments, that provision can be removed as of July 1, 2006.

## County Zoning Taxes

If the county zoning ordinance had a provision allowing the levying of a specific tax to support the administration of the zoning ordinance that should be removed from the ordinance as that provision from the County Zoning Act was eliminated.

## Discretion in Application of Standards for Adult Foster Care Facilities in Cities and Villages

Section 206 (M.C.L. 125.3206) consolidates the adult foster care facility standards and Section 206(4) (M.C.L. 125.3206(4)) requires townships and counties to issue special use permits, conditional use permits and similar permits if group day-care homes meet certain standards, whereas cities and villages are given discretion in the issuance of such permits (Section 206(5) (M.C.L.125.3206(5))). Be alert to other differences in community types on some specific land use limitations (e.g. oil and gas, in home instruction in the arts, etc.) although these are **not** new provisions.

## New Authority for Interim Zoning in Cities and Villages

Section 404 (M.C.L. 125.3404) continues authority for interim zoning in townships and counties that do not currently have any zoning, but also extends that authority to cities and villages. The draft interim ordinance must be sent to the county zoning commission or coordinating committee for review prior to adoption by the legislative body. Approval by the legislative body is automatic if the county does not act within 15 days. The interim ordinance can be renewed for not more than 2 years by resolution of the legislative body.

## Nonconformities

Review the zoning ordinance requirements for nonconformities with §208 (M.C.L. 125.3208). If there are any discrepancies between what your zoning ordinance reads and what the Michigan Zoning Enabling Act requires, then prepare an amendment to the zoning ordinance to comply with the statute.

Note the statute, for townships and counties, changes from “shall” to “may” provide for the completion, resumption, restoration, reconstruction, extension, or substitution of nonconforming uses or structures upon terms and conditions provided in the zoning ordinance. This means a zoning jurisdiction **may** provide for some or all of those elements.

“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.”

(§208(2) (M.C.L. 125.3208(2)))

It has always been “may” in cities and villages. In addition, a provision which was in the City-Village Zoning Act now applies to townships and counties. A person aggrieved of a decision on nonconforming uses under Section 208 (M.C.L. 125.3208) may appeal to circuit court and the court must apply the standards applicable to reviews of Zoning Board of Appeals decisions in Section 606 (M.C.L. 125.3606) when adjudicating the court case. These provisions may require a change in some township and county ordinances.

## Site Plans

Review the zoning ordinance requirements for site plans with §501 (M.C.L. 125.3501). If there are any discrepancies between what your zoning ordinance reads and what the Michigan Zoning Enabling Act requires, then prepare an amendment to the zoning ordinance to comply with the statute.

## Discretionary Decisions

Review the zoning ordinance requirements for discretionary decisions with §504 (M.C.L.

125.3504). If there are any discrepancies between what your zoning ordinance reads and what the Michigan Zoning Enabling Act requires, then prepare an amendment to the zoning ordinance to comply with the statute.

## Performance Guarantees

Review the zoning ordinance requirements for performance guarantees with §505 (M.C.L. 125.3505). If there are any discrepancies between what your zoning ordinance reads and what the Michigan Zoning Enabling Act requires, then prepare an amendment to the zoning ordinance to comply with the statute.

## Update Resolution/Ordinance

### Creating Planning Commission

In addition to reviewing the zoning ordinance and comparing it to the new provisions of the Michigan Zoning Enabling Act, some municipal attorneys are also recommending locating the resolution or ordinance use to create the zoning commission/zoning board/planning commission. Then have the legislative body amend the resolution or ordinance to update it to reflect new provisions in the Michigan Zoning Enabling Act.

### Update Rules of Procedure (bylaws)

Some municipal attorneys are also recommending a review of the bylaws of the zoning commission/zoning board (if they have any), the planning commission (which must have bylaws), and the Zoning board of appeals (which also must have rules of procedure) and compare them to the new Michigan Zoning Enabling Act. If necessary, update them to reflect the new provisions in the Act.

## Consolidated Public Notice Requirement

Following is sample public notice language that consolidates all public notice requirements into a single section of the zoning ordinance. Most zoning ordinances have separate public notice requirements

for each zoning activity (i.e. a separate one for hearings on rezonings, another for special land uses, etc.). If the following sample ordinance language is used, it is important to delete the separate notice requirements elsewhere in the ordinance.

**Section X.Y PUBLIC NOTICE**

X.Y.1 Public Notification: All applications for development approval requiring a public hearing shall comply with the Michigan Zoning Enabling Act, PA 110 of 2006 and the other provisions of this Section with regard to public notification.

- A. *Responsibility: When the provisions of this Ordinance or the Michigan Zoning Enabling Act require that notice be published, the \_ [INSERT PERSON RESPONSIBLE, USUALLY THE ZONING ADMINISTRATOR OR CLERK] shall be responsible for preparing the content of the notice, having it published in a newspaper of general circulation in the \_ [INSERT NAME OF LOCAL UNIT OF GOVERNMENT] and deposited during normal business hours for delivery with the U.S. Postal Service or other public or private delivery service or personally delivered.*
- B. *Content: All mail, personal and newspaper notices for public hearings shall:*
  - 1. *Describe the nature of the request: Identify whether the request is for a rezoning, text amendment, special land use, planned unit development, variance, appeal, ordinance interpretation or other purpose.*
  - 2. *Location: Indicate the property that is the subject of the request. The notice shall include a listing of all existing street addresses within the subject 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 such as a tax parcel identification number, identifying the nearest cross street, or including a map showing the location of the property. No street addresses must be listed when eleven (11) or more adjacent properties are proposed for a zoning amendment, or rezoning, or when the request is for an ordinance interpretation not involving a specific property.*
  - 3. *When and where the request will be considered: Indicate the date, time and place of the public hearing(s).*

- 4. *Written comments: Include a statement describing when and where written comments will be received concerning the request. Include a statement that the public may appear at the public hearing in person or by counsel.*
  - 5. *Handicap access: Information concerning how handicap access will be accommodated if the meeting facility is not handicap accessible.*
- C. *Personal and Mailed Notice*
- 1. *General: When the provisions of this Ordinance or state law require that personal or mailed notice be provided, notice shall be provided to:*
    - a. *The owners of property for which approval is being considered, and the applicant, if different than the owner(s) of the property.*
    - b. *Except for a zoning amendment, or rezoning, requests involving eleven (11) or more adjacent properties or an ordinance interpretation request that does not involve a specific property; to all persons to whom real property is assessed within three hundred (300) feet of the boundary of the property subject to the request, regardless of whether the property or occupant is located within the boundaries of the \_\_\_ [INSERT NAME OF LOCAL UNIT OF GOVERNMENT]. If the name of the occupant is not known, the term "occupant" may be used in making notification. Notification need not be given to more than one (1) occupant of a structure, except that if a structure contains more than one (1) dwelling unit or spatial area owned or leased by different individuals, partnerships, businesses, or organizations, one (1) occupant of each unit or spatial area shall receive notice. In the case of a single structure containing more than four (4) dwelling units or other distinct spatial areas owned or leased by different individuals, partnerships, businesses or organizations, notice shall 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.*
    - c. *All neighborhood organizations,*

*public utility companies, railroads and other persons which have requested to receive notice pursuant to Section X.y.2, Registration to Receive Notice by Mail.*

- d. *Other governmental units or infrastructure agencies within \_ [INSERT DISTANCE, SUCH AS ONE MILE] of the property involved in the application.*
  - 2. *Notice by mail/affidavit: Notice shall be deemed given by its deposit with the U.S. Postal Service, or other public or private delivery service, or personally delivered during normal business hours. The \_ [INSERT PERSON RESPONSIBLE, USUALLY THE ZONING ADMINISTRATOR OR CLERK] shall prepare a list of property owners and registrants to whom notice was mailed, as well as of anyone to whom personal notice was delivered.*
- D. *Timing of Notice: Unless otherwise provided in the Michigan Zoning Enabling Act, PA 110 of 2006, or this Ordinance where applicable, notice of a public hearing shall be provided as follows:*
- 1. *For a public hearing on an application for a rezoning, text amendment, special land use, planned unit development, variance, appeal, or ordinance interpretation: not less than fifteen (15) days before the date the application will be considered for approval. [THIS MEANS IT MUST BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION AND FOR THOSE RECEIVING PERSONAL NOTICE, RECEIVED BY PERSONAL DELIVERY OR DEPOSITED WITH THE U.S. POSTAL SERVICE DURING*

*NORMAL BUSINESS HOURS, NOT LESS THAN 15 DAYS BEFORE THE HEARING.]*

- 2. *For any other public hearing required by this Ordinance: \_ [INSERT REQUIRED NUMBER OF DAYS, IF THERE ARE OTHER ZONING ACTIVITIES REQUIRING PUBLIC HEARINGS].*

*X.Y.2 Registration to Receive Notice by Mail:*

- A. *General: Any neighborhood organization, public utility company, railroad or any other person may register with the \_ [INSERT PERSON RESPONSIBLE, USUALLY THE ZONING ADMINISTRATOR OR CLERK] to receive written notice of all applications for development approval pursuant to Section X.Y.1.C.c., Personal and Mailed Notice, or written notice of all applications for development approval within the zoning district in which they are located. The \_ [INSERT PERSON RESPONSIBLE, USUALLY THE ZONING ADMINISTRATOR OR CLERK] shall be responsible for providing this notification. Fees may be assessed for the provision of this notice, as established by the legislative body.*
- B. *Requirements: The requesting party must provide the \_ [INSERT PERSON RESPONSIBLE, USUALLY THE ZONING ADMINISTRATOR OR CLERK] information on an official form to ensure notification can be made. All registered persons must re-register bi-annually [OR ANOTHER LENGTH OF TIME] to continue to receive notification pursuant to this Section.*

[April 30, 2008; C:\Documents and Settings\Kurt Schindler\My Documents\wp\BullitensMSUE Wexford\pamphlet9SampleZoneAmdMiZoneEnabAct.wpd]