

2004 Land Use Legislation

The first set of legislation from Governor Jennifer M. Granholm's Land Use Leadership Council.

- A. What we will cover:
1. Joint Planning Act
 2. Noncontiguous Open Space (TDR)
Prepared by Dean Solomon, District Natural Resources Agent, Kellogg Biological Station (solomon@msue.msu.edu)
Several graphics prepared by Rod Cortright, Charlevoix County Extension Director, Land Use Area of Expertise (cortrigh@msue.msu.edu)
 3. Land Bank
Prepared by Zenia Z. Kotval, Co-Director, Urban Planning Partnerships (kotval@msu.edu)
June Thomas, Professor, Urban & Reg. Planning and Co-Director, Urban Collaborators (thomasj@msu.edu)
And additional materials by Genesee County Treasurer Daniel T. Kildee (<http://www.co.genesee.mi.us/treasurer/index.htm>)
 4. Blight Regulations
Prepared by Kurt H. Schindler, Wexford County Extension Director, Land Use Area of Expertise (schindlk@msue.msu.edu)
 5. Brownfields
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 - c. MSU/MSUE Urban Collaborators (<http://www.ssc.msu.edu/~urp/outreach/urbcollabs.htm>)
 - d. Genesee County Treasurer's Office

(<http://www.co.geneseee.mi.us/treasurer/index.htm>)

- e. Adesoji O. Adelaja, Hannah Distinguished Professor in Land Use Policy

B. Michigan Land Use Leadership Council

- 1. These Public Acts are the first to come from Governor Jennifer Granholm's Land Use Leadership Council.
- 2. Expect more land use legislation to come.
- 3. Land Use Leadership Council maintains an excellent, well documented web site. See: <http://www.michiganlanduse.org/>

C. A. Michigan State University Extension

- 1. MSU Extension:
 - a. 1912-1914: Extension started nation-wide and in Michigan
 - b. Extension is part of the Land Grant University in each state. In Michigan: MSU.
 - c. Funding is from three main sources:
 - (1) Federal Government (U.S. Department of Agriculture)
 - (2) State of Michigan (Michigan State University)
 - (3) Local County Board of Commissioners.
 - d. In Michigan there is an Extension office in each of 82 counties.
 - e. Campus faculty are resource people to do research, translate research results into education programs for county Extension offices.
 - f. Extension focuses on three main areas of emphasis with 32 Area of Expertise Teams:
 - (1) Agriculture and Natural Resources
 - (2) Children, Youth and Family
 - (3) Community and Economic Development
 - g. This program is a result of Land Use Area of Expertise Team as part of Community and Economic Development focus.

D. Michigan Land Use Leadership Council

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- 2. Expect more to come.

Joint Municipal Planning Act

Prepared by Kurt H. Schindler, Wexford County Extension Director, Land Use Area of Expertise (schindlk@msue.msu.edu)

- A. Need for Coordination in Michigan.
1. The *Relative Risk Analysis Project* (1992) concluded “lack of integrated and coordinated land use planning” was one of the top environmental problems in Michigan.¹
 2. 1,858 Governments with possible planning and zoning authority.
 - a. 1,242 Townships in Michigan.
 - b. 258 Villages.
 - c. 275 Cities.
 - d. 83 Counties.
 3. Compared to other states with 300± to 400± governments with planning and zoning authority.
 4. Very difficult to see the big picture, let alone plan for it.
 5. Very difficult to coordinate between so many units of government.
- B. Coordination is an attitude thing.
1. If people want to make it happen it will work.
 2. The issue now is for this to become the new practice in Michigan.
 3. There are many issues and topics which can not be dealt with in a small area, (village, city or township).
 4. To be effective, it must be done at a larger geographic scale.
 5. Economic development example.
 - a. Economic development involves a larger areas than a municipality² (village, township and most cities).
 - b. Jobs, and location of people employed is a labor market area; often an entire county or multiple counties.
 - c. Coordinated planning is needed to be as effective as possible for economic development: worker training, housing, new industrial sites.

¹Michigan Department of Natural Resources (Public Sector Consultants, Inc.); *Relative Risk Analysis Project*; July 30, 1992.

²Townships, charter townships, villages, and cities (not counties).

6. Ground/Surface water example:
 - a. One community can have a very good system in place to protect a river, lake or groundwater.
 - b. But water does not stop at the political boundary.
 - c. Coordinated planning at a watershed (or ground-watershed) level is critical for long term success.
 7. Other topics that demand a multi-government cooperative planning approach include:
 - a. Natural features (lakes, rivers): Often touch more than one municipality.
 - b. Technology for farming, mining, pipelines, radio transmissions: Cross municipal boundaries.
 - c. Transportation (roads, trails, billboards, parking, scenic vistas): Include multiple municipalities.
 - d. Major developments: Have impacts on more than just one municipality (traffic, lights, etc.) reference, relevant portions of other plans adopted by other agencies and governments.
 - e. Can you think of others:
 - (1) _____
 - (2) _____
 - (3) _____
 8. Every local government in Michigan should identify those “bigger than just local concern” issues.
 - a. Put that list on the table for coordinated planning discussion.
 - b. The county planning commission has an opportunity to be in the center in this effort.
- C. The process of planning coordination is now a part of the township, village and city, and county planning enabling acts (2001 Amendments).
1. So a process is in place. Now supplemented even further with Joint Municipal Planning Act³:
- D. Purpose:
1. Option to have for joint land use planning, and
 2. Option to have joint exercise of certain zoning powers, and
 3. Option to conduct other duties by local units of government, and;
 4. Option to establish powers, and duties of joint planning commissions.

³P.A. 226 of 2003, being the Joint Municipal Planning Act, M.C.L. 125.131 *et. seq.* (effective December 18, 2003). (HB-4284 (Enrolled and sent to the governor December 4, 2003).

- E. Applies to City, Village and Townships (“municipalities”)
 - 1. (Not Counties).
- F. Two or more municipalities may each adopt an ordinance approving an agreement establishing a joint planning commission.
 - 1. The agreement shall specify at least all of the following:
 - a. The composition of the joint planning commission, including any alternate members.
 - b. The qualifications,
 - (1) the selection by election(!) or
 - (2) the selection appointment,and the terms of office of members of the joint planning commission.
 - c. Conditions and procedures for:
 - (1) removal from office of members of the joint planning commission, and
 - (2) for filling vacancies in the joint planning commission.
 - d. How the operating budget of the joint planning commission will be shared by the participating municipalities.
 - e. The jurisdictional area of the joint planning commission,
 - (1) which may consist of all, or
 - (2) which may consist of partof the combined territory of the participating municipalities.
 - f. Procedures by which a municipality may join or withdraw from the joint planning commission.
 - g. The planning act whose procedure will be followed by the joint planning commission in adopting a plan or exercising any other power or performing any other duty of a planning commission. The planning act shall be a planning act that would otherwise be applicable to at least 1 participating municipality. (Thus it would be one of the following acts:
 - (1) P.A. 285 of 1931, as amended, being the City or Village Planning Act, M.C.L. 125.31 *et. seq.*
 - (2) P.A. 168 of 1959, as amended, being the Township Planning Act, M.C.L. 125.321 *et. seq.*)
 - h. The zoning act whose procedure will be followed by the joint planning commission in exercising the powers and performing the duties of a zoning board or zoning commission. The zoning act shall be a zoning act that would otherwise be applicable to at least 1 participating municipality. (Thus it would be one of the following acts:
 - (1) P.A. 207 of 1921, as amended, being the City and Village Zoning Act,

- M.C.L. 125.581 *et. seq.*).
- (2) P.A. 184 of 1943, as amended, being the Township Zoning Act, M.C.L. 125.271 *et. seq.*).
- i. Any additional provision concerning the powers or duties of a zoning board or zoning commission that the zoning act specified pursuant to subdivision (h) authorizes to be set forth in a zoning ordinance and that is agreed to by the participating municipalities.
- G. Section 7
1. All the powers and duties of a planning commission under each planning act are, with respect to the jurisdictional area of the joint planning commission, transferred to the joint planning commission. In exercising such powers or performing such duties, the joint planning commission shall follow the procedure provided under the planning act specified.
2. All the powers and duties of a zoning board or zoning commission under each zoning act are, with respect to the jurisdictional area of the joint planning commission, transferred to the joint planning commission. In exercising such powers or performing such duties, the joint planning commission shall follow the procedure provided under the zoning act specified.
- H. If only part of the territory of a participating municipality is in the jurisdictional area of a joint planning commission,
1. the participating municipality, with the joint planning commission acting as the zoning board or zoning commission, may adopt a zoning ordinance that affects only that portion of its territory in the jurisdictional area of the joint planning commission.
- I. Zoning Ordinance, or amendment, subject to petition placing it on the ballot (the same way it is done as if it is a township zoning ordinance).
1. If a municipality adopts an ordinance under section 5, within 7 days after the municipality publishes the ordinance or a synopsis of the ordinance, whichever is required by law,
- a. a registered elector of the municipality may file with the clerk of the municipality a notice of intent to file a petition under this section.
- b. If a notice of intent is filed, then within 30 days following the publication of the ordinance or synopsis, a petition signed by a number of registered electors of the municipality equal to not less than 15% of the total votes cast for all candidates for governor, at the last preceding general election at which a governor was elected, in the municipality may be filed with the clerk of the municipality requesting the submission of the ordinance to the registered electors of the municipality for their approval.

- c. Upon the filing of a notice of intent, the ordinance adopted by the legislative body of the municipality shall not take effect until 1 of the following occurs:
 - (1) The expiration of 30 days after publication of the ordinance or synopsis, if a petition is not filed within that time. (Process ends.)
 - (2) If a petition is filed within 30 days after publication of the ordinance, the clerk of the municipality determines that the petition is inadequate. (Process ends.)
 - (3) If a petition is filed within 30 days after publication of the ordinance, the clerk of the municipality determines that the petition is adequate:
 - d. Then an election is held and the ordinance is approved by a majority of the registered electors of the municipality voting for the ordinance at the next regular election which supplies reasonable time for proper notices and printing of ballots, or at any special election called for that purpose. The legislative body of the municipality shall provide the manner of submitting the ordinance to the registered electors of the municipality for their approval or rejection, and determining the result of the election.
- 2. If a municipality has a charter and the charter provides for a right of referendum on municipal ordinances, then in that municipality, the charter referendum provisions, instead of subsections (1) and (2), apply.
 - 3. A petition under subsection (1), including the circulation and signing of the petition, is subject to section 488 of the Michigan Election Law⁴. A person who violates a provision of the Michigan election law,⁵ applicable to a petition under subsection (1) is subject to the penalties prescribed for that violation in the Michigan election law.
- J. The business that a joint planning commission may perform shall be conducted at a public meeting of the joint planning commission held in compliance with the Open Meetings Act,⁶
 - K. A writing prepared, owned, used, in the possession of, or retained by a joint planning commission in the performance of an official function is subject to the Freedom of Information Act.⁷

⁴P.A. 116 of 1954, as amended, being Michigan Election Law, M.C.L. 168.488.

⁵P.A. 116 of 1954, as amended, being Michigan Election Law, M.C.L. 168.1 to 168.992.

⁶P.A. 267 of 1976, as amended, being Open Meetings Act, M.C.L. 15.261 to 15.275.

⁷P.A. 442 of 1976, as amended, being the Freedom of Information Act, M.C.L. 15.231 to 15.246.

Noncontiguous Open Space (TDR?)

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Several graphics prepared by Rod Cortright, Charlevoix County Extension
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- A. 2003 Open Space zoning amendments:
 - 1. P.A. 227 of 2003
 - a. Amends P.A. 207 of 1921, as amended, (being the City and Village Zoning Act, M.C.L. 125.581 *et. seq.*)
 - 2. P.A. 228 of 2003
 - a. Amends P.A. 184 of 1943, as amended, (being the Township Zoning Act, M.C.L. 125.271 *et. seq.*)
 - 3. P.A. 229 of 2003
 - a. Amends P.A. 183 of 1943, as amended, (being the County Zoning Act, M.C.L. 125.201 *et. seq.*)
- B. A quick review: The Open space zoning 2001 amendments:
 - 1. What is open space development?
 - a. Conventional development and open space option.
 - b. Results in the same number of building units.
 - 2. Implementing open space development.
- C. PUD open space zoning 2003 amendment.
 - 1. The Amendment applies to Planned Unit Developments (PUD).
 - 2. The Amendment reads:
 - “Unless explicitly prohibited by the planned unit development regulations, if requested by the landowner, a township⁸ may approve a planned unit development with open space that is not contiguous with the rest of the planned unit development.”
- D. Why the PUD open space zoning 2003 amendments came to be:
 - 1. The problem:
 - a. Many ordinances treat adjacent parcels as single lot for zoning purposes.
 - b. But some do not.
 - c. Creates challenges for developers seeking open space developments.

⁸also applies to counties, cities and villages.

2. The solution:
 - a. Allow open space on noncontiguous parcels.
 - b. Example 1: Open space all contiguous within the developed parcel.
 - c. Example 2: Open space on noncontiguous parcels, separated by a road.
3. The Amendment:
 - a. Applies to PUDs only.
 - b. Unless explicitly prohibited in zoning ordinance, open space may be in non-contiguous parcels as part of the PUD.
 - c. Must be requested by landowner.
 - d. Landowner must own or have interest (development rights) for both parcels.
 - e. Example 3: Open space is on a noncontiguous parcel.
4. Things to consider...
 - a. Will noncontiguous open space maintained in perpetuity?
 - b. Will noncontiguous open space be accessible to PUD residents?
- E. Transfer of Development Rights (TDR) authority?
 1. *Some* planners and attorneys interpret the new law to...
 - a. Give local governments that authority to transfer development rights from one area to another.
 - b. Never before explicitly part of enabling legislation.
 2. This interpretation *has not* been tested.
- F. Transfer of Development Rights (TDR) authority.
 1. Logic behind saying it is TDR authority:
 - a. If open space can be non-contiguous, could it be on the other side of the community?
 - b. If so, isn't the net effect to allow density to be transferred from one area to another?
 - c. Isn't that the same as transfer of development rights?
 2. To do TDR with the Open Space PUD amendments:
 - a. Create a community TDR plan.
 - (1) identify *sending zones* and *receiving zones*.
 - b. PUD standards.
 - (1) Procedures.
 - (2) Approval standards.
 - (3) Density calculation.
 - (4) Permanent dedication requirement.
 - c. Transfers within single governmental unit only.
 - (1) Opportunities with multi-jurisdictional transfers using joint planning

- commissions?
3. Consult your attorney!

Land Bank

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And additional materials by Genesee County Treasurer Daniel T. Kildee
(<http://www.co.genesee.mi.us/treasurer/index.htm>)

- A. Land Banking
 - 1. The practice of acquiring land and holding it for future use
- B. Why is it Important?
 - 1. Public control of land is often desirable as a strategy to eliminate blight, dangerous conditions or havens for criminal activities.
 - 2. Municipalities are sometimes hesitant to acquire land because ownership raises the specter of liability, including environmental liability for "brownfield" sites.
 - 3. Tax reverted properties often contribute to urban decay by
 - a. discouraging residential or commercial ownership
 - b. depressing property values
 - c. attracting criminal activity
 - d. creating health hazards
- C. Why Needed in Michigan?
 - 1. Reform legislation enacted in 1999 was overly complicated, and still required 5 or 6 years between delinquency and foreclosure.
 - 2. At the time legislation was considered in 1999, title companies indicated that 65% of tax reverted properties lacked marketable title.
 - 3. Some large cities developed huge backlogs, 50,000 parcels in Detroit in 1998
 - 4. Counties use the 1999 legislation, but not all counties choose to handle tax delinquency at the county level.
 - 5. Genesee County (Flint) uses the legislation with the Urban Cooperation Act⁹ to create a Land Bank prior to this new legislation being in place.
- D. The Basic Problem: A Scenario
 - 1. 1995—a person dies and leaves no clear heir.
 - 2. Survivor can't sell property or can't pay taxes.

Grey

⁹P.A. 7 of Extra Session, 1967, as amended, being the Urban Cooperation Act, M.C.L. 124.501 *et. seq.*

3. The County begins a long process of trying to get taxes paid.
 4. YEARS go by; property goes to State but not until much later does it come back to County or City.
- E. Effects on neighborhood.
1. Note: Photo is from Metro Times in Detroit. This once fine structure stood on the 2400 block of Helen on Detroit's east side, and was well-kept until a year before the April 10, 2002 publication date of photo.
- F. The Potential: Genesee County
1. Flint population fell from 193,000 in 1970 to 120,000 in 2000.
 2. Over 12% of housing stock empty in 2000.
 3. Abandoned properties transferred to private speculators or became state-owned through foreclosure; 5 year span.
 4. Contiguous blight.
 5. No way to intervene for local families.
- G. Results: Genesee County
1. Got outside funding and consultants to help develop a way to use legislation
 2. In first two years after 1999, county took title to 2,500 parcels, 5% of land in county.
 3. In first two years, county brought in \$2.6 million from:
 - a. land sales,
 - b. increased delinquent tax fees surplus dedicated to the land bank.
 4. In first two years, set up program which saved from foreclosure:
 - a. 890 families (in homes they own),
 - b. 130 families in rental housing (tenant managed),both assisted by MSUE.
 5. Side lot transfers and city lot preparation for redevelopment.
 6. 140 foreclosed tenant-occupied properties owned by land bank are now managed by non-profit housing agencies.
 7. The County's Treasurer helped fashion the new bills!
- H. What is required for Land Banking?
1. Set up the Land Bank Authority.
 - a. State of Michigan,
 - b. A county foreclosing governmental unit (32 counties),
 - c. City of Detroit,
 - d. Any municipality(ies) based on an agreement with their county or with the state, if appropriate.
 2. Cities must have the capacity to:
 - a. rapidly gain control of deteriorated property,

- b. assemble larger tracts of land,
- c. hold land in anticipation of development without incurring substantial liabilities,
- d. dispose of land to individual property owners, and nonprofit and for profit groups without going through cumbersome proceedings, while still fulfilling the function of protectors of the public treasury and principal land use regulators.

I. Land Bank Legislation

- 1. Governor Granholm on January 5, 2004 signed a bipartisan package of legislation intended to help urban communities. Immediately effective.
- 2. The six-bill, bipartisan Land Bank Fast Track Authority legislation presents an innovative approach to relieving the state and local units of tax reverted parcels.
- 3. The land bank authorities would undertake expedited action to clear titles and then ensure redevelopment of the properties, helping urban communities revitalize neighborhoods and business districts.

J. The Legislative Package¹⁰

- 1. The package contains 6 tie-barred bills:
 - a. House Bill 4480 (H-2):
 - (1) Amends the Brownfield Redevelopment Financing Act to include assistance to a land bank fast track authority.
 - (2) Includes tax reverted property held by an authority as eligible property.
 - (3) Permits the use of tax increment revenues for assistance .
 - b. House Bill 4481 (H-2):
 - (1) Amends the General Property Tax Act to exempt from the tax property owned by a land bank fast track authority.
 - (2) Creates a 5-year tax exemption property sold or conveyed by an authority.
 - c. House Bill 4482 (H-2):¹¹
 - (1) Creates the “Tax Reverted Clean Title Act,” to impose a specific task on property sold by a land bank authority.
 - (2) Dedicates 50% of the proceeds to the authority that sold the property.

¹⁰Land Bank Fast Tract Act, P.A. 258 of 2003, M.C.L. 124.751 *et. seq.*, (HB 4483 and five other bills amending parts of other statutes: HB4480 amending brownfield finance; HB4481 and HB4484 amending the general property tax statute; HB4482 creating a Tax Reverted Clean Title Act, P.A. 260 of 2003, M.C.L. 211.1021 *et. seq.*; and HB4488 for disposition of surplus funds to be made available as loans to land banks).

¹¹Tax Reverted Clean Title Act, P.A. 260 of 2003, M.C.L. 211.1021 *et. seq.* (HB4482).

- d. House Bill 4483—key component of package:
 - (1) Public Act 258 of 2003. Creates the Land Bank Fast Track Act and authorizes the Authority to assemble property for sale or lease, and to protect or prevent the extinguishing of any lien held by the Redevelopment Fast Track Authority (RFTA).
 - (2) The Authority may also preserve the value of the property by demolition, managing or repair of the property. See more detail below.
 - e. House Bill 4484 (H-4):
 - (1) Amends the General Property Tax Act to permit a foreclosing unit to request a title product to identify owners.
 - (2) Describes steps to access the address of those parties entitled to notice of a foreclosure hearing.
 - f. House Bill 4488 (H-2):
 - (1) Amends P.A. 105 of 1855, which governs the disposition of surplus State funds to allow the State Treasurer to invest surplus funds in loans to a land bank fast track authority to clear the title.
- K. Key Bill: H. B. 4483¹²
- 1. House Bill 4483 (H-3) enacts the Land Bank Fast Track Act, which:
 - a. Creates the State Land Bank Fast Track Authority and provides for the creation of county and local land bank authorities.
 - b. Establishes procedures for an expedited quiet title and foreclosure action.
 - c. Allows an authority to acquire, buy, lease, demolish or rehabilitate property.
 - d. Allows a county or city to make a tax pledge to support its bonds.
 - e. Creates the Land Bank Fast Track Authority Fund.
 - f. Repeals the Tax Reverted Property Emergency Disposal Act.
- L. Early Concerns:
- 1. HB 4483 was to give land bank authorities great power subject only to prohibitions about condemnation, levying taxes, casinos.
 - 2. Property owned by land bank would be tax-exempt; would this deprive municipalities of tax revenue?
 - 3. Is proper notification going to be given to property owners?
- M. Creation and Powers of the Landbank Authority:
- 1. This series of bills creates the new land banking authority within the state Department of

¹²Land Bank Fast Tract Act, P.A. 258 of 2003, M.C.L. 124.751 *et. seq.*, (HB 4483).

- Labor and Economic Growth (formerly Consumer and Industry Services).
2. A county or qualifying city foreclosing unit could enter into an agreement with the state authority for the creation of a county authority.
 3. The authority has the power to borrow money and issue bonds and notes.
 4. The authority could not use eminent domain to condemn land, levy any taxes or assessments or develop a casino.
- N. Purchasing Powers:
1. An authority can purchase property for any purpose, including:
 - a. To use or develop the property it acquired.
 - b. To facilitate the assembly of the property for sale or lease to another public or private entity.
 - c. To protect or prevent the extinguishing of a lien, including a tax lien, held by the authority or imposed on its property.
- O. Implementation Powers:
1. An authority can do the following with land it holds:
 - a. Grant or acquire a license, easement or option.
 - b. Fix, charge, and collect rent, fees and charges.
 - c. Pay any tax or special assessment due.
 - d. Take action required to clear or quiet title to establish ownership.
 - e. Remediate environmental contamination.
- P. Summary of Legislation:
1. This Act provides for the creation of land bank fast track authorities to assist in the following:
 - a. Assist governmental entities in the assembly and clearance of title to property in a coordinated manner;
 - b. Facilitate the use and development of certain property;
 - c. Promote economic growth;
 - d. Prescribe the powers and duties of certain authorities;
 - e. Provide for the creation and appointment of boards to govern land bank fast track authorities and to prescribe their powers and duties;
 - f. Authorize the acquisition, maintenance, and disposal of interests in real and personal property;
 - g. Authorize the conveyance of certain properties to a land bank fast track authority;
 - h. Authorize the enforcement of tax liens and the clearing or quieting of title by a land bank fast track authority;
 - i. Provide for the distribution and use of revenues collected or received by a land

- bank fast track authority;
- j. Prescribe powers and duties of certain public entities and state and local officers and agencies;
- k. Authorize the transfer and acceptance of property in lieu of taxes and the release of tax liens;
- l. Exempt property, income, and operations of a land bank fast track authority from tax;
- m. Extend protections against certain liabilities to a land bank fast track authority.

Blight Regulations

Prepared by Kurt H. Schindler, Wexford County Extension Director, Land Use Area of Expertise (schindlk@msue.msu.edu)

A. The Problem

1. In mid 1990s the “municipal civil infractions” method of enforcement was adopted.
2. Now communities are struggling with major backlogs (months, years) before district court hears the case.
3. Court gives civil infractions a low priority
4. Civil infraction maximum penalty of \$500 is too low.

B. Blight, or Quality of Life Violations.

1. A series of acts to set up an enforcement bureau for violations of ordinances which deal with quality of life.
 - a. Applies to cities only.
 - b. Applies only to certain ordinances:
 - (1) zoning;
 - (2) building or construction codes (including elevator, escalator, electrical, mechanical, and plumbing codes);
 - (3) building or property maintenance or conditions in buildings or on premises related to health and safety;
 - (4) fire prevention;
 - (5) illegal dumping and disposal of solid waste;
 - (6) noxious weeds; and
 - (7) vehicle abandonment, inoperative vehicles, and vehicle impoundment.
 - c. But not:
 - (1) Civil infractions under the motor vehicle code, uniform traffic code, or provisions that allow for control of traffic in parking areas.
 - (2) Actions which are a crime under specifically listed statutes.
 - (3) Have jurisdiction over criminal offences, traffic infractions, municipal or state civil infractions.
2. Administrative Hearing Bureau
 - a. A city can set up a Bureau to:
 - (1) adjudicate,
 - (2) impose sanctions,

Blue-grey

- (3) accept admissions of responsibility for quality of life violations, and
 - (4) collect civil fines and costs.
 - b. Maximum civil fine of \$10,000.
 - c. Can not impose a penalty of incarceration
 - d. City must bear the costs of running the Bureau.
3. City must adopt an ordinance to create the Bureau.
4. Proceedings by the Bureau are detailed – and spelled out in the statute.
 - a. Will need a lawyer to guide a city through the process of setting up a Bureau and setting up operating guidelines/procedures.
 - b. Accused
 - (1) pays the fine listed on the notice of, or
 - (2) appears before the Bureau to admit responsibility,
 - (3) appears before the Bureau to admit responsibility with explanation,
 - (4) appears before the Bureau to deny responsibility,
 - c. Failure to appear results in a judgement made in their absence.
 - d. City must have rules/procedures to set aside an entry of decision and order of default.
5. Hearing procedures are detailed in the statute.
 - a. Accused has to have opportunity for a hearing.
 - (1) Can be represented by counsel, present witnesses, cross-examine witnesses.
 - (2) Formal technical rules of evidence would not apply.
 - b. Hearing officer must be an attorney.
 - (1) In practice in Michigan for 5+ years,
 - (2) appointed according to a city's charter,
 - (3) complete the training program prescribed in the statute,
 - c. Can appeal decision to circuit court, if done within 28 days.

C. Tie-bared House Bill 5217 amends Home Rule City Act (M.C.L. 117.4r) to allow a city to obtain a lien against property involved in a quality of life violation (if fines are not paid).

D. Tie-bared House Bill 5218 amends Home Rule City Act (M.C.L. 117.29) to say a city can set up such a Bureau.

E. Tie-bared House Bill 5219 amends the Revised Judicature Act (M.C.L. 600.8313) so the Bureau has jurisdiction needed.

F. Tie-bared House Bill 5220 amends the City and Village Zoning Act (M.C.L. 125.587) to specify a zoning violation can be handled in the Bureau: if the city designates zoning violations:

1. A municipal civil infraction,
2. Imposes a civil fine,

3. Designate the violation as a quality of life violation.
- G. Remember this only applies to Cities.

Brownfield

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A. Brownfield Redevelopment

1. Michigan has a very active Brownfield program. One can see the many faces of brownfields in Michigan including old gas stations, abandoned industries, blighted buildings and contaminated properties.
2. Agenda
 - a. This program provides an overview of the brownfield process in Michigan. This is intended to be an introduction to brownfields and provide definitions, claims, State and Federal legislation including the recently passed PA 252 of 2003 and available resources at the Victor Institute for Responsible Land Development and Use, MSUE.
3. Brownfield definitions
 - a. EPA Definition: The United States Environmental Protection Agency defines brownfields as vacant or underused commercial or industrial property where environmental, economic and social obstacles hinder use and redevelopment.
 - b. States vary in their definitions of what is a brownfield. For example, the state of Michigan allows ANY property to be a brownfield if it has contamination above residential standards.
 - c. In general, most brownfield sites contain low to moderate levels of contamination. Brownfields are often associated with distressed urban areas. Brownfield sites can be as small as an abandoned gas station or as large as a factory complex.
4. Michigan Brownfields
 - a. In Michigan, any property with contamination above residential standards is a brownfield. In some instances, for funding, it is also important to show that there is a redevelopment potential. MI legislature specifically calls out commercial, industrial, and residential properties. However, even functionally obsolete or blighted buildings in Core Communities can qualify for brownfield funds.

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5. Michigan Core Communities
 - a. are defined as Qualified Local Units of Government under PA 146. They tend to be central, older or in distress areas. In Michigan, there are 104 communities that are qualified local governmental units. They can add demolition, infrastructure improvements, site preparation and lead and asbestos abatement to the definition of eligible activities for tax capture. They can have obsolete property rehabilitation districts. They can receive tax credits for properties that are functionally obsolete or blighted and not a facility.
6. Brownfield Properties
 - a. Brownfields are everywhere. There are estimated over 500,000 in the US. MDEQ lists over 3,000 Part 201 sites (not including underground storage tanks). However, most brownfield sites are not documented by MDEQ, but known by the community. Brownfields exist in every county-urban and rural settings.
7. Brownfield Claims
 - a. Clean, unencumbered properties are worth more than contaminated properties. The greater the market value of a property, the greater tax potential.
 - b. Redeveloping brownfields prevents sprawl. It reduces the pressures on farm land and open space such as Greenfields where there has not been any commercial or industrial land development.
 - c. Because brownfield sites have existing infrastructure such as electricity (power), sewer and roads, they can be less expensive to develop than greenfields.
 - d. Cleaning up a brownfield site reduces the exposure to hazards and thereby protects the public health and the environment.
 - e. Properly developed sites may provide needed jobs and services, they eliminate eyesores and give the community a sense of pride.
8. Michigan Communities are Active
 - a. There are over 200 Brownfield Redevelopment Authorities (BRA) in the State of Michigan. They represent counties, cities, villages, and townships.
 - b. MDEQ has awarded over \$109.4 million to over 258 sites in Michigan:
 - (1) Leveraged \$1.9 billion in private investments,
 - (2) Created 8,117 jobs.¹³
 - c. Over 7,000 Baseline Environmental Assessments have been filed
 - d. 39 Entities are receiving some federal funding. This includes the State, cities,

¹³MDEQ news release, February 4, 2004; www.michigan.gov.

- villages, BRAs, townships, tribes, counties, and even nonprofits.
- e. This shows that communities are all at different levels of brownfield knowledge and active communities are receiving funds to help assess, cleanup and redevelop sites.
9. **Brownfield Background: Federal Liability**
 - a. The fear of liability has been hard to overcome. Brownfield sites sat idle, the past owner bankrupt and no where to be found. Potential new owners feared the liability under the federal superfund law known as the Comprehensive Environmental Compensation and Liability Act of 1980 (CERCLA).¹⁴ This federal law was structured that even if you did not cause the contamination, the new owner would still liable for the cleanup of the site. Under Superfund liability was joint, strict and several.
 - b. Under Superfund laws, the cleanup of a site was based residential cleanup standard. Basically, the property had to be cleaned up to a standard that people could build homes on the site. Often this was referred to the site being clean enough for children to “eat the dirt”.
 10. **Overcoming Federal Liability**
 - a. Today, Michigan has signed a memorandum of understanding with the federal government.
 11. **Michigan Environmental Response Act¹⁵ (MERA) of 1995**
 - a. This MOU allows liability for new owners to be based on “causation” rather than status as owner. Since new owners are not liable for contamination they did not cause, they do not have to clean it up. Michigan laws is not causation based and not strict.
 - b. In Michigan, cleanup is based on the end use of the property. For example, a site that will be redeveloped as new manufacturing will meet a lower cleanup standard than a property that will be redeveloped for homes. These new risk based standards are labeled as industrial, commercial and residential. The environmental data obtained in the Phase I and Phase II investigations, coupled with the risk assessment, are used to select a cleanup strategy to meet the intended land use. As described in Michigan’s Part 201 cleanup program, these generic criteria are now based on 10 different categories of property use

¹⁴42 U.S.C. 9601 to 9675.

¹⁵Part 201 of P.A. 451 of 1994, as amended (being the Michigan Environmental Response part of the Michigan Natural Resources and Environmental Protection Act, M.C.L. 324.20101 *et. seq.*).

- including residential, commercial, recreational, industrial and limited.
- c. Residential land use includes single family dwellings, condominiums, and apartment buildings. Properties that meet the residential cleanup criteria have no use restrictions. Industrial property includes manufacturing, utilities, and industrial research and development where access is restricted. The commercial category is extremely varied and encompasses everything from daycare centers to gas stations and warehouses.
 - d. The categories of cleanup standards identified as “limited”, apply to circumstances that require property use restrictions beyond only zoning limitations. A limited use allows for the property to exceed the cleanup standard for that category by employing engineering and/or institutional controls. The limited designation may be used when converting an industrial site to a limited residential site. In this case, a “hot spot” where the standards only meet industrial criteria, might be covered with a parking lot. This exposure barrier limits people from being exposed to on-site contamination. A site that falls under the limited use category must have a deed restriction to insure that the use restrictions or exposure barriers remain in place.
12. MERA Amendments-Liability
- a. With the MOU in place, new owners can purchase contaminated properties without the fear of liability from past practices. New owners document the status of the property at time of transfer and are still responsible for any contamination that they may cause. New owners file a Baseline Environmental Assessment (BEA) and must comply with their Due Care obligations.
 - b. The purpose of the BEA is to document the state of the property at the time of transfer, thereby distinguishing between existing contamination and new releases. This protects the new owner from liability resulting from the actions of previous owners, and holds the new owner accountable only for future activities. The BEA must be filed within 45 days of purchase or start of operations, and may be based on the environmental data obtained from the Phase I and Phase II assessments
 - c. There are three types of BEAs: N, D and S.
 - (1) N means that the new operation is nonhazardous,
 - (2) D means that the new operation uses hazardous materials but is different than the previous use, and
 - (3) S means that the new operation will have the same types of hazardous materials with the new development.
 - d. In addition to the BEA, the new owner/operator must comply with Section 7a

of Part 201, the Due Care provisions. The Due Care provisions outline the responsibilities of the new owner/operator to prevent exacerbation of existing contamination, mitigate unacceptable exposure to hazardous substances and to take reasonable precautions against the reasonably foreseeable acts or omissions of third parties and related consequences.

13. Land Use Council
 - a. Michigan's Land Use Council identified existing programs that could benefit brownfield redevelopment. They identified the Clean Michigan Initiative. This was a bond that was passed in 1998 to provide funding for brownfield redevelopment and other environmental issues. The MI chamber of commerce highlighted the success of the CMI by showing the 15 grants/loans were provided totaling over \$10.3 million and that there provided a return in private investment of \$314 million.
14. PA 252 of 2003:¹⁶ Clean Michigan Initiative Money
 - a. Based on the success of Clean Michigan Initiative (CMI), PA 252 was passed to provide money for brownfield redevelopment.
 - b. Funding is to be used for corrective action for underground storage tanks, response activities at facilities (recall that facilities are sites that exceed residential cleanup standards), and assessments.
 - c. Grants and loans will be available for local units of government and brownfield redevelopment authorities (up to 75 M, with half for loans and half for grants).
 - d. Applications are due by March 31 but will also be accepted on a continuous basis.
15. CMI Money: Contact Information for MDEQ
 - a. Contact for grant/loan application is at the MDEQ regions.
 - (1) For the Upper Peninsula and Northern Lower Peninsula: Jamie Harrington (906)346-8506;
 - (2) Mid Michigan and Thumb: Susan Sandell (231)775-3960;
 - (3) Southwest and Central: Carol Skilling (517)335-6871;
 - (4) Southeast: Bruce Moore (517)373-6413.
16. Federal Brownfield Legislation
 - a. In December 2001, the Federal government passed Public law 107-118 (H.R. 2869) - "Small Business Liability Relief and Brownfields Revitalization Act".

¹⁶ P.A. 252 of 2003 amends Part 196 of P.A. 451 of 1994, as amended, (Being the Clean Michigan Initiative Implementation part of the Michigan Natural Resources and Environmental Protection Act, M.C.L. 324.19608 *et. seq.*).

Basically, this legislation provides the following: Relief for small businesses from liability under the CERCLA; to promote the cleanup and reuse of brownfields, to provide financial assistance for brownfields revitalization; to enhance State response programs. For more information see www.epa.gov/brownfields.

17. Victor Institute, MSUE
 - a. There are many resources available to help communities, MSUE with brownfield redevelopment issues. The Victor Institute at MSUE is one such resource. The mission is to support wise and responsible use, development, and redevelopment and provide researched-based information to all stakeholders.
 - b. The Victor Institute provides written materials such as Newsletters, Michigan Guidebook for Brownfield Redevelopment, Lessons Learned in Brownfield Redevelopment. Web training like BF 101 and other Workshops/Training
18. Victor Institute, continued – Workshop/Training Examples
 - a. Workshops and training have included MSUE Train the Trainer in 1999; Brownfield Financial Reporter (ongoing); Fundamentals of Brownfield Workshop (Jackson, 1999); Environmental Management Certificate (Wayne County, 2000); Brownfield-Greenfield Policy Roundtable (MSU, 2003) and works with MSUE and BRAs on topics such as Brownfield Redevelopment Authorities, Brownfield Plans, Environmental Issues, Brownfield Financing
19. Brownfields
 - a. Brownfield redevelopment programs enhance development opportunities and because of this, one can think of brownfields as opportunities
20. Opportunities
 - a. So, are there any opportunities in your community?
21. Michigan Brownfields Web Pages
 - a. www.michigan.gov/deq
(http://www.michigan.gov/deq/0,1607,7-135-3311_4110---,00.html)
 - b. www.egr.msu.edu/brownfields
 - c. www.msue.msu.edu/victorinstitute
 - d. www.epa.gov/brownfields
 - e. www.envirotools.org
22. Contact information
 - a. Lisa Szymecko, Civil and Environmental Engineering Dept., Michigan State University, (517)432-2291, szymecko@egr.msu.edu.
 - b. Phil Davis, Victor Institute for Responsible Land Development and Use, Michigan State University Extension, (517)432-9295,

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Conclusion

- A. Five New Sets of Legislative Changes:
 - 1. Joint Municipal Planning Act
 - 2. Non Contiguous Open Space (TDR?)
 - 3. Fast Track Land Bank
 - 4. Blight (Quality of Life)
 - 5. Brownfields.
- B. Joint Municipal Planning Act
 - 1. Two or more municipalities can join to combine Planning and Zoning.
 - 2. Done by written agreement.
 - 3. Can be for all of the territory, or a selected territory (e.g., around a lake, along a river, commercial area).
- C. Noncontiguous Open Space (TDR?)
 - 1. The 2003 Amendment further supplements the 2001 Open Space Amendments.
 - 2. 2003 amendment applies only to Planned Unit Developments.
 - 3. Unless zoning explicitly prohibits: Open space in a PUD can not be required to be contiguous.
 - 4. May provide Transfer of Development Rights --**consult with your attorney first.**
- D. Fast Track Land Bank
 - 1. Land banking is an important concept for places in which population is declining or foreclosures rising.
 - 2. The experiences of Genesee County show the potential.
 - 3. New land banking legislation offers many opportunities.
 - 4. It is composed of several bills, but the original H. B. 4483 is perhaps pivotal.
 - 5. This allows for the creation of county or local authorities under certain conditions and with certain powers.
- E. Blight (Quality of Life)
 - 1. Quality of Life Violations
 - a. City can set up a violations Bureau (sort of like a mini-court).
 - b. Only for certain ordinances (civil infractions).
 - c. Create Bureau by adopting an ordinance.
 - d. Need lawyer to set it up.
 - e. Need lawyer to be the hearings officer.
- F. Brownfields.
 - 1. Brownfields-any property exceed residential standards; Core Communities include blighted or functionally obsolete.

2. Brownfields are everywhere! Michigan communities are active.
 3. Michigan law limits liability and cleanup is based on end use.
 4. New MI legislation provides funding for brownfield redevelopment – LUGs & BRAs.
 5. MSUE can provide resources to communities.
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List of Handouts:

C “All Communities to Benefit from New Land Use Legislation”; *Planning & Zoning News*; Planning & Zoning Center, Inc.©; December 2003, pp 5-8.

Joint Planning

C P.A. 226 of 2003, being the Joint Municipal Planning Act, M.C.L. 125.131 *et. seq.* (HB4284, effective December 18, 2003).

C Additional Background:

C *Joint Municipal Planning Act*; House Legislative Analysis Section; HB 4284 (7-16-03).

Noncontiguous Open Space (TDR?)

C P.A. 183 of 1943, as amended, (being the County Zoning Act, M.C.L. 125.201 *et. seq.*)

C P.A. 184 of 1943, as amended, (being the Township Zoning Act, M.C.L. 125.271 *et. seq.*)

C P.A. 207 of 1921, as amended, (being the City and Village Zoning Act, M.C.L. 125.581 *et. seq.*)

C Additional Background:

C *Planned Unit Development Noncontiguous Open Space*; House Legislative Analysis Section; HB 4666-4668 (12-23-03).

Land Bank

C P.A. 258 of 2003, as amended, (being the Fast Track Land Bank, M.C.L. 124.751 *et. seq.*) (HB 4483; effective January 5, 2004).

C *Summary of Michigan Land Bank and Community Development Authority Act*; undated.

C *The Genesee County Urban Land Redevelopment Initiative*; by Daniel T. Kildee, Genesee County Treasurer; undated.

C Additional Background:

C *Land Bank Fast Track Act*; House Legislative Analysis Section; HB 4480-4484, and 4488 (7-1-03)

C *Land Bank Fast Track*; Senate Fiscal Agency; HB 4480 (H-2)-4484 (S-2) & 4488 (H-2).

Blight

- C P.A. 316 of 2003, being an expert of the Home Rule City Act (sections 4l and 4q), M.C.L. 117.4l and 117.4q.
- C Additional Background:
 - C *Quality of Life Violations*; House Legislative Analysis Section; HB 5216-5219, 5220, and 5223-5224 (11-12-03).
 - C *Quality of Life Violations; A Summary*; House Legislative Analysis Section; HB 5216-5220 (11-3-03).

Brownfields

- C Brownfield Guidebook for Michigan (this is a large book, if not included in your handouts, it can be downloaded at <http://www.egr.msu.edu/brownfields/CRDC%20May15.pdf>).
- C VI newsletter on BF 2000 amendments

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