

"AND JUSTICE FOR ALL"

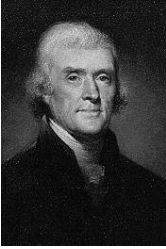
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MICHIGAN STATE UNIVERSITY EXTENSION

Bringing Knowledge to Life



"I know of no safe depository of the ultimate powers of the society but the people themselves, . . .

. . . and if we think them not enlightened enough to exercise their control with wholesome discretion, the remedy is not to take it from them, but to inform their discretion."

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Planning and Zoning Primer

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Michigan State University Extension

Bringing Knowledge to Life

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WELCOME PERRIER
"EVART WANTS YOUR 200 QUALITY JOBS"
LOCATE YOUR ICE MOUNTAIN WATER BOTTLING PLANT IN OSCEOLA COUNTY

GO AWAY PERRIER!
Leave Our Water Alone

FIGHT POISON GAS

PRESERVE
ST. FRANCIS

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This Program Will Cover

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

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A. Why Plan?

- ““Would you tell me please which way I ought to walk from here?’ [said Alice]. ‘That depends a good deal on where you want to get to’ said the cat.”

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



Sir John Tenniel -1865

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We all Plan

A. Why Plan?

- Often we plan subconsciously.
- We think ahead and prepare accordingly.
 - (We get dressed before going out of the house)
 - (We make a list before going to buy groceries)
 - (We measure before we cut the board)

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We all Plan

A. Why Plan?

- To buy a car:
 - We establish a goal “*To have a new car all the time*”
 - We establish an objective “*To buy a new car every two years*”
 - We establish a policy “*To put \$200 each month in a savings account for the car*” or “*To maintain a good credit rating so I can get a car loan*” or both.
 - We establish a strategy: “*To have monthly income which is more than \$____.*” (So we can afford the \$200 per month or car payments.)
 - We take action: “*Research, test drive, and select the car we want*” and we buy the car.

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We all Plan

A. Why Plan?

- Planning as a Government; when one plans for a community:
 - Can not do it subconsciously (Open Meeting Act; we are in a democracy).
 - Must be open; include many people.
 - Must have a formal process.
 - Must have formal adoption.
- P.A. 33 of 2008, as amended, Michigan Planning Enabling Act M.C.L. 125.3801 *et seq.* (Used to be:
 - P.A. 282 of 1945, as amended, (being the County Planning Act, M.C.L. 125.101 *et seq.*);
 - P.A. 168 of 1959, as amended, (being the Township Planning Act, M.C.L. 125.321 *et seq.*);
 - P.A. 285 of 1931, as amended, (being the Municipal Planning Act, M.C.L. 125.31 *et seq.*).

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We all Plan

A. Why Plan?

- Does this all seem too complex, difficult?
 - That is a good sign because:

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

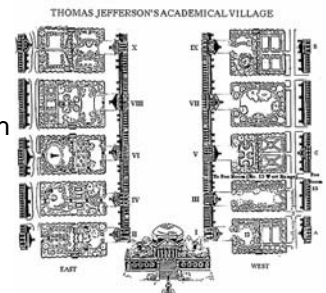
– H. L. Mencken

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We all Plan

A. Why Plan?

- Planning is not new:
 - New Haven (1682); Philadelphia (1682); Detroit (1700); New Orleans (1718); Savannah (1733); Washington D.C. (1800).
 - Our founding fathers did community planning: Thomas Jefferson (Charlottesville and University of Virginia); Washington D.C. (1800).



University of Virginia Library Electronic Text Center

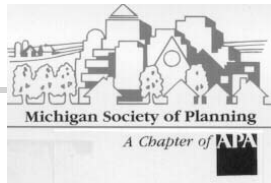
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We all Plan

A. Why Plan?

■ The Purpose of Planning

- Why Plan according to Michigan Society of Planning Officials. (Wyckoff, Mark A. and others (Planning & Zoning Center): *Community Planning Handbook-Tools and Techniques for Guiding Community Change*; Michigan Society of Planning Officials; Rochester, Michigan; March 1992; Page 2.)
 - Planning is a process, fundamental to what we do (personal lives, jobs, and in a community).
 - Planning (or failing to plan) is important at the community level as it affects many people.
 - **Change occurs with or without planning** – planning is a way to guide change
 - to maximize the positive and
 - minimize the negative impacts



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We all Plan

A. Why Plan?

- Zoning is based on a plan; **the plan is when/where decisions are made** about possible development.
 - Then: Often big picture issues are decided in the planning process.
 - By the time it is a zoning permit or amendment proposed, it is too late.
 - So: **Be active in the development of the Plan. Participate.** “The world is run by those who show up.”



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B. Planning

- Planning is a mix of:
 - Research, science (*Fact Book*)
 - Public opinion, politics for the community
- Need to do both.
- Some say the process (that builds consensus, involves many people) is more important than the “published plan”

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Research

B. Planning

- Do not use just any “study.”
- There is good and bad research/science. Know the signs of good research:
- Those standards are:
 - Was the data “double blind?”
 - Was the study peer-reviewed?
 - Can the study be repeated and get similar results?
 - The researcher does not have a stake in the outcome.

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Public Policy

Content of various plans

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



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Content of Plans

B. Planning

	MTE	GdT	EMM	LEE	BNZ	N.Z.
Introduction	X	X	X	X		X
Summary	X	X	X			X
About the Plan	X	X		X	X	
International/national/state/regional	X			X		X

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Content of Plans

B. Planning

	MTE	GdT	EMM	LEE	BNZ	N.Z.
PLAN MAP						
Conclusions/Map	X	X	X	X	X	X
Industrial areas	X					
Commercial areas	X					
Residential areas	X	X				

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Content of Plans

B. Planning

	MTE	GdT	EMM	LEE	BNZ	N.Z.
...PLAN MAP						
Rural Residential	X					
Resource Protect.	X	X		X		X
Sensitive/Env.	X	X	X	X		X
Special Areas	X		X	X		X

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Content of Plans

B. Planning

	MTE	GdT	EMM	LEE	BNZ	N.Z.
Housing	sd	X	X			
Human Services	sd			X		
Education	sd		X			
Infrastructure	sd	X	X	X		X

sd=separate document

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Content of Plans

B. Planning

	MTE	GdT	EMM	LEE	BNZ	N.Z.
Economic Dev.	sd	X	X	X		
Air,water,waste,etc	X		X	X		X
River/lake margins			X	X		X
Indigenous peoples	X					X

sd=separate document

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Content of Plans

B. Planning

	MTE	GdT	EMM	LEE	BNZ	N.Z.
Other (special)	oil			penn	X	gw
Public Participation	X	X			X	
Adoption documentation	X		X			
Appendixes	X	X	X	X	X	X

oil=oil and gas extraction
penn=unique issues of being a peninsula
gw=groundwater quality and quantity issues

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C. Implement the Plan

- Zoning is not all there is.
- Government has other powers that should also be used to use to promote/discourage development in different areas.
 - Power of Taxation
 - Power of Spending Money
 - Police Power
 - Coordination

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Four Government Powers

C. Implement the Plan

Taxation

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

Police Power

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

Spend Money

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

Cooperation

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

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Taxation Example

C. Implement the Plan

■ City of Traverse City

- Downtown Development Authority
- Zoning District/DDA boundaries the same
- New SEV set aside for downtown improvements:
 - Street scape
 - Parking ramp
 - Zoning design development (neo-traditional community)

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Spending Money Example

C. Implement the Plan

- Manistee County Road Commission
 - Year-round road construction to Kaleva
 - Goal: New industrial park & development
 - No road construction & closing county roads in certain forest areas: old growth, Big Manistee River
 - Goal: No development in areas important for recreation, trail use, etc. Preserve the outdoor experience, focus snowmobiles away from private lands.

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Police Power Examples

C. Implement the Plan

- Junk Ordinance.
- Sign, Billboards Ordinance.
- We will cover zoning (part E of this program)

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D. Coordination

(C. Implement the Plan, continued)

- The Relative Risk Analysis Project (1992) concluded "lack of integrated and coordinated land use planning" was one of the top environmental problems.
 - There are many issues and topics which can not be dealt with in a small area, such as village, city, or township.
 - To be effective in planning for many issues, it must be done at a larger geographic scale.

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Economic Development Example:

D. Coordination

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

- Jobs, and location of employed people is a labor market area; often an entire county or multiple counties.
- Coordinated planning is needed to be as effective as possible for economic development: worker training, housing, new industrial sites.

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Ground/Surface water example:

D. Coordination

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

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Other topics

D. Coordination

- Other topics that demand a multi-government cooperative planning approach include:
 - Natural features (lakes, rivers).
 - Technology for farming, mining, pipelines, radio transmissions.
 - Transportation networks (billboards, parking, scenic vistas).
 - Major developments. (Have impacts on more than just one municipality (traffic, lights, etc.) reference, relevant portions of other plans adopted by other agencies and governments)
 - Can you think of others? _____

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Division of Authority

D. Coordination

- Who is pulling all this together?
 - Township: decides local roads
 - Road Comm: decides primary roads
 - Township/village/city: parks
 - Township/village/city: billboards along highways
 - County: Tax reverted lands
 - USFS/DNR: Forest Management, parks, land trading
 - City/DPW/Township: Sewers & Water
 - School Board: parks, new school buildings
 - County: does zoning
 - Some townships zone: Springville, Cedar Creek, Haring.

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The Plan

D. Coordination

- Who is pulling all this together?
- In Michigan it is supposed to be the Planning Process.
 - Every local government in Michigan should identify those “bigger than just local concern” issues.
 - Put that list on the table for coordinated planning discussion.
 - County planning commission [YOU] has an opportunity to be the leader in this effort.

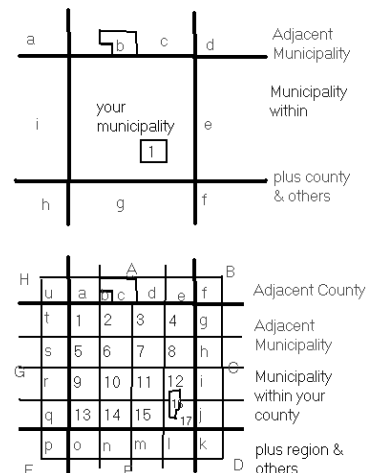
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Planning Process

D. Coordination

- Steps to plan (new steps in red):
 1. “I’m starting to plan” notice to all governments within/contiguous to the planning area.
 2. Conduct background studies, research.
 3. Prepare draft plan.
 4. Approve draft plan (Planning Commission & Legislative Body).
 5. Draft plan sent to all governments within/contiguous to the planning area.
 - 6-7. Draft plan and region/municipality’s comments on draft plan sent to county planning.
 8. Planning Commission holds public hearing on revised plan.
 9. Adopt final plan (Planning Commission & maybe Legislative Body).
 10. Copies of plan sent to all governments within/contiguous to the planning area.

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E. Zoning

Legal Authority for Zoning

- **United States Supreme Court** (*Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926)) upheld zoning as a proper exercise of the police power to protect the public welfare. (Euclid is a suburb of Cleveland, Ohio.) Court warned zoning must “find their justification in some (proper) aspect of . . . protecting the public welfare.” e.g. a Plan.
- **Many Other Court Cases.**

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Enabling Statues in Michigan

E. Zoning

- **Enabling Statutes in Michigan.** Michigan Courts have ruled local government can not just adopt a zoning. Local government must be given authority to zone by the Michigan Legislature (“enabling statutes”).
 - Zoning is based on a plan: Legal Basis (Know where your zoning authority comes from)
 - P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et seq.*)
 - Used to be:
 - Cities & Villages: P.A. 207 of 1921, as amended, (being the City or Village Zoning act, M.C.L. 125.581 *et. seq.*)
 - Townships: P.A. 184 of 1943, as amended, (being the Township Zoning Act, M.C.L. 125.271 *et. seq.*)
 - Counties: P.A. 183 of 1943, as amended, (being the County Zoning Act, M.C.L. 125.201 *et. seq.*)

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Some claim zoning is unconstitutional

E. Zoning

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

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Zoning is:

E. Zoning

- Use of Land
- Impact on land and adjacent uses
- Zoning is **not**:
 - to promote/oppose **economic, racial, or religious** views.
 - enforcement of private **deed restrictions**.
 - a solution for neighborhood **feuds** or **personal quarrels**.
 - a **promoter of development** (it merely permits it).
 - a tool for the **political arena** (to reward/punish others).
 - a **public popularity contest** – zoning decisions are to be based on facts, not majority of votes.

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Zoning Limitations:

E. Zoning

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

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Zoning Limitations:

E. Zoning

- **Outright Preemption of local zoning:**
 - Hazardous waste disposal
 - **Solid Waste** Facilities (landfills) (See county Solid Waste Plan)
 - **Utility lines** (electric, phone, etc.)
 - **Pipelines** regulated by the PSC
 - State **prisons** and public correctional facilities
 - **Oil and Gas wells**
 - **Surface coal mining**
 - **Water pollution** regulations
 - **Non-point source pollution** regulations

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Zoning Limitations:

E. Zoning

- Outright Preemption of local zoning:
 - Fertilizer regulation
 - Mackinac Island Park Authority activity on state land
 - Trails designated by DNR as "Michigan Trailways"
 - State Police radio communication system
 - State-owned armories etc. for military uses
 - Nuclear power facilities
 - United States military facilities
 - Native American (Indian) tribe activity on tribal land/in "Indian country"
 - Certain public colleges and universities.

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Zoning Limitations:

E. Zoning

- Outright Preemption --sort of:
 - Site Plan review of public schools, or no jurisdiction at all
 - (this is still in court)
 - Activities of the United States Government
 - Federal government must consider local ordinances
 - Must follow them to "the maximum extent feasible"
 - Shall not obtain a local permit.

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Zoning Limitations:

E. Zoning

- If one is permitted, then also permit:
 - If zoned "residential" (2, or fewer, units per acre) then must provide for "open space"/"cluster" development
 - If dwellings are permitted, then must allow mobile homes
 - If dwellings are permitted, then must allow "state licensed residential facilities"
 - If dwellings are permitted, then must allow craft/fine art home occupations
 - If dwellings are permitted in a county or township, then must allow day-care

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Zoning Limitations:

E. Zoning

- More if one is permitted, then also permit:
 - If farm is allowed/zoned "agricultural" then cannot regulate activity that has *Generally Accepted Agricultural and Management Practices* in place:
 - Manure management and utilization
 - Pesticide utilization and pest control
 - Nutrient utilization
 - Care of farm animals
 - Cranberry production
 - Site selection and odor control of livestock production facilities
 - If a county zones an area commercial, (or similar, or if not zoned at all) then must permit billboards.

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Zoning Limitations:

E. Zoning

- Can Regulate, but not prohibit:
 - Content of a sign.
 - Religious activities/land uses
 - Adult entertainment/sexually oriented businesses
 - Satellite dishes, cellular telephone towers
 - Shooting ranges (gun clubs)

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Zoning Limitations:

E. Zoning

- Can Regulate, but must be as strict or stricter than the state:
 - Air Pollution regulations
 - Airport zoning
 - High risk erosion areas (along the Great Lakes)
 - Designated sand dune protection
 - State Natural Rivers protection
 - Wetlands regulations/protection
 - Floodplains
 - Soil Erosion and sedimentation

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Division of duties and Types of Zoning Decisions

E. Zoning

- Three parts
 - Executive/Administrative
 - Legislative
 - Quasi Judicial

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Division of duties

E. Zoning

ZONING ADMIN.	PLANNING COMM. /ZONING BOARD	APPEALS BOARD	LEGISLATIVE BODY
Permits			
Receive applications for special use, PUD, site plans and checks for completeness	Adopts Plan (Planning Comm. Only) Hearing and recommendation on zoning amendments	Hear appeal of zoning administrator decision Hear appeal on special use, PUD ONLY if zoning ordinance says	Be active in plan development (endorsement) May hold more hearing on zoning ordinance or amendment
Enforcement		Hear appeal on variances	Adopt zoning and amendments
Collect fees	Act on special use, PUD, permits etc.	Ordinance interpretation	

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Typical Zoning Ordinance Table of Contents

E. Zoning

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

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Zoning Functions

E. Zoning

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

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Zoning Actions:

E. Zoning

- The Public has influence on b. Special Uses, c. Amendments, d. Variances & Appeals.
- (Public notices, hearing, or similar)
 - Public influence means any of the following (people can participate and make submissions):
 - Applicant/Developer
 - Neighborhood wishing to support or oppose
 - Local government/agency wishing to support or oppose, or provide facts.

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Zoning Actions

E. Zoning

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

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Permits

E. Zoning

- The general “land use permit” or “zoning permit.”
 - A person fills in an application, pays a fee, and the administrator checks for compliance.
 - The use must be specifically listed in the zoning ordinance for the district. Each district should have a list of permitted uses. If the use is not listed, the permit can not be issued.
 - An example would be a permit for a house in a residential zoning district.

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Special Use Permits (including Planned Unit Development (PUD))

E. Zoning

- The “special use permit” or “conditional use permit” or “discretionary permit.” It is for land uses which may be allowed in a particular district if certain standards and conditions are met.
 - A person files an application, pays a fee, and the administrator only checks to make sure the application is complete then forwards it to the planning commission.
 - The planning commission will meet and decide whether to issue the special use permit.
 - The decision often requires a public hearing first.
 - May require a performance bond to guarantee compliance.

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Special Use Permits (including PUD)

E. Zoning

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

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Special Use Permits (including PUD)

E. Zoning

- An example would be a permit for a party store in a residential zoning district.
- Standards and conditions which would make the use okay might include:
 - a hedge or tree border around the store and parking area so it is not seen by neighboring house occupants,
 - off-street paved parking, lighting which is shaded so it does not shine in house windows,
 - entrance and location only on main roads,
 - hours the store is open to avoid late night noise.

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Special Use Permits (including PUD)

E. Zoning

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

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Special Use Permit Standards:

E. Zoning

- Standards in four places:
 - 1. General standards in Article on Special Uses.
 - 2. In the Article on the respective zoning district
 - Setbacks (front, rear, side, waterfront), Parcel Size, Parcel width, Building size, and more.
 - 3. In the Article on General Provisions (regulations that apply everywhere)
 - Parking, Screening, Groundwater protection, and lots more.
 - 4. Sometimes there will also be specific standards for a specific type of Special Use.
 - Mining, Mobile Home Parks, Heavy Industry, and more.
- (If you do not like the standards, then seek to amend the zoning ordinance.)

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Planned Unit Development

E. Zoning

- A Planned Unit Development (PUD) is commonly used to allow for cluster development, mixed uses in a single development, and so on.
 - Can be handled as a special use permit (above).
 - Can be handled as a zoning amendment (below).

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Amendment (including PUD)

E. Zoning

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



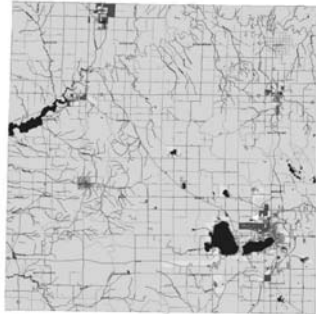
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Amendment (including PUD)

E. Zoning

Two types of zoning amendments:

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



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Amendments Change a Lot

E. Zoning

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

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Amendment Process

E. Zoning

- Briefly, the amending process includes:
 - A) the planning commission studying the proposed amendment,
 - B) planning commission writing the text of the amendment,
 - C) planning commission giving proper hearing notices:
 - sent to everyone within/around 300 feet & in newspaper, (if rezoning is 10 or fewer parcels) or
 - in newspaper (if rezoning is 11 or more parcels).
 - D) planning commission holding at least one public hearing on the proposed change,

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Amendment Process

E. Zoning

- E) action by the planning commission to recommend elected body adopt the amendment,
- F) in a city or village: can file a protest petition (abutter's challenge).
 - See a lawyer to do this.
 - Do not delay. There are deadlines and things that must be done within a certain amount of time.

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Amendment Process

E. Zoning

- G) action by the Legislative Body to adopt the amendment and giving it a date in which it takes effect,
 - Legislative Body can:
 - Adopt proposed amendment, as recommended.
 - Hold additional Hearing(s).
 - Attend and give submission as was done before.
 - Return proposed amendment to the Planning Commission for further study.
 - When a proposed amendment comes back a second time, the Elected body can adopt, hold hearings, or reject it.
 - H) publication of a “notice of ordinance adoption.”
 - I) Petition for an election (if a township or county)
- There are no shortcuts and each step, fully documented, is important. Proper notice forms, timing requirements, etc., must be followed.

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Still Not Happy?

E. Zoning

- If the Amendment is adopted and one is still opposed to it:
 - Can petition to bring the amendment to a vote of the people (maybe not in a city/village).
 - See a lawyer to do this.
 - Do not delay. There are deadlines and things that must be done within a certain amount of time.



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Appeals/Variances

E. Zoning

- Appeals Board does four things:
 - Interpretation of the Zoning Ordinance
 - Interpretation of the Zoning Map
 - Issues Dimensional/Regulation Variances
 - Issues Use Variances
- Who can appeal any decision the zoning administrator makes?
 - Any aggrieved person
 - Officer, department, board, bureau of the state
 - Officer, department, board, bureau of the local unit of government.

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Appeal, Interpretations

E. Zoning

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

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Appeal, Interpretations

E. Zoning

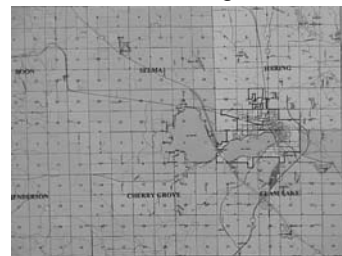
- For **text** interpretation issues (=standards):
 - Research zoning ordinance, old minutes, etc.
 - Consider in context of entire ordinance, section.
 - Review the definitions in the ordinance.
 - Review other zoning districts. If questioning “if it is allowed in one zoning district?”, and it is listed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

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Appeal, Interpretations

E. Zoning

- For **map** interpretation issues:
 - (see specific rules spelled out in the zoning ordinance (§1807 or §18XX) e.g. = to standards).



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Appeal, Variance

E. Zoning

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

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Appeal, Variance

E. Zoning

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

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Appeal, Variance

E. Zoning

- A regulation variance should be difficult to obtain. “Practical difficulty” (court established standards):
 - Will strict compliance with the dimensional requirements of the zoning ordinance prevent the applicant from using the property for the permitted purpose?
 - Will granting the variance be fair to the applicant or would a lesser variance work just as well?
 - Is the need for the variance due to a situation that is unique to the property and would not generally be found elsewhere in the same zoning district?
 - If granted, will the variance uphold the spirit and intent of the ordinance and be fair to neighboring properties?
 - Has the need for the variance been created by some action of the applicant?

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Appeal, Variance

E. Zoning

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

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Appeal, Variance

E. Zoning

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

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Appeal, Variance

E. Zoning

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

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All Appeals

E. Zoning

- Notices that someone has asked for a variance must be sent to everyone within/around 300 feet & in newspaper.
- If all else fails, go to court.



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Zoning Enforcement

E. Zoning

- Zoning administrator's Duty: Responsible for making sure the zoning ordinance is complied with.
 - Making sure no construction and no changes in the use of land take place without permits, when needed.
 - Making sure, once a permit is issued, the work is done as approved.
- There are three types of legal actions:
 - Criminal: pursuing the violation as a criminal matter.
 - Injunctive relief in Circuit Court: A civil action in Circuit Court to stop the violation.
 - Civil infraction: The newest technique is to use process of writing a ticket, similar to a traffic ticket (not a criminal matter).

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Zoning Enforcement

E. Zoning

- Techniques to obtain voluntary compliance.
 - Zoning administrator travels to find possible violations before improper construction or use has progressed too far. Catching a situation early means many more options for voluntary compliance.
 - Zoning administrator should be an extra pair of "eyes and ears" for the various agencies which enforce other similar statutes and regulations.
 - to report to them possible violations to their respective statutes; to help them find the location and to help make sure that an actual violation is pursued through appropriate channels.

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Zoning Enforcement

E. Zoning

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

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F. Training, Keep Up-to-date

- Subscribe to: **Planning and Zoning News**®:
 - Mark A. Wyckoff, Editor, 715 N. Cedar Street, Lansing, Michigan 48906-5206, Phone: (517)886-0555, Fax: (517)886-0564
- www.pzcenter.com



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MSU Extension

F. Training, Keep Up-to-date

Land Use AoE

- MSUE Training programs
 - Training in response to specific needs and requests.
Contact your MSU Extension Director
 - www.msue.msu.edu
- MSUE Bulletins (formal and informal):
Contact your county MSU Extension office and talk to your County Extension Director.
- Schindler's own web page of training programs:
 - www.msue.msu.edu/lu/

"Thirty seven million acres is all the Michigan we will ever have"
~Governor William G. Milliken

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Citizen Planner

F. Training, Keep Up-to-date



- 8-12 course series of classes. (16-24 class hours)
- Contact: Your local County Extension Director
- <http://www.msue.msu.edu/cplanner/>

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Michigan Society of Planning

F. Training, Keep Up-to-date



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

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American Planning Association

F. Training, Keep Up-to-date

American Planning Association
Making great communities happen

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



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Thank You

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