

**WHITEWATER TOWNSHIP PLANNING COMMISSION AGENDA FOR REGULAR MEETING,**

**February 7th, 2024 @ 7:00 PM**

Whitewater Township Hall Via ZOOM (if available) and in-person

5777 Vinton Road, Williamsburg, MI 49690

Phone 231-267-5141/Fax 231-267-9020

Zoom:

<https://us06web.zoom.us/j/87150860229?pwd=FC7x4zLL5VBN1IPShvoYfEhTRbVzbb.1>

Meeting ID: 871 5086 0229

Passcode: 823059

1. Mic Check, Call to Order, Pledge of Allegiance
1. Roll Call of PC Members
2. Set/Adjust Meeting Agenda
3. Declaration of Conflict of Interest pertinent to agenda items
4. Public Comment – Any person shall be permitted to address a meeting of the PC. Public comments shall be carried out in accordance with the following rules and procedures:
  - a. Comments shall be directed to the PC, with questions directed to the Chair.
  - b. Any person wishing to address the PC shall speak from the lectern (or use raise hand feature if Zoom is being utilized) and state his/her name and address.
  - c. Persons may address the PC on matters that are relevant to Township planning and zoning issues.
  - d. No person shall be allowed to speak more than once on the same matter, excluding the time needed to answer a PC members' questions.
  - e. Public comment shall be limited to 3 minutes per person.
  - f. In order to avoid unscheduled debates, the PC generally will not comment or respond to public comment. Silence or non-response from the PC should not be interpreted as disinterest.
5. Approval of Minutes of Previous Meeting(s):
  - a. Joint Township Board and Planning Commission Meeting December 13th, 2023
  - b. Regular Planning Commission Meeting January 3rd, 2024
6. Correspondence - None
7. Reports/Presentations/Announcements/Comments
  - a. Zoning Administrator
  - g. Chair

- h. Township Board Representative
- i. ZBA Representative
- j. Committee Reports

8. Unfinished Business

- a. Zoning Project
  - i. Map, Surveyor, RFP Discussion (Mielnik)
  - ii. Supply Road set back Discussion (Mielnik)
  - iii. Anything else related to the ZP
- b. Master Plan
  - i. Chapter 5 follow up/discussion
  - ii. Anything else related to the MP project
- c. TB February Meeting Submission - FYI
  - i. PC Bylaws as adopted 01/03/2024
  - ii. PC FY 24/25 Budget recommendations
  - iii. Rachel's resignation effective 03/15/2024

9. New Business

- a. Guest: Laura Rigan from Grand Traverse Regional Land Conservancy (Reference Ordinance 33)
- b. Guest: Michael Sherman introduction of plans for the Millbrook Property located at 8596 Church.
- c. PC Annual Report FY 23/24

10. Next Meeting: March 6th, 2024 @ 7:00 PM

11. Public Comment

12. PC Discussion/Comments

- a. Key Notes to share at next Regular TB Meeting
- b. Action items for PC members reviewed.

13. Continuing Education (5-15 minutes at each meeting)

- a. Citizen Planner - Linda Slopsema email
- b. Training Workshops Pamphlet - Provided by Randy Mielnik
- c. MSU Extension information - Provided by Bob Hall
- d. Planning and Zoning News - Regulating Nonconformities - Provided by Bob Hall

14. Adjournment

Whitewater Township will provide necessary reasonable auxiliary aids and services to individuals with disabilities who are planning to attend Contact the township supervisor at 231-267-5141



**DRAFT**  
WHITEWATER TOWNSHIP PLANNING COMMISSION  
MINUTES FOR SPECIAL MEETING  
with TOWNSHIP BOARD  
December 13, 2023

Call to Order at 7:00 p.m.

Roll Call: DeYoung, Jacobson, Keaton, Slopesma, Wroubel, Steelman

Roll Call: Popp, Goss, Benak, Glenn, Vollmuth

Also in attendance: Planner Mielnik, Recording Secretary MacLean  
Five on Zoom at the start of the meeting.

Set / Adjust Agenda: Set

Declaration of Conflict of Interest: None

Public Comment: None

Public Hearing: None

Special Meeting Business:

1. Master Plan (MP): Mielnik did a review of what has happened, including community engagement with survey, the open house and the workshop; where the project sits right now with the reports produced of the summary of information that was gathered from the community engagement. Going forward the final draft chapters will be released for comment. The plan is to have the full draft to the PC in April. Then there will be the formal process. No comments or questions from the Board members regarding the first four chapters of the draft MP that are mainly census data and historical information.

Number of surveys mailed out?

Downtown, support to develop a downtown, where will all of this happen? There will be changes that need to happen to implement. This is the public input. The PC has to take the information and address in the MP as possible to look to addressing zoning to reach the plan in the MP. The MP is a plan for the future.

Is it possible to have the township purchase the land, put in infrastructure and sell to developers? The township would have to look to find out how interested the township residents would be to use township funds.

A traffic study can be required by the PC for development. Can look at and address curb cuts and access management.

A township needs study was done that addressed mostly buildings. Water and sewer is well into the millions of dollars. Currently we do not have the funds and we do not have the population to support.

A Master Plan is a plan for 20+ years. Will look into funding opportunities in the future.

In the public input there was a general statement regarding maintenance. Maintenance of what, roads, trails or what?

The Board may be working on code enforcement.

Address all zoning districts, increase R1 is stated. It is noted that the township needs more “affordable” housing. Neighborhood communities can be addressed. PUDs will be addressed. Getting more education on what choices are available and what would fit our area. Infrastructure will have to be addressed. Developers generally pay for those.

Recommend getting a definition of rural character. Rural character means something different to everyone. Rural character is not just density / units per acre.

Architectural design guidelines was geared toward industrial and commercial. What does a build out look like of the commercial district? Do we expand the commercial district? Do we expand the industrial district? What comes first to support expansion – infrastructure, etc. We have no development ready areas. We cannot afford

what we need in the future to support development. “As funds and funding becomes available. . .” would be a statement in the MP regarding future development and infrastructure. The MP is a road map. Zoning is addressed after the MP is created. The MP defines how the community wants to change/grow.

Popp will present his full comment list to the PC.

Will need to review the zoning ordinance to meet the MP.

Resident Outreach Subcommittee (ROS) worked very well and accomplished what was desired. Looking to keep the ROS for future community input and review. Possibly add more people to the committee.

2. Zoning Ordinance clarification project is to review what is current. Described the goal of this clarification process. Also making a list of areas that need to be addressed more substantially. The PC is also addressing the zoning map. Zoning language has to be precise and clear. Mielnik described zoning maps and using GIS. The parcel layer is available through the county currently and is available on the county website. We know there are current problems, including the known issue with the industrial district. Discussion ensued regarding surveying, the legal descriptions, maps and interactivity (zoomability) of the maps, accuracy, discrepancies and certifying. Legal descriptions and current maps will always be part of the archive. The county and the assessors have maps and use the legal descriptions. The districts have their own legal descriptions. The township zoning will be layered with the county GIS and will be able to be zoomed in on.

The township is currently working to get the Industrial District inconsistencies addressed. Recommend getting a registered surveyor to address the details, get a general amount that will be needed.

Would like to get feedback on the rest of the zoning clarification. Discussion of sharing and commenting. Mielnik’s redline version is complex.

3. Fiscal Year 2024/2025 Budget Discussion: Budget work starts the middle of January. How much detail does the Board want? Total amounts with detail, example: number of meetings that make up the wages line item.
4. Metropolitan Planning Organization (MPO) - Discussion ensued regarding the MPO document provided.
5. Anything else related to Planning Commission - None

Next meetings: Planning Commission Regular: January 3, 2024 and Township Board Regular: January 9, 2024

Public Comment: None

Commission Discussion/Comments:

Adjournment: 9:30 p.m.

Respectfully Submitted  
Lois MacLean,  
Recording Secretary

**DRAFT**  
WHITEWATER TOWNSHIP PLANNING COMMISSION  
MINUTES FOR REGULAR MEETING  
January 3, 2024

Call to Order at 7:01 p.m.

Roll Call: Jacobson, Keaton, Wroubel, Steelman, Vollmuth

Absent: DeYoung, Slopsema

Also in attendance: Planner Mielnik, Recording Secretary MacLean, Members of the ROS

Eight on Zoom at the start of the meeting.

Set / Adjust Agenda: Set

Declaration of Conflict of Interest: None

Public Comment:

Connie Hymore

Public Hearing: None

Approval of Minutes:

MOTION by Jacobson second by Wroubel to approve the Regular Meeting Minutes of December 6, 2023.

Roll call vote: Vollmuth-yes; Jacobson-yes; Wroubel-yes; Steelman-yes; DeYoung-N/A; Slopsema-N/A, Keaton-yes.

Motion carried.

Correspondence: Elk Rapids draft Master Plan open for comments

Reports and Presentations:

*Zoning Administrator Report, Hall:* None

*Chair's Report, Steelman:* None

*Township Board Rep, Vollmuth:* General Ordinance Books presented to PC members. Read the Board packet.

*ZBA Representative, Wroubel:* No cases in December.

*Committee Reports:* None

*Additional items:* None

Unfinished Business:

1. Master Plan (MP) / Resident Outreach Subcommittee (ROS)
  - a. Popp's comments on Chapters 1-4 from the joint meeting  
Mielnik summary of Popp's comments: typo correction
  - b. Chapter 5 represents the overview of current engagement and past surveys. Review the summary and bring back comments to the February meeting. A high-resolution file of the photos is available on the website.  
Next up is goals and action steps to be taken.
  - c. Anything else related to the MP. There was a statement about Supply Road being Federally funded. Does that have something to do with the setbacks along that road? That information would be important to include in the MP and/or zoning ordinance. Bring back to the February meeting.
2. Zoning Ordinance project update
  - a. Zoning map discussion: Keaton suggests funding for zoning map verification. A local surveyor is evaluating the Industrial Zone. Possibly have all of the districts surveyed. Validate the map. Need a scope of work to create an RFP to get that moving.  
Legal descriptions and a map to match. Current parcel layer from the county and draw the zoning district boundaries according to the legal descriptions. Include the zoning ordinance and amendments for the RFP.  
MOTION by Vollmuth second by Keaton to have Randy create the RFP as discussed.  
Roll call vote: Vollmuth-yes; Slopsema-N/A; DeYoung-N/A; Wroubel-yes; Jacobson-yes; Keaton-yes; Steelman-yes. Motion carried.
3. Correspondence and discussion about the timing to invite Laura Rigan from Grand Traverse Regional Land Conservancy to explain what services they provide, educate on options and what development easements are, not

necessarily try to create development easements just to educate. Invite for February or March meeting.

a. Discussion about other resources / ideas to assist during some of the hot topic zoning concerns. Possibly connect with other townships regarding short term rentals (STRs). Mielnik will connect with a contact from East Bay regarding STRs.

4. Popp's comments on the draft zoning ordinance as presented at the joint PC / Board meeting. Mielnik noted there are 120 comments and questions on the 20 pages presented. The PC does not want to deviate from the work and plan that the PC is trying to accomplish. It was noted that nothing in the comments should bring the current trajectory to a halt. This is a working draft.  
It is a consensus of the PC to keep moving the way we are to move the draft forward.  
Mielnik will have more to the PC.
5. Anything else related to the zoning project.

New Business:

1. Resolution PC24-01 Meeting dates  
MOTION by Steelman second Jacobson to adopt Resolution #PC24-01, Meeting Schedule for 2024/2025 as amended.  
Roll call vote: DeYoung-N/A; Jacobson-yes; Keaton-yes; Slopsema-N/A; Steelman-yes; Wroubel-yes; Vollmuth-yes. Motion carried.
2. Bylaws discussion regarding suggestions presented.  
MOTION by Steelman second by Jacobson to accept the changes and present to the Board.  
Roll call vote: Jacobson-yes; Keaton-yes; Slopsema-N/A; Steelman-yes; Wroubel-yes; Vollmuth-yes; DeYoung-N/A. Motion carried.

Discussion of the annual report to be presented to the board for the February meeting. Coordinate with the zoning administrator and include the previous year(s) report(s) for reference.

3. Fiscal Year 2024/2025 Budget discussion ensued regarding number of meetings, the costs of public hearing notice publications, office supplies, postage, printing, Michigan Association of Planning membership for 12, education and professional services for the MP, the zoning ordinance and survey map work.  
Consensus to send the discussed budget amounts to the Board.
4. Zoning Administrator email – Grant opportunity: MSHDA Housing Ready Grant Initiative. The portal opens January 16.

Next meeting: February 7, 2024

Public Comment:

Linda Slopsema

Commission Discussion/Comments:

The Master Plan discussion may bring forth areas that require more details. Don't want to hold up the whole MP.  
The zoning map may cause delays.

Key notes to share at next Regular Board Meeting: Budget information for February, year-end report for March, RFP.  
Action items for PC members Steelman will send the to-do lists.

Continuing Education: None

Adjournment: 9:35 p.m.

Tabled items: Article 5 Districts; Article 25, Special Use Permits: Campgrounds

Respectfully Submitted  
Lois MacLean,  
Recording Secretary



9304 Wheeler Oaks Drive, Williamsburg, Michigan 49690 734-770-2698 Email: [randy@northplaceplanning.com](mailto:randy@northplaceplanning.com)

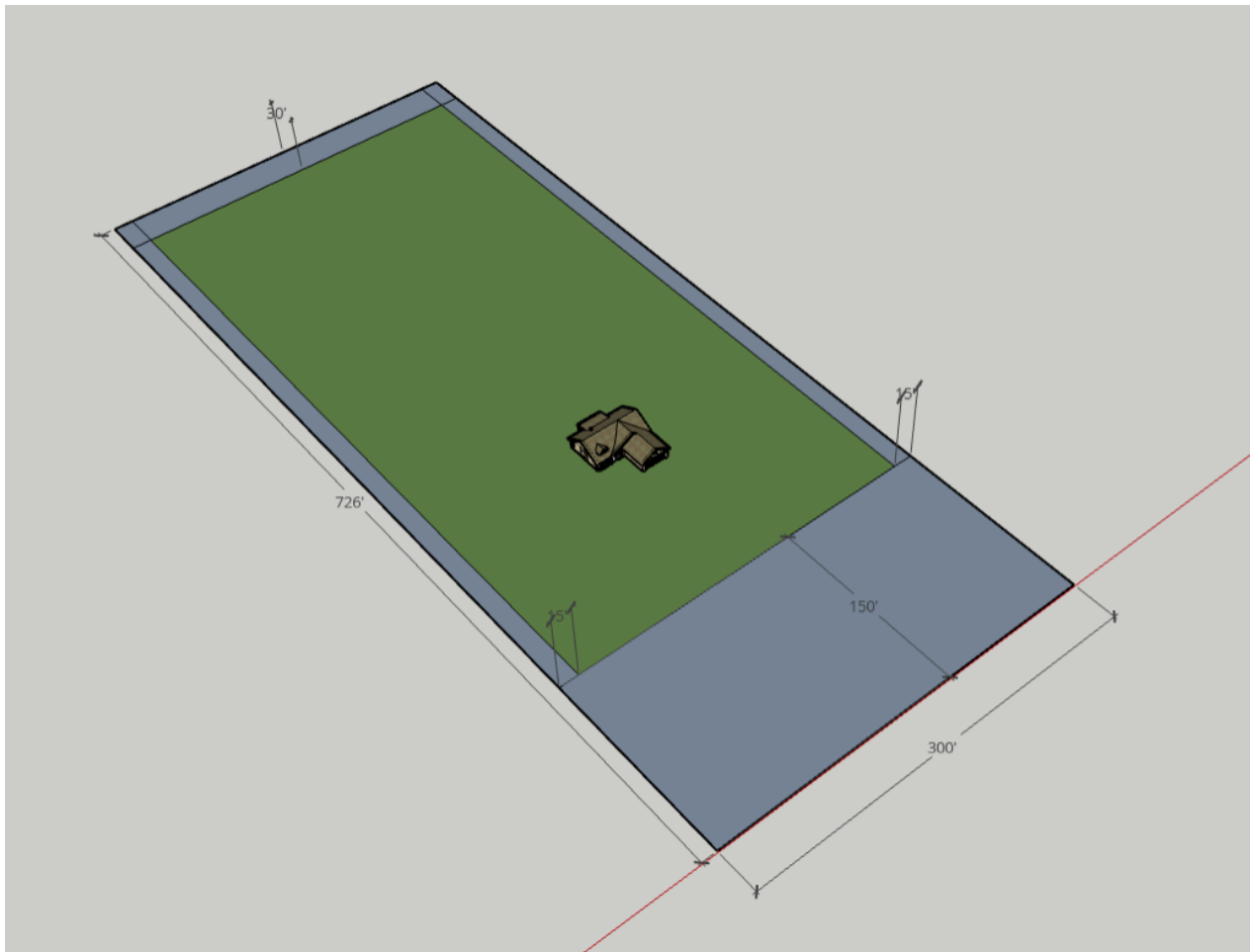
# MEMO

**To:** Whitewater Township Planning Commission  
**From:** Randy Mielnik, AICP  
**CC:**  
**Date:** January 30, 2024  
**Re:** Supply Road Setback

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At the January 2024 meeting of the Whitewater Township Planning Commission, the issue of the 150-foot setback on Supply Road was raised. Specifically, the table in Section 12.11 of the Zoning Ordinance indicates that a 150-foot front setback is required along Supply Road. This amount of front setback is substantial, and the origins and purposes of this requirement seem to be unknown. Since the meeting, the following findings were discovered:

1. The table in Section 12.11 was apparently added to the Zoning Ordinance by Amendment 28 in 1993. The 150-foot setback for Supply Road appears in this table, so it became law with the passage of this amendment.
2. The State of Michigan owns most of the frontage along Supply Road (see page 37 of the Draft Master Plan - MAP 4). Therefore, the 150-foot setback is not likely to impact many private properties.
3. Two possible recent explanations for this 150-foot setback related to creating the "Road Plan" for Whitewater Township and repealing Article 27, "Environmentally Sensitive Areas." However, in both cases, these actions occurred after 1993 (when Section 2.11 was created by Amendment 28). A specific setback on Supply Road is not mentioned in the Road Plan or Article 27.
4. The land next to Supply Road is Zoned RC-1. This Zoning District includes a 5-acre minimum lot size. The graphic below shows a scaled drawing of a hypothetical 5-acre lot (300' x 726') and a 150-foot front setback. A required 30-foot rear setback and 15-foot side setbacks are also shown.
5. Further discussion about this requirement seems in order.



## Submitted to TB 01/15/2024

**From:** Rachel Steelman <[rsteelmanpc@yahoo.com](mailto:rsteelmanpc@yahoo.com)>

**Date:** January 15, 2024 at 5:30:46 AM EST

**To:** Ron Popp <[supervisorwhitewater@gmail.com](mailto:supervisorwhitewater@gmail.com)>

**Subject:** TB Packet Submission

Good morning TB,

Attached to this email you will find 3 items:

1. PC's Bylaws were updated and adopted on 01/03/2024. Included for your information. There is no TB action to be taken on this document.
2. The PC's FY 24/25 Budget Recommendations
3. My 60-day notice of resignation effective 03/15/2024.

If you have any questions please don't hesitate to reach out.

Thank you,  
Rachel Steelman

BCC: TB, PC, ZA, Rec. Sec., Planner

## Whitewater Township Planning Commission Bylaws

Adoption Date: January 3, 2024

The following rules of procedure are hereby adopted by the Whitewater Township Planning Commission to facilitate the performance of its duties as outlined in the Michigan Planning Enabling Act, Public Act 33 of 2008, MCL 125.3801, *et seq.*, and the Michigan Zoning Enabling Act, Public Act 110 of 2006, MCL 125.3101, *et seq.*

### SECTION 1: MEMBERSHIP

- A. **Membership Size** - The Planning Commission (PC) shall consist of seven (7) members.
- B. **Membership Terms of Office** – Members are appointed by the Township Supervisor for staggered three-year terms with the approval of the Township Board and expire December 31. Members are expected to take the Oath of Office and serve until their term expires and a successor has been appointed as provided above.
- C. **Membership Departure** - Members who are unable or unwilling to serve the entire terms for which they were appointed or who do not wish to be considered for reappointment shall provide sixty (60) days advance written notice of that fact to the Township Supervisor so that a successor may be appointed and approved in a timely manner that does not require the PC to function with less than the seven (7) members provided.
- D. **Membership Qualification** - All members shall be qualified electors of the Township of Whitewater, except that one member may be a non-qualified elector.
- E. **Membership Representation** - Membership shall be representative of the important segments of the community including:
  - 1. Agriculture
  - 2. Natural Resources/Environmental
  - 3. Recreation
  - 4. Education
  - 5. Public Health/Safety
  - 6. Government
  - 7. Transportation
  - 8. Industry
  - 9. Commerce
  - 10. Waterfront Owner
  - 11. Building Trades
  - 12. Resident at Large



- F. Township Board Representation** – One member of the Township Board shall serve as a member of the PC. His/her term shall coincide with their term of office on the Whitewater Township Board of Trustees. The Township Supervisor is ineligible to serve in this capacity. As a Township Board representative, he or she shall prepare and share a report on PC activities at Board meetings, and shall act as a primary liaison between the PC and the Board. The Township Board representative shall also present proposed PC action items at Township Board meetings for consideration. The Township Board representative may not serve as an officer of the PC. The Township Board representative shall also inform the PC of Township Board activities, actions, and goals.
- G. Zoning Board of Appeals Representation** – The Michigan Zoning Enabling Act requires Townships that enact a zoning ordinance to have a Zoning Board of Appeals (ZBA). The ZBA is responsible for ruling on appeals of administrative decisions and zoning ordinance requirements. The processes are explained in the ZBA handbook published by the Michigan Municipal League, and in the Whitewater Township Zoning Ordinance itself. One member of the PC shall be appointed by the supervisor to serve as a member of the (ZBA). His/her term shall coincide with their appointment to the PC. The PC chair shall provide the supervisor with a recommendation for appointment following consultation with the PC membership. The PC member reports to the ZBA on relevant PC actions, proposed ordinances and, developments etc..., and responds to questions regarding the spirit and intent of ordinances. The PC member reports back to the PC on ZBA decisions and any issues the ZBA would like assistance on.
- H. Meeting Participation** - The Township Attorney, Planner, Zoning Administrator and any township planning staff shall have the ability to participate in discussions of the PC as they deliberate on agenda items during meetings.
- I. Zoning Administrator** - The Zoning Administrator shall carry out all responsibilities associated with an employment contract, or job description (if an employee). Such responsibilities should include assisting with the development of the PC annual report, preparation of required legal notices and preparation of materials needed to support development-related PC action items.
- J. Planner** - Subject to applicable contractual terms, the Planner may assist with updates to the Master Plan and zoning ordinance amendments. The Planner may also assist with independent reviews of development-related PC action items (special use approvals, site plans, etc...).

## SECTION 2: OFFICERS

- A. Selection and Tenure** - At the first regular meeting each April, the PC shall select a Chairperson, Vice Chairperson and Secretary. All officers shall serve a term of one year and shall be eligible for re-election for consecutive terms for the same office. The newly elected officers shall assume their responsibilities at the next regular meeting. If due to unforeseen circumstances, the PC is unable to elect officers at the April meeting, those officers whose terms as officers have expired and who remain as active members of the PC shall continue their services as officers until elections are held.

- B. Chairperson** - The Chairperson shall preside at all meetings, appoint committees and perform such other duties as may be ordered by the PC, including recommending the ZBA Representative to the Township Board when a vacancy occurs. Other roles and responsibilities include:
1. Preside at all meetings
  2. Appoint committees
  3. Agenda creation and submission
  4. Inform Clerk of any necessary meeting date and/or time changes within 48 hours of known change
  5. Create Action Item list and distribute within 72 business hours of meeting to PC members
- C. Vice Chairperson** - The Vice Chairperson shall act in the capacity of the chairperson in his/her absence. In the event the office of Chairperson becomes vacant, the Vice Chairperson shall succeed to this office for the unexpired term, and the PC shall select a successor to the office of Vice Chairperson for the unexpired term.
- D. Secretary** - The Secretary shall execute documents in the name of the PC and shall perform such other duties as the PC may determine. The Secretary may be assisted by a Recording Secretary and/or the Zoning Administrator in the performance of his/her duties. Other roles and responsibilities include:
1. Ensure hall setup is complete 5 minutes prior to meeting start time (mics checked, name tags, recording equipment, Zoom, chairs, tables, etc.)
  2. Conduct Roll Calls
  3. Monitor zoom & equipment
  4. Take notes
  5. Assist with meeting packet organization and posting in a timely manner.

## SECTION 3: MEETINGS

The business the PC may perform shall be conducted at a public meeting held in compliance with the Open Meetings Act. The PC may establish reasonable rules and regulations in order to minimize the possibility of disrupting the meeting.

- A. Regular Meetings** – Meetings of the PC shall be held on the First Wednesday of each month. All meetings shall take place at Whitewater Township Hall, 5777 Vinton Road, Williamsburg, MI 49690 at 7:00 P.M. When a regular meeting falls on a legal holiday or upon a day resulting in a conflict, the PC shall, if possible, select a suitable alternate meeting date in the same month as the originally scheduled meeting.

Notice of regular PC meetings shall be posted at Township Hall each year in accordance with the Open Meetings Act and on the township website.

- B. Special Meetings** - Special meetings may be called by the Chairperson or upon written request to the secretary by at least two members of the PC. Notice of special meetings shall be given to the members of the PC at least 48 hours prior to the meeting. Such notice shall state the purpose, time and location of the special meeting and shall be posted in accordance with the Open Meetings Act.
- C. Notice** - Notice required for specific planning, zoning or other land use actions will be given in accordance with the Michigan Planning Enabling Act, the Michigan Zoning Enabling Act, Land Division Act, or other applicable statute. All PC agendas and notices will be posted on the Township website, whitewatertownship.org. and in all other Township designated locations.
- D. Public Hearings** - All public hearings held by the PC must be held as part of a regular or special meeting of the PC.
1. Public Hearings that will result in the consideration of amending the Zoning Ordinance text or map shall be set by motion of the PC.
  2. Public Hearings that are required for site plan and/or special use consideration may be set in accordance with the PC regular schedule by the Zoning Administrator.
- E. Agenda** – Per, Section 2B above, the chairperson is responsible for preparing a tentative agenda, with assistance from the Zoning Administrator and/or Recording Secretary, if requested. The agenda may be modified by quorum of the PC. The PC may only take action on items that appear on the agenda.
- F. Quorum** - Four (4) members of the PC shall constitute a quorum for transacting business and taking official action for all matters with the exception of Master Plan adoption or amendments (see G below).
- G. Voting** - An affirmative vote of 2/3 of the members of the PC is required to recommend approval of the master plan or amendments to the plan or to amend these bylaws. Unless otherwise required by statute, other actions or motions placed before the PC may be adopted by a majority vote of the members present and voting, as long as a quorum is present. Voting shall be by voice vote; a roll call vote shall be required if requested by any PC member or directed by the chairperson. Except in the case of conflict of interest, all PC members, including the Chairperson and ex officio member, shall vote on all matters.
- H. Public Records** - All meetings, minutes, records, documents, correspondence and other materials of the PC shall be open to public inspection in accordance with the Freedom of Information Act, except as may otherwise be provided by law.
- I. Parliamentary Procedure** – Parliamentary procedure in PC meetings shall be governed by Roberts Rules of Order.
- J. Subcommittees** - The PC may establish subcommittees to aid in conducting business as described below. All subcommittees are advisory in nature and only capable of making recommendations to the full PC.
1. **Executive Subcommittee:** An Executive Committee consisting of the Chair, Vice-Chair, and Secretary of the PC may consider matters related to budgets, contracts, and similar administrative items and draft a report containing

recommendations as to those items. The report shall be presented to the entire PC, who may amend, adopt, or veto the recommendation contained therein.

2. **Ad Hoc Subcommittees:** The PC may establish and appoint members and other individuals to ad hoc subcommittees for purposes related to the duties of the PC. A new subcommittee may be formed when the PC identifies an issue that needs attention, substantial discussion, or investigation. Each subcommittee shall be titled to ensure notices, agendas, packets, payments, and documentation can be easily identified. This will also help delineate if the subcommittee is advisory and only capable of making recommendations concerning a particular subject matter.
  - a. **Chair and Report:** Each subcommittee shall appoint a chair, who shall be responsible for drafting and submitting a report to the PC included in the PC Regular Meeting packet, summarizing the subcommittee's findings and recommendations. The subcommittee chair must be a member of the PC. All subcommittees serve the entire PC, and the recommendations offered to the PC are subject to review, amendment, or veto.
  - b. **Ad Hoc Membership:** The size of a subcommittee can vary as the PC deems fit. Subcommittees can be made up of both PC members and individuals who are not PC members. However, at no time shall a quorum of PC members serve on an ad hoc subcommittee.
3. **Subcommittee Operation:**
  - a. The subcommittee chairperson shall conduct the meeting, and a quorum shall consist of at least half of the total membership of the subcommittee.
  - b. Subcommittee meetings are not "meetings" under the Michigan Open Meetings Act, MCL 15.261 et seq.
  - c. Motions are adopted by a majority vote of the members present and voting with a quorum present. Only subcommittee members physically present at a meeting are eligible to cast a vote.
  - d. If any subcommittee member is absent for three consecutively scheduled meetings, the PC may remove such member from the subcommittee.
  - e. Minutes of meetings shall be prepared in the same format used by the PC and filed in the same manner as PC minutes.
  - f. Subcommittee meetings are open meetings for public attendance and participation, and minutes of the meetings are to be available for public inspection. Subcommittee meetings may be open for public attendance and participation via videoconference software, such as Zoom.
  - g. Subcommittee members, including residents, may be paid according to the salary and wage schedule adopted by the Township Board. Non-PC members on a subcommittee must complete payroll paperwork with the Clerk before payments are processed.

## SECTION 4: DUTIES OF THE PC

The PC shall perform the following duties:

- A. Prepare, review, and update a master plan as a guide for development within the Township's planning jurisdiction.
- B. Take such action on petitions, staff proposals and Township Board requests for amendments to the Zoning Ordinance as required.
- C. Take such action on petitions, staff proposals and Township Board requests for amendments to the Master Plan as required.
- D. At the beginning of each year the Chairperson shall appoint one member of the PC to prepare an annual written report of the PC's accomplishments, development and planning activities for the Township Board. As required by the Michigan Planning Enabling Act, this report will include the status of planning activities, including recommendations regarding actions by the Township Board. This report will be presented to the PC for approval before presentation to the Township Board.
- E. Take such actions as authorized or required by the Michigan Planning Enabling Act.
- F. Take such actions as authorized or required by the Michigan Zoning Enabling Act, and Whitewater Township Zoning Ordinance.
- G. Review, approve and submit an annual budget to the Supervisor, on or before the first Township Board meeting in January of each year.
- H. Perform other duties and responsibilities or respond as requested by any Township Board or Commission.

## **SECTION 5: ABSENCES AND REMOVALS**

- A. To be excused, members of the PC shall notify the PC Chairperson, or Township Staff when they intend to be absent from a meeting. Failure to make this notification prior to the meeting shall result in an unexcused absence.
- B. Members may be removed by the Township Board for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing.
- C. Following three consecutive absences or six within any 12-month period, the PC Chairperson shall present to the Township Board a recommendation for dismissal or continued service of a member.

## **SECTION 6: CONFLICT OF INTEREST**

During the Declaration of Conflict of Interest portion of the agenda, PC member(s) shall disclose the potential conflict of interest to the full PC membership. Failure of a member to disclose a potential conflict of interest as required by these bylaws constitutes malfeasance in office.

Conflict of interest is defined as, and a PC member shall declare a conflict of interest and abstain from participating in PC deliberations and voting on a request, when:

- A. An immediate family member is involved in any request for which the PC is asked to make a decision. "Immediate family member" is defined as a spouse, mother, father, sister, brother, son, or daughter, including an adopted child.
- B. The PC member has a business or financial interest in the property involved in the request or has a business or financial interest in the applicant's company, agency or association.
- C. The PC member owns, or has a financial interest in, property that is required to receive a notice of a public hearing as required by the Whitewater Township Zoning Ordinance on an application under consideration by the PC. A financial interest is herein defined as an ownership stake in an equity security or debt security issued by an entity, including the rights and obligations to acquire such an interest.
- D. These guidelines shall be superseded when the "rule of necessity" is invoked.

If there is a question whether a conflict of interest exists or not, the question shall be put before the PC. Whether a conflict of interest exists or not shall be determined by a majority vote of the remaining members of the PC.

In the event that a conflict is declared, the member shall remove themselves from the meeting table until the agenda item is concluded.

## **SECTION 7: COMPENSATION**

PC members will receive compensation on a per meeting basis as determined by the Township of Whitewater Board of Trustees. PC members may receive reimbursement for travel and expenses with recommendation by the PC and approval by the Township Board.

## **SECTION 8: EDUCATION**

Members shall complete one training/educational program each year. Training may be provided when available at regular meetings of the PC by other PC members, the Planner or Zoning Administrator and will qualify as acceptable training. Additional training from professional or educational organizations is also encouraged.

## **SECTION 9: ORDER OF BUSINESS**

The order of business shall be as follows:

1. Mic Check, Call to Order/Pledge of Allegiance
2. Roll Call of PC Members
3. Set/Adjust Meeting Agenda
4. Declaration of Conflict of Interest pertinent to agenda items
5. Public Comment – Any person shall be permitted to address a meeting of the PC. Public comments shall be carried out in accordance with the following rules and procedures:
  - a. Comments shall be directed to the PC, with questions directed to the Chair.
  - b. Any person wishing to address the PC shall speak from the lectern (or use raise hand feature if Zoom is being utilized) and state his/her name and address.
  - c. Persons may address the PC on matters that are relevant to Township planning and zoning issues.
  - d. No person shall be allowed to speak more than once on the same matter, excluding the time needed to answer a PC members' questions.
  - e. Public comment shall be limited to 3 minutes per person.
  - f. In order to avoid unscheduled debates, the PC generally will not comment or respond to public comment. Silence or non-response from the PC should not be interpreted as disinterest.
6. Public Hearing
  - a. Open public hearing/ state time.
  - b. Request those attending sign attendance sheet.
  - c. State date of public hearing notice publication and newspaper published in.
  - d. State purpose of public hearing.
  - e. Brief Introductory Presentation (Zoning Admin. Planner, Applicant/Agent, etc.).
  - f. Read any written comments received.
  - g. Receive public comment.
  - h. Close public hearing/state time.

Questions shall be addressed through the Chair during the public hearing. PC discussion and action shall take place after the public hearing is closed. Action may also take place at a subsequent PC meeting.
7. Approval of Minutes of Previous Meeting(s)
8. Correspondence
9. Reports/Presentations/Announcements/Comments
  - a. Zoning Administrator
  - b. Chair
  - c. Township Board Representative
  - d. ZBA Representative
  - e. Committee Reports
  - f. Additional Items
10. Unfinished Business
11. New Business
12. Next Meeting Agenda (Review action items, due dates, meeting date/time)
13. Public Comment
14. PC Discussion/Comments
15. Continuing Education (5-15 minutes at each meeting)
16. Adjournment

## **SECTION 10: EX-PARTE COMMUNICATIONS**

Pursuant to the Open Meetings Act, a “meeting” is any gathering of a quorum of members of a governmental body to discuss, or take action on, official business or policy. The term “meeting” also applies to information-gathering and fact-finding sessions at any location where a quorum of members is present and discussions include a public business item. All meetings must be properly noticed and advertised pursuant to the Open Meetings Act.

Members of the PC may not email, text or engage in other forms of electronic communication during, or outside of formal meetings for the purpose of sharing information or asking questions related to any action item. Additionally, it is the policy of the PC to not take part in meetings of three or more PC members at any location with an applicant to discuss a pending action item. Such communication may constitute deliberations toward decision-making or an actual decision.

## **SECTION 11: SUBMITTAL DEADLINES**

To facilitate timely action on agenda items, it is the policy of the PC to require complete applications, applicable fees and related supporting material to be submitted to the Zoning Administrator no less than ten working days before a scheduled PC meeting. This provides time to review material, determine its completeness, place it on the meeting agenda and include all relevant materials in the meeting packet. If changes, updates, or additional information related to application for an action item is provided less than ten working days before a PC meeting, the PC reserves the right to defer consideration of such additional or updated material to a subsequent meeting.

## **SECTION 12: MEETING PACKETS**

To ensure that PC members and the public have adequate time to review the agenda, and supporting materials for an upcoming meeting, the PC will aim toward making meeting packets available by the close of business on the day that is one week before the meeting. Pursuant to Section 3A above, the packet should be available by 5 PM on the prior Wednesday.

## **SECTION 13: AMENDMENTS**

These bylaws may be amended at any time following a recommendation of the majority of the membership of the PC and subsequent notification to the Township Board. It is the policy of the PC to review these by-laws in January of each year and thereafter, make necessary changes to maintain a relevant and useful set of rules of conduct and practice.



## PLANNING COMMISSION - BUDGET WORKSHEET

Page: 1  
1/14/2024

Whitewater Township

	Prior Year Actual	Current Year -----				(6)	(7)	(8)
		Original Budget	Amended Budget	Actual Thru December	Estimated Total	Requested	Recommended	Adopted
Month: 12/31/2023								
Fund: 101 - GENERAL FUND								
Expenditures								
Dept: 400 Planning Commission								
702 Salaries	5,010	16,000	16,000	9,105	0	16,000		
703 Wages	2,615	2,120	7,000	4,714	0	4,000		
715 Social Security (Employer)	473	937	1,426	857	0	1,300		
716 Medicare (Employer)	110	219	336	200	0	300		
727 Office Supplies & Expense	569	2,000	4,800	4,438	0	2,000		
728 Postage	0	3,000	3,000	1,119	0	2,000		
804 Professional Services	4,238	32,000	57,000	26,759	0	40,000		
840 Dues and Memberships	0	250	250	0	0	725		
847 Software Support	0	160	160	0	0	160		
860 Mileage Reimbursement	0	250	250	0	0	250		
865 Meal/Lodging Expense	0	0	0	0	0	0		
880 Education & Training	1,767	2,000	2,000	350	0	2,000		
901 Publishing	1,275	3,000	3,000	268	0	3,000		
902 Printing	0	2,500	2,500	828	0	3,000		
Planning Commission	16,057	64,436	97,722	48,638	0	74,735	0	0
Total Expenditures	16,057	64,436	97,722	48,638	0	74,735	0	0
GENERAL FUND	-16,057	-64,436	-97,722	-48,638	0	0	0	0
Grand Total:	-16,057	-64,436	-97,722	-48,638	0	0	0	0

## NOTES:

702 - 716: estimate 22 meetings (12 regular, 6 special, 4 joint TB/PC)

804 Professional Services 40K: carry over expense from existing unspent  
NPP contract 15K + zoning map GIS/Surveyor 10K + Zoning Ordinance (ZO)  
/ Master Plan (MP) edits and ZO refinements 15K

Zoning Map: 10K (new contract)

840 Dues / Memberships: MI Assoc of Planning (annual membership dues)

902 Printing: Revisions to ZO &amp; MP

Date: January 15<sup>th</sup>, 2024  
To: Whitewater Township Board  
From: Rachel Steelman, PC Chairperson (Term Exp. 12/31/2024)  
Subject: Planning Commission Resignation

I am writing to submit my resignation from the Planning Commission, effective March 15<sup>th</sup>, 2024. It has been an honor to serve in this capacity, and I am sincerely grateful for the opportunities to learn, meet amazing people, and contribute to the sense of service within our community.

In accordance with the Planning Commission bylaws, I am providing a 60-day notice to ensure a smooth transition. I also formally request that the Township Board expeditiously fill my seat, allowing the Planning Commission to continue its vital work with a full complement of members.

I appreciate the support and collaboration during my time on the commission and look forward to witnessing its continued success in the future.

Thank you for understanding, and I wish the Planning Commission ongoing achievements.

Sincerely,



Rachel Steelman

## Ordinance No. 33 - For Referencing while Laura Rigan from GT Regional Land Conservancy Speaks

### WHITEWATER TOWNSHIP ORDINANCE CERTIFICATE

State of Michigan                    )  
Township of Whitewater        )       §  
County of Grand Traverse       )

I, the undersigned, being the duly elected and qualified clerk of the Township of Whitewater, do hereby certify that the attached Ordinance No.33 of the Whitewater Township Ordinances is a true and complete copy as adopted by the Whitewater Township Board at a special meeting of the said Township Board held on July 1, 2004.

I do further certify that a synopsis/ summary of Ordinance No.33 was published on July 7, 2004 in the Traverse City Record Eagle, a newspaper of general circulation in Whitewater Township, and that Ordinance No.33 becomes effective 1 day after the date of publication.

I do further certify that the members of the Township Board voted upon Ordinance No. 33 by the following vote:

For the amendment: Amos, Beckwith, Couturier, Hubbell, Hockin.

Against the amendment: None.

Absent: None.

I further certify that Ordinance No.33 was duly filed in the Whitewater Township Book of Ordinances within one week after publication thereof.

In witness whereof, I have hereunto set my hand this 14th day of July, 2004.

Carol Hockin  
Carol Hockin  
Whitewater Township Clerk

2055  
Whitewater Sup.

## AFFIDAVIT OF PUBLICATION

SUMMARY OF  
WHITEWATER TOWNSHIP  
FARMLAND AND OPEN  
SPACE DEVELOPMENT  
RIGHTS ORDINANCE  
GRAND TRAVERSE  
COUNTY, MICHIGAN  
Adopted by the Whitewater  
Township Board of Trus-  
tees Ordinance No. 33  
ADOPTED:  
July 1, 2004  
EFFECTIVE: Day after publi-  
cation  
AN ORDINANCE creating a  
farmland and open space  
protection program in  
cooperation with other local  
units of government, de-  
signed to protect farmland  
and open spaces by acquir-  
ing development rights vol-  
untarily offered by land-  
owners creating agricultural  
conservation easements.  
This ordinance sets forth  
the guidelines/procedures  
and restrictions.  
A summary/synopsis of the  
Ordinance follows:  
BE IT ORDAINED BY THE  
Whitewater Township  
Board of Trustees TO:  
SECTION 1. DECLARATION  
OF PURPOSE  
A. Purpose of the program.  
B. Mechanism to achieve  
purpose.  
C. Economic importance of  
farmland and agriculture.  
D. Importance of other non-  
agricultural attributes of  
farmland.  
E. The impact of farmland  
loss.  
F. State and local policies.  
G. Value of development  
rights.  
H. Coordination with the  
County Purchase of Devel-  
opment Rights Program.  
SECTION 2. DEFINITIONS  
The Township defers to the  
Grand Traverse County  
Farmland and Open Space  
Preservation Ordinance,  
which defines terms in the  
following manner:  
A. "Agricultural conserva-  
tion easement".  
B. "Agricultural use".  
C. "Agricultural Worker  
Housing".  
D. "Development".  
E. "Development rights".  
F. "Development rights ordi-  
nance".  
G. "Farmland".  
H. "Intensity of develop-  
ment".  
I. "Parcel".  
J. "Permitted use".  
K. "Property owner".  
SECTION 3. AUTHORIZA-  
TION  
A. Pursuant to the Town-  
ship Zoning Act, MCL  
125.301, 125.302, 125.303  
125.310, the Township is  
authorized to purchase the  
development rights of farm-  
land throughout the Town-  
ship and may provide fund-  
ing for such acquisitions.  
Such acquisition may be by  
purchase, gift, grant, be-  
quest, devise, covenant or  
contract. The Township  
shall only purchase devel-  
opment rights of farmland  
that are voluntarily offered  
for sale by a property own-  
er.  
B. The Township is author-  
ized to coordinate devel-  
opment right purchases with  
Grand Traverse County and  
to authorize Grand Traverse  
County to purchase devel-  
opment rights within the  
township. The Township  
defers to the Grand Tra-  
verse County Farmland and  
Open Space Preservation  
Ordinance, which estab-  
lishes guidelines.  
C. Finance.  
D. Township ordinance only  
applies to such acquisitions  
whereby matching funds  
have been provided by the  
Township.  
SECTION 4. ADMINISTRA-  
TION  
A. Township Board of Trus-  
tees.  
B. Conflict of Interest.  
SECTION 5. ELIGIBILITY  
FOR APPLICATION  
SECTION 6. TOWNSHIP  
APPLICATION AND SELEC-  
TION PROCESS  
SECTION 7. CONSERVA-  
TION EASEMENT PROVI-  
SIONS AND EASEMENT  
DURATION  
SECTION 8. TOWNSHIP  
FARMLAND PRESERVA-  
TION FUND  
SECTION 9. AMENDMENTS  
SECTION 10. SEVERABILITY  
The publication of the sum-

STATE OF MICHIGAN  
County of Grand Traverse } SS.

Michael C. Nau being duly sworn deposes and  
says the annexed printed copy of notice was  
taken from the Traverse City RECORD-EAGLE,  
a newspaper printed and circulated in said  
State and County, and that said notice was  
published in said newspaper on the following  
dates:

July 7, 2004

that he or she is the agent of the printers of said  
newspaper, and knows well the facts stated  
herein.



Subscribed and sworn to before me  
this 14th day of July 2004

E. Dolores Elkey

E. Dolores Elkey  
Notary Public in and for  
Grand Traverse County, MI  
Commission Expires September 14 2004

TION  
A. Township Board of Trustees.  
B. Conflict of Interest  
SECTION 5. ELIGIBILITY FOR APPLICATION  
SECTION 6. TOWNSHIP APPLICATION AND SELECTION PROCESS  
SECTION 7. CONSERVATION EASEMENT PROVISIONS AND EASEMENT DURATION  
SECTION 8. TOWNSHIP FARMLAND PRESERVATION FUND  
SECTION 9. AMENDMENTS  
SECTION 10. SEVERABILITY  
The publication of the summary/synopsis of the Ordinance is intended to meet the requirements for publication as provided by law. No further publication is required or contemplated. This summary/synopsis is not exhaustive of all provisions and requirements of the Ordinance. A true and complete copy of the Ordinance can be inspected or obtained at the office of the Clerk, 5777 Vinton Road, P.O. Box 159, Williamsburg, MI 49690.  
WHITEWATER TOWNSHIP  
Dated: July 1, 2004  
Carol Hockin  
Whitewater Township Clerk  
Phone (231) 267-5141  
July 7, 2004-17



Whitewater Township Farmland and  
Open Space Development Rights Ordinance  
Grand Traverse County, Michigan

Ordinance No. 33

Adopted by the Whitewater Township Board of Trustees:  
July 1, 2004

AN ORDINANCE creating a farmland and open space protection program in cooperation with other local units of government, designed to protect farmland and open spaces by acquiring development rights voluntarily offered by landowners creating agricultural conservation easements. This ordinance sets forth the guidelines, procedures and restrictions.

*BE IT ORDAINED BY THE Whitewater Township Board of Trustees TO:*

Section 1: Declaration of Purpose

- A. *Purpose of the program.* It is the primary purpose of the Whitewater Township Farmland and Open Space Preservation Program and this Ordinance to implement a permanent option to protect farmland; to maintain a long-term positive business environment for agriculture; preserve the rural character and scenic attributes; enhance tourism and other important environmental benefits and to maintain the quality of life of Whitewater Township residents.
- B. *Mechanism to achieve purpose.* The purchase of development rights and the placement of an agricultural conservation easement on farmland through the Grand Traverse County Farmland and Open Space Preservation Program as provided for in this Ordinance is a public purpose of Whitewater Township. Financing of such purchases requires that Whitewater Township enter into agreements with property owners to obtain such development rights. Properties of which the Township has purchased development rights and entered into an agricultural conservation easements should remain substantially undeveloped in order to remain viable for agricultural use.
- C. *Economic importance of farmland and agriculture.* Whitewater Township's agricultural lands are an economically important resource. These lands support a locally important and globally unique agricultural industry, which includes excellent fruit production and processing, dairy, livestock, food from grains, and vegetables, as well as nursery and greenhouse crops. The climate, micro-climate, topography and accessibility of the area makes Whitewater Township uniquely suited for the production, processing, and

distribution of agricultural products on a regional, national, and international level.

- D. Importance of other non-agricultural attributes of farmland.* In addition to its economic benefits, Whitewater Township's farmland contributes significantly to open space and natural resources that are important to the region's tourism industries. Preserving the rural character, scenic beauty, and cultural heritage of the area, as well as other recreational opportunities such as hunting, will help maintain the quality of life and continue to make Whitewater Township an attractive place to live, work and visit.
- E. The impact of farmland loss.* Land suitable for farming is a non-renewable natural resource with soil and topographic characteristics that have been enhanced by generations of agricultural use. When such land is converted and fragmented, a critical community resource is permanently lost to the citizens of Whitewater Township. Residential development in agricultural areas also makes farming more difficult by increasing conflict over farming practices, increased trespass, liability exposure and property damage. Because agricultural land is an invaluable economic, natural and aesthetic resource, the Township should make an effort to maintain agricultural land in a substantially undeveloped state to ensure the long-term viability of agriculture and to create a long-term business environment for agriculture within the Township.
- F. State and local policies.* It is the policy of the State of Michigan, Grand Traverse County and Whitewater Township to protect, preserve and enhance farmland and open spaces. This is evidenced by the township master plans, the Farmland and Open Space Preservation Act, the State Agricultural Preservation Fund, the Conservation and Historic Preservation Easement Act, portions of the County Zoning Act, Township Zoning Act and other state and local statutes and policies. These measures alone have failed to effectively provide the sufficient long-term protection of farmland in Whitewater Township from the pressure of increasing residential and commercial development.
- G. Value of development rights.* Certain features of good farmland in Whitewater Township have a greater market value for future residential development than market value for farming. Agriculture and residential development share the demand for well-drained soils, slope, proximity to water, elevation and open spaces. This fact encourages the speculative purchase of farmland at high prices for future residential development, regardless of the current zoning. Farmland which has a greater development potential and market value than its agricultural value does not attract sustained agricultural investment and eventually is sold to non-farmers and removed from agricultural use.



- H. *Coordination with the Grand Traverse County Farmland and Open Space Development Rights Ordinance.* It is the intent of Whitewater Township to fully support and participate in the Grand Traverse County Farmland and Open Space Preservation Program. The purpose of this Ordinance is to provide guidelines for the use of any funds provided by Whitewater Township and to defer to Grand Traverse County for all aspects of program administration and implementation, in accordance with County Ordinance # 26, passed by the Grand Traverse County Board of Commissioners on June 30, 2004.

Section 2: Definitions. Whitewater Township defers to the Grand Traverse County Farmland and Open Space Development Rights Ordinance, which defines terms in the following manner:

- A. "Agricultural conservation easement" means a conveyance by a written instrument, in which, subject to permitted uses, the owner relinquishes to the public, in perpetuity, the development rights creating a covenant running with the land preventing non-farm development.
- B. "Agricultural use" means substantially undeveloped land devoted to the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities. Agricultural use includes use in a federal acreage set-aside program, a federal conservation reserve program, or a wetland reserve program. Agricultural use does not include the management and harvesting of a wood lot.
- C. "Agricultural Worker Housing" means housing owned by the farm operation that is not occupied by the owner(s) and is being provided rent-free to farm labor whose primary source of income is derived from that farm operation.
- D. "Development" means an activity that materially alters or affects the existing conditions or use of any land in a manner that is inconsistent with an agricultural use.
- E. "Development rights" means an interest in land that includes the right to construct a building or structure, to improve land for development, to divide a parcel for development purposes or to extract minerals incidental to a permitted use or as set forth in an agricultural conservation easement.



- F "Development rights ordinance" means an ordinance adopted under the County or Township Zoning Act. The development rights ordinance may be incorporated into an existing zoning ordinance, or it may be a separate ordinance.
- G "Farmland" means 1 or more of the following:
- (i) A farm of 40 or more acres in 1 ownership, with 51% or more of the land area devoted to an agricultural use.
  - (ii) A farm of 5 acres or more in 1 ownership, but less than 40 acres, with 51% or more of the land area devoted to an agricultural use, that has produced a gross annual income from agriculture of \$200.00 per year or more per acre of cleared and tillable land. A farm described in this subparagraph enrolled in a federal acreage set-aside program or a federal conservation reserve program is considered to have produced a gross annual income from agriculture of \$200.00 per year or more per acre of cleared and tillable land.
  - (iii) A farm designated by the department of agriculture as a specialty farm in 1 ownership that has produced a gross annual income of \$2,000.00 or more from an agricultural use. Specialty farms include, but are not limited to, greenhouses; equine breeding and grazing; the breeding and grazing of cervidae, pheasants, and other game animals; bees and bee products; mushrooms; aquaculture; and other similar uses and activities.
- H "Intensity of development" means the height, bulk, area, density, setback, use, and other similar characteristics of development.
- I. "Parcel" means a contiguous quantity of land in the possession of a single owner.
- J. "Permitted use" means any use expressly authorized within an agricultural conservation easement consistent with the farming operation or that does not adversely affect the productivity or agricultural use of the land. Storage, retail or wholesale marketing, or processing of agricultural products is a permitted use in a farming operation if more than 50% of the stored, processed, or merchandised products are produced on that farm operation for at least 3 of the immediately preceding 5 years. Permitted use includes oil and gas exploration and extraction, but does not include other mineral development that will adversely affect the productivity or agricultural use of

the land. Permitted use also includes the renovation or establishment of agricultural worker housing.

- K. "Property owner" means the party or parties having a freehold estate or fee simple interest in land.

### Section 3: Authorization

- A. Pursuant to the Township Zoning Act, MCL 125.301, 125.302, 125.303 125.310, the Township is authorized to purchase the development rights of farmland throughout the Township and may provide funding for such acquisitions. Such acquisition may be by purchase, gift, grant, bequest, devise, covenant or contract. The Township shall only purchase development rights on farmland that is voluntarily offered for sale by a property owner.
- B. Whitewater Township is authorized to coordinate development right purchases with Grand Traverse County and to authorize the County to purchase development rights within the Township. The Township defers to the Grand Traverse County Farmland and Open Space Development Rights Ordinance, which establishes guidelines for the following:
- i. Establishing landowner eligibility and application procedures.
  - ii. Approval of selection criteria for ranking and prioritizing of applications to the program.
  - ii. Establishing a points-based appraisal formula for determining the value of the agricultural conservation easements.
  - iii. Reviewing and scoring all applications according to the adopted selection criteria.
  - iv. Ranking and prioritizing the top scoring applications for acquisition and determining whether the development rights should be purchased.
  - v. Approving the restrictions and permitted uses under the agricultural conservation easement.
  - vi. Establishing the price to be offered to the property owner and authorize negotiations for the purchase of development rights and agricultural conservation easement.
  - vii. Establishing monitoring procedures and overseeing subsequent monitoring to insure compliance with the agricultural conservation



easement. Enforcement of the agricultural conservation easement in the case of non-compliance shall be the responsibility of the Grand Traverse County Board of Commissioners.

C. Pursuant to the Township Zoning Act, Whitewater Township, upon approval by the Whitewater Township Board of Trustees, may finance the Farmland and Open Space Preservation Program through 1 or more of the following sources:

- i General appropriations by the Township.
- ii Proceeds from the sale of development rights by the township under Section 7.
- iii Grants.
- iv Donations.
- v General fund revenue.
- vi Bonds or notes.
- vii Special assessments as permitted by law.
- viii Other sources approved by the Township Board of Trustees and permitted by law.

D. This Township Ordinance only applies to such acquisitions whereby matching funds have been provided by the Township. Regardless of extent of Township funding, if any, the Township encourages landowners to participate in the Grand Traverse County Farmland and Open Space Preservation Program, in accordance with the Grand Traverse County Farmland and Open Space Development Rights Ordinance.

#### Section 4: Administration

A. The Township Board of Trustees shall be responsible for the following:

- i. Establishing the amount of funding available on an annual basis for awarding matching funds.
- ii. Determining the amount of matching funds, if any, for each application.
- iii. Allocating matching funds in coordination with the Grand Traverse County Farmland and Open Space Preservation Program.

B. Individual members of the Whitewater Township Board of Trustees shall disclose any potential conflict of interest and may not deliberate or vote when a conflict exists. Conflict of interests include, but are not confined to, situations where (1) the board member is the applicant; (2) the member is a close relative of the applicant; (3) the board member has a close business association or ties with the applicant; (4) the board member, a relative, or a

business associate could receive financial gain or benefit from the acceptance of the application. These qualifications are in addition to, but not in lieu of, any other statutory or common law provisions relating to conflict of interest or incompatibility of office provisions.

#### Section 5: Eligibility for Application

Any Whitewater Township landowner may submit an application for Township matching funds to the Grand Traverse County Farmland and Open Space Preservation Program provided it meets the requirements of the Grand Traverse County Farmland and Open Space Development Rights Ordinance, which are:

- A. The property owner has signed the application indicating they are interested in voluntarily selling the development rights to the parcel.
- B. At least 51% of the parcel's area is devoted to an active agricultural use.
- C. The preservation of the parcel is consistent with Whitewater Township's Master Plan.
- D. The property is not designated for commercial, industrial or high density residential uses under the County, Township, City or Village Master Plan.
- E. Agricultural activities are a permitted use on the parcel under all applicable zoning ordinances.
- F. The property owner has completed the application required by the Grand Traverse County Farmland and Open Space Preservation Program and meets all the requirements of the Grand Traverse County Farmland and Open Space Development Rights Ordinance.

#### Section 6: Whitewater Township Application and Selection Process

- A. Upon approval of Township funds, the Township shall, in coordination with Grand Traverse County's application cycle, conduct a voluntary application and selection process for property owners who wish to sell development rights under the Grand Traverse County Farmland Preservation Program and desire consideration for Township matching funds.
- B. The application for Township matching funds will be the same application form as required by the Grand Traverse County Farmland and Open Space Preservation Program. The application will remain active per annual written approval of the landowner, provided there is no subsequent modification to the scoring criteria or application that requires additional information.

- C. All applications for Township matching funds shall be scored and ranked utilizing the approved selection criteria of the Grand Traverse County Farmland and Open Space Development Rights Ordinance.
- D. The Township Board of Trustees shall establish guidelines for allocation of matching funds in coordination with Grand Traverse County's application cycle. The Township shall provide matching funds to the highest scoring parcels and allocate matching funds in a manner to provide the most competitive advantage to landowner's application for County, State or Federal matching programs. The Township Board of Trustees may decide, based on available Township funds, to allocate matching funds to one or more parcels.
- E. Following the Township's approval of landowner application(s), a letter of intent to Grand Traverse County shall accompany the application(s) indicating a total amount of matching dollars the Township anticipates is available and the maximum % match to each application. The funds shall be applied to the highest ranking parcels from the Township and shall be applied to as many parcels as possible.
- F. If parcel(s) are not selected for County, State, Federal or Private matching funds, the funds previously allocated by the Township may be reevaluated and redirected to other parcels utilizing Grand Traverse County's scoring system.

#### Section 7: Conservation Easement Provisions and Easement Duration:

For land that utilized Whitewater Township matching funds, in addition to the provisions within the Grand Traverse County Farmland and Open Space Development Rights Ordinance # 26, passed by the Grand Traverse County Board of Commissioners on June 30, 2004:

- A. The Township shall also sign the agricultural conservation easement that is executed by Grand Traverse County and the landowner upon the sale of development rights.
- B. If a development rights re-purchase is ordered by eminent domain the Township shall deposit the Township's share of any proceeds resulting from the repurchase of development rights into the farmland preservation fund and the proceeds shall be used to purchase additional development rights and agricultural conservation easements on additional farmland within the Township.
- C. If the farm is determined not "marketable for farm use" by a vote of the Grand Traverse County Board of Commissioners, it shall also require approval by a vote of the Whitewater Township Board of Trustees. The



Township shall also deposit the Township's share of these proceeds resulting from the repurchase of development rights into the farmland preservation fund and the proceeds shall be used to purchase additional development rights and agricultural conservation easements on additional farmland within the Township.

#### Section 8: Whitewater Township Farmland Preservation Fund

Available Township funding for the Farmland and Open Space Preservation Program and all interest accrued, shall be deposited in a special farmland preservation fund within the Township. Money in such farmland preservation funds may be temporarily deposited in such institutions or invested in such obligations as may be lawful for the investment of Township money. Revenues from the deposit and/or investment of the farmland preservation fund shall be applied and used solely for the purpose of administering and purchasing development rights and agricultural conservation easements under this Ordinance on farmland within the Township. Funds may be used in making payments obligated under installment purchase contracts, promoting and educating farmland about the preservation program, or paying for costs of administering or enforcing the farmland preservation program.

#### Section 9: Amendments

This Ordinance may amended after receiving a majority vote of those elected and serving on the Whitewater Township Board of Trustees.

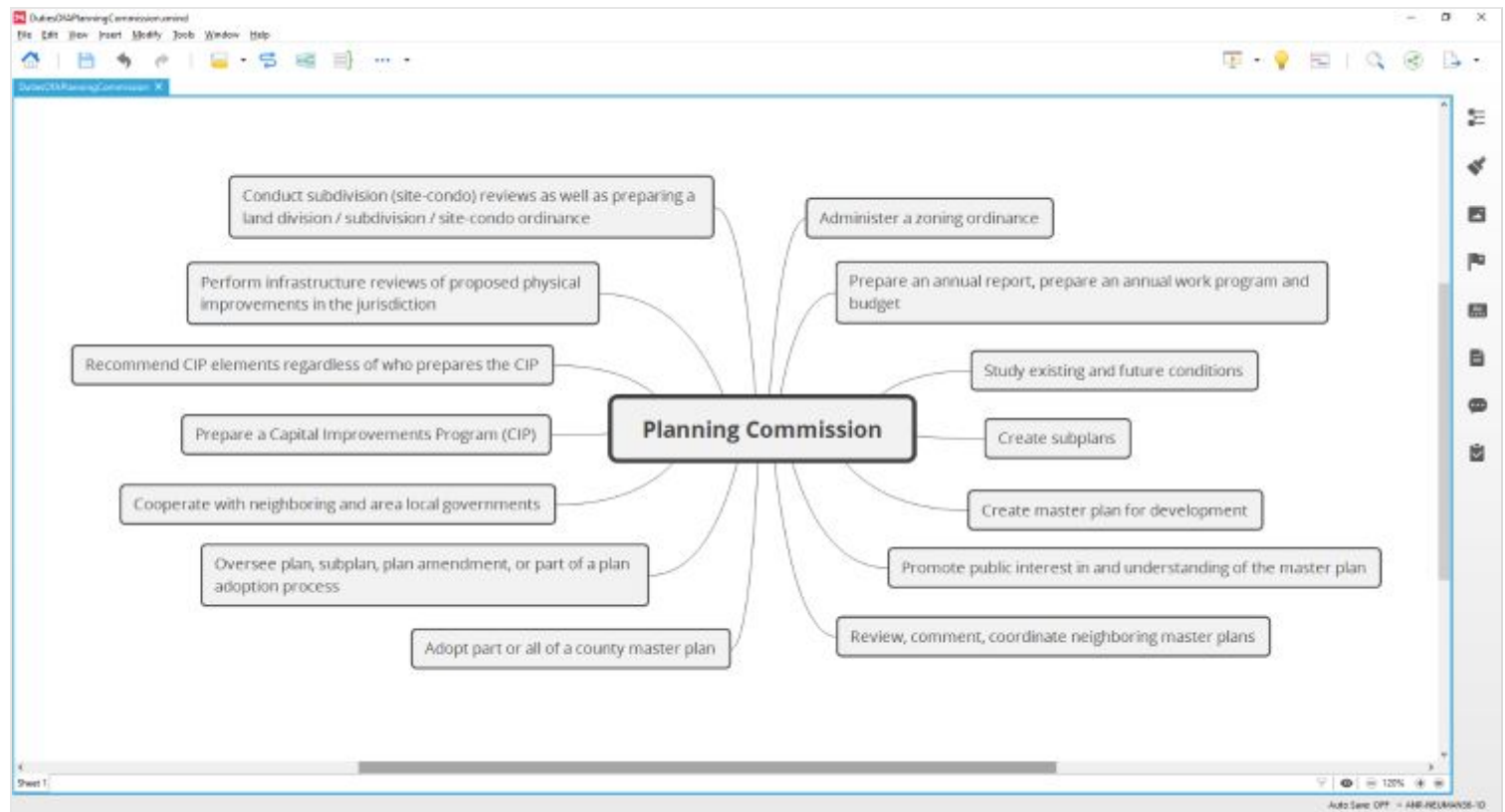
#### Section 10: Severability

Any provision of this Ordinance which is found by a court of competent jurisdiction to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision contained in the Ordinance and such other provisions shall remain in full force and effect.

## What's in a planning commission's annual report?

Tyler Augst and Bradley Neumann, Michigan State University Extension - November 06, 2020

The annual report is a requirement of all local government planning commissions and is an opportunity to provide the community and elected officials with a review of planning commission activities and achievements.



The Michigan Planning Enabling Act (MPEA) (MCL 125.3801 et seq.) states that “A planning commission shall make an annual written report to the legislative body concerning its operations and the status of planning activities, including recommendations regarding actions by the legislative body related to planning and

*development*” (MCL 125.3819(2)). This was a new requirement for cities, villages, and counties when the MPEA was adopted in 2008, but has always been required of township planning commissions.

So, what should be in an annual report? This article will describe the required elements of a planning commission annual report as well as some optional information to include to document a well-functioning planning and zoning program. The MPEA *requires* planning commissions to report annually on the operations of the commission, status of planning activities, and recommendations to the legislative body related to planning and development. Planning commissions *may also* consider reporting on the operations of the zoning administrator and zoning board of appeals, attendance, professional development of members and staff, and fiscal needs for the next year.

## Required by MPEA

### *Operations of the commission*

This section highlights the work done by the planning commission throughout the previous year. Provide the number of:

- Special-use permits granted or recommended
- Planned unit developments granted or recommended
- Zoning amendments granted or recommended
- Site plans reviewed or approved
- Subdivisions/site condos reviewed or approved

Also, consider including the number of plans the planning commission reviewed from neighboring units of government as allowed for by the MPEA (MCL 125.3841(3)). A summary of the past year’s ordinance amendments is also helpful for the legislative body to recall the issues that arose and the solutions offered. Remember the responsibility to review local infrastructure and capital expenditures? (MCL 125.3861) These reviews constitute operations of the commission, too. (see Michigan State University Extension news article “Planning commissions’ reviews ensure consistency”) For a county, a report on operations should include the number of municipal plans and township zoning ordinances reviewed. For a township and county, Farmland Development Rights Agreements (commonly known as PA 116 agreements) reviewed in the past year may be of interest to the legislative body, too.



## **Status of planning activities**

At least once every five years, the planning commission must review the master plan per the MPEA. However, chances are good that the planning commission is involved in planning activities more often than that. If the planning commission is preparing a sub-area plan, studying a transportation corridor, or engaging in a regional planning initiative, summaries of those activities should be included in the annual report. If the planning commission annually prepares the Capital Improvement Program, a brief review of the process is appropriate. Further, the planning commission might have active advisory committees (MCL 125.3817(2)) studying specific land use issues in the community and summaries of those activities and/or findings are warranted in the annual report.

## **Recommendations to the legislative body related to planning and development**

Based on the planning commission's regular use and application of the master plan and zoning ordinance (e.g. plan interpretation, special use permit applications or rezoning requests) there may be sections of the master plan or zoning ordinance that should be amended. The annual report should include recommendations for these kinds of updates, in addition to recommendations on the need for sub-area plans, a different approach to zoning (e.g. form-based), joint meetings with neighboring governments, etc.

Beyond the minimum required by statute, there is additional information associated with the local planning and zoning program that should also be included in the planning commission annual report.

## **Additional information**

### **Operations of the zoning administrator**

The planning commission works in tandem with the zoning administrator to operate a local government's planning and zoning program. To give an overview of the zoning administrator's work, the annual report should include the number of zoning permits, site plan reviews, and other activities done by the zoning administrator in the day-to-day operation of the zoning ordinance, including violations and enforcement activities. The report might also include a summary of land division reviews (ideally performed in conjunction with the local assessor).

## Operations of the zoning board of appeals

Similarly, include information on the operations of the zoning board of appeals, such as the number of administrative appeals, interpretation cases, nonconformities, non-use variances, and use variances (if applicable) considered and approved or denied. This annual review can be an opportunity to see if there are trends in circumstances necessitating a variance request. If a number of similar variances are being applied for and granted, it may be a signal for the planning commission to review the regulation in the next year.

## Attendance

Since it's the legislative body (for townships and counties) or mayor or president (for cities and villages) who appoints planning commissioners to their roles, it is only appropriate that elected officials know the attendance record of their appointees. If an individual's attendance is weak and their term is expiring soon, the attendance record is helpful for elected officials to make an informed decision about (re)appointing a member who will be present to do their job. It is recommended that attendance requirements be placed in the planning commission bylaws. Then, if attendance is not met, the planning commissioner can be appropriately removed for nonfeasance.

## Training or professional development of members/staff

Perhaps members of the planning commission have participated in training offered by the Michigan Township Association, Michigan Municipal League, Michigan Association of Counties, Michigan Association of Planning, Michigan State University Extension, or other organization and they may have even earned certification through the MSU Extension Citizen Planner Program. Such achievements are noteworthy and advance the knowledge and effectiveness of individual members and the planning commission as a whole (see MSU Extension news article "The importance of discussing best practices for continuing education in planning and zoning.")

## Fiscal needs for next year

Perhaps the most practical purpose of the annual report is to provide the justification for next year's budget request. If the planning commission sufficiently documents accountability in the annual report, next year's budget is a fairly straightforward request. The annual report might include details on ongoing initiatives that will require funding

into the future, such as a multi-year process to update a Master Plan. Being an annual report, however, the specifics for next year's activities and initiatives should be more appropriately detailed in an accompanying annual work program.

The planning commission does not exist in a vacuum. Activities of other entities within the community planning and zoning program, including the zoning board of appeals and staff, should be included in the annual report to ensure a well-rounded presentation to the legislative body. On the other hand, it is not necessary to compile an exhaustive document that loses the interest of the legislative body. The important point is to use the opportunity of the annual report to provide elected officials and the public an overview of planning commission operations and a justification for future initiatives. In the era of government accountability, think of the annual report as the planning commission dashboard. Below are some example annual reports from various types of local governments in Michigan.

## Example Annual Reports

- [Isabella County Planning Commission 2019 Annual Report](#)
- [City of Ionia Planning Commission 2019 Annual Report](#)
- [Bloomfield Township Planning Division 2019 Annual Report](#)
- [Village of Middleville 2019 Planning Commission Annual Report](#)

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## PC's 2022 Annual Report for reference



# WHITEWATER TOWNSHIP

---

5777 Vinton Road • P.O. Box 159 • Williamsburg, MI 49690 (231)  
267-5141 • FAX (231) 267-9020

TO: Whitewater Township Board

FROM: Whitewater Township Planning Commission

DATE: March 01, 2023

RE: Planning Commission Annual Report

---

The Planning Commission (PC) is an administrative body of seven members comprised of six appointed officials and one member of the Board of Trustees. The PC holds regular monthly meetings on the first Wednesday of the month. The PC is tasked with reviewing applications for site plan review, special land uses, planned unit developments, and rezonings. The PC is also required to hold necessary public hearings for zoning text amendments and is entrusted to incorporate the application of policies initiated in the Whitewater Township Master Plan while reviewing development decisions.

### **PURPOSE OF THE ANNUAL REPORT**

The Michigan Planning Enabling Act contains language of the requirement of the PC to prepare an annual report to the Board of Trustees: "A planning commission shall make an annual written report to the legislative body related to planning and development." Benefits of the annual report include increased information sharing between staff, boards, commission, and the governing body as well as allowing for the anticipation of upcoming issues and priorities, in order to prepare and budget accordingly.

### **MEMBERSHIP**

#### **Planning Commission Member**

Rachel Steelman, Chair

Al Keaton, Vice Chair

Mike Jacobsen, Secretary

Heidi Vollmuth, WWT Board Representative

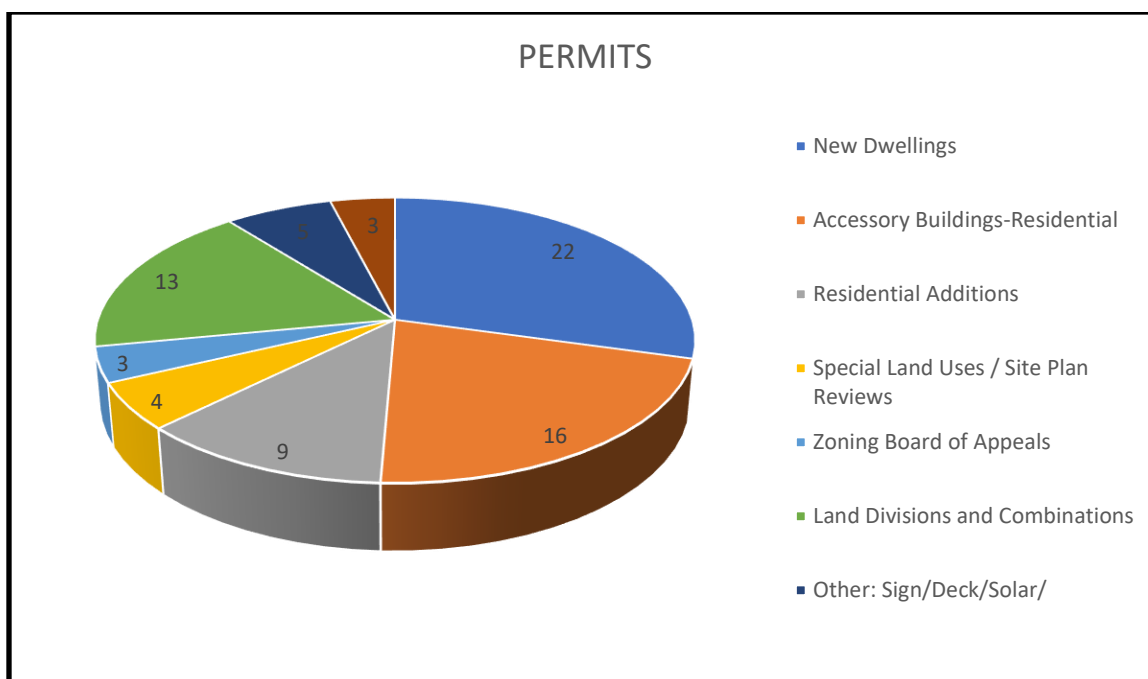
Carlyle Wroubel

Keith DeYoung

Rod Rebant

## II. Zoning Administrator

### ZONING – ANNUAL REPORT of ACTIVITY<sup>1</sup>



**Note:** Of special interest to the Zoning Administrator is the fact that both ZBA requests that were processed in 2022, and the one pending (for 2023) for action, are ALL related to nonconforming issues. [Nonconformities in zoning is the source of much confusion](#). The Whitewater Township Zoning Ordinance (Article IV) offers extremely limited guidance. Section 4.15 ‘offers’ a single sentence of ‘guidance’ to the Zoning Board of Appeals. The remainder of the Section offers limited administrative advice, but only implicitly.

Respectfully,

Robert (Bob) Hall

Whitewater Township – Zoning Administrator

<sup>1</sup> Number of Land Use Permits may not match exactly due to the possibility of multiple classifications – (Example: a declared AG exemption for the Accessory Building) or a ZBA application being received, but not yet processed.

## III. TRAINING

Steelman, Wroubel, and Rebrant have initiated and/or completed Citizens Planner an online course offering land use education by The MSU Extension. Wroubel has enrolled in a secondary online course through the MSU Extension, Introduction to Lakes. Reading material was provided throughout the year by PC Chair, Mangus and ZA, Hall.

#### **IV. MASTER PLAN**

To the benefit of the PC, the Township contracted with Randy Meilnik of North Place Planning to assist with the Master Plan Update and related planning services. Randy has been an asset and we are fortunate to have his expertise at the table. A workgroup consisting of; 2 PC members, Planner, and 3 residents has been formed to advise the PC on obtaining the communities input throughout the Master Plan process.

#### **V. FY24 Goals**

- Education including reading material, group trainings, and individual online courses
- Completion of the Master Plan
- Once the PC is in possession of a complete Zoning Ordinance, amendments will be prioritized.

# Bob's portion of the 2023 PC Annual Report

## Whitewater Township Zoning Annual Report – 2023

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### ZONING

Rather than breaking it down by the exact numbers, it is most important to realize several important trends which were been prevalent in the past and continued into this year. Single family home permits are steadily on the rise – this is indicative of a community that is not built out and is still ‘developing’. Agricultural land continues to be divided for the purpose of providing additional parcels which are able to be built upon. In the calendar year 2023, there were XX ‘new’ parcels added in Whitewater Township.

The Zoning Administrator receives numerous inquiries about development potential of certain properties, mostly along the M-72 corridor between the eastern township boundary near the casino, westward to about Cook Road. This area involves vast areas of the Commercial, Village, Industrial, and R3-Residential zoning districts. One might surmise that there is interest being expressed in this geographical location for just that purpose – potential development to meet area needs.



### PLANNING

Planning (and planning properly) is the ‘backbone’ of Whitewater Township – great strides have been made towards not only the update of the Whitewater Township Master Plan, but also the reorganization of the Zoning Ordinance into a more user-friendly document. Successful community engagement has been demonstrated and is expected to result in a superb document that is community supported. As the planning commission ventures into goal setting, an attachment to this report: **Implementing Community Vision** is for everyone’s review to help keep us on track.

---

### ZONING BOARD of APPEALS

The Zoning Board of Appeals meets when necessary. While most are familiar with typical ‘dimensional’ variances involving setback constraints, they are charged with many more responsibilities. More often during this past year, the Zoning Board of Appeals was asked to address issues involving nonconforming situations (see attached issue of **Planning and Zoning News**).<sup>1</sup> It is hoped that in the future, nonconforming issues and how to deal with them will be addressed in greater detail in the zoning ordinance.

Robert (Bob) Hall

Zoning Administrator

***Let us not confuse information with knowledge***

---

<sup>1</sup> Reprinted with permission of the editor / author

## Training information

**From:** LindaPC <[wwtslopsema@gmail.com](mailto:wwtslopsema@gmail.com)>

**Date:** January 25, 2024 at 9:34:50 AM EST

**To:** Rachel Steelman <[rsteelmanpc@yahoo.com](mailto:rsteelmanpc@yahoo.com)>, Randy Mielnik <[randy@northplaceplanning.com](mailto:randy@northplaceplanning.com)>, [kakeaton@charter.net](mailto:kakeaton@charter.net), [wwtpc02@gmail.com](mailto:wwtpc02@gmail.com), [pc5@whitewatertownship.org](mailto:pc5@whitewatertownship.org), [pc3@whitewatertownship.org](mailto:pc3@whitewatertownship.org), [oldchaneyplace7031@sbcglobal.net](mailto:oldchaneyplace7031@sbcglobal.net), [heidivyourtrustee@gmail.com](mailto:heidivyourtrustee@gmail.com), [wtpc.deyoung@gmail.com](mailto:wtpc.deyoung@gmail.com), [keithdeyoung@gmail.com](mailto:keithdeyoung@gmail.com)

**Subject:** Citizen Planner Training

I have been taking the MSU Citizen Planner Course online this month and wanted to share some observations for those of you who have not yet taken the training.

Overall, I believe it provides an essential basis for doing our job with knowledge on the PC. The materials bring up relevant issues that have confronted our township. Without a doubt our township did not always follow best practices and awareness through the training likely would have helped make better decisions as to how to handle things (I am referring to actions of the township board, the ZBA, and the PC collectively).if you

So, if you have not yet had this training, I suggest you register and get started as soon as possible:

[https://www.canr.msu.edu/michigan\\_citizen\\_planner/](https://www.canr.msu.edu/michigan_citizen_planner/)

You will need a copy of your payment receipt (\$250) to forward to Cheryl Goss for reimbursement.

Alternately you can get her to issue a PO but that will take longer to get going.

The course is self paced and broken into 24 individual lessons of about 20 minutes each. Many of the lessons pertain to the ZO and the Master Plan elements. Once registered you have 3 months to complete the course.

--

Linda Slopsema

Whitewater Township Planning Commission

[wwtslopsema@gmail.com](mailto:wwtslopsema@gmail.com)

517-614-4887



## ON-SITE WORKSHOPS

### Can't make the scheduled workshops? Interested in another topic?

MAP's on-site workshops are a flexible and affordable way to bring training to your community. You pick the topic, date, location, and attendees - MAP finds an AICP-certified instructor and provides the materials. Collaborating with neighboring communities provides added value to the workshop, and also helps cover costs.

MAP's menu of workshops covers everything from broad topics like Planning and Zoning Essentials to niche subjects like accessory dwelling units or capital improvement programming. Check out all of the offerings at [www.planningmi.org/on-site-workshops](http://www.planningmi.org/on-site-workshops)

For more information, or to schedule an on-site workshop, please contact Amy Vansen at (734)913-2000 or [avansen@planningmi.org](mailto:avansen@planningmi.org).

## ABOUT MAP

The Michigan Association of Planning (MAP) is a 501(c)(3) non-profit organization dedicated to promoting quality community planning through statewide education, information and advocacy.

### Membership benefits are valuable:

- Subscription to *Michigan Planner* magazine.
- Discounts on MAP events & publications.
- Part of nation-wide network of planners.
- Access to tools and resources to help you make better decisions.
- And more!

For more information, contact Rachel Goldstein at (734) 913-2000 or [rgoldstein@planningmi.org](mailto:rgoldstein@planningmi.org).

### MAIL OR EMAIL FORMS TO:

1919 West Stadium Blvd., Suite 4, Ann Arbor, MI 48103 | [info@planningmi.org](mailto:info@planningmi.org)  
P: (734) 913-2000 | [www.planningmi.org](http://www.planningmi.org)

### REGISTRATION POLICY

For cancellations received in writing 7 business days prior to the workshop, a refund (minus a \$25 fee) will be given if materials have not been mailed. Cancellations received less than 7 days prior will not be refunded.

**Students:** This discount is intended to make the workshops affordable for all full-time student members.

## CALENDAR OF EVENTS

**January 23**

**How to Interview Prospective Planning**

**Consultants: A Primer\*\***

Virtual

**February 10**

**MAP Student Conference**

University of Michigan

**February 15**

**Transportation Bonanza 15\***

Lansing

**March 5**

**Planning and Zoning Essentials**

**Getting the Development you Want**

Kirtland Community College, Grayling

**March 6 & 7**

**Zoning Administration\*\***

Virtual

**March 6**

**Zoning Board of Appeals**

Virtual

**March 14**

**Nonconformities\*\***

Virtual

**March 19**

**Zoning Ordinance\*\***

**Advanced ZBA: Beyond the Fundamentals\*\***

Kalamazoo Valley Community College, Texas Township

**March 21**

**Planning and Zoning Essentials**

**Housing Supply, Choice & Affordability\*\***

Bavarian Inn Lodge, Frankenmuth

**March 26 & 27**

**Planning and Zoning Essentials**

Virtual

**May 8**

**Spring Institute\*\***

Lansing

**September 25-27**

**Planning Michigan Conference\*\***

Grand Rapids

**\*AICP CM Credits**

**\*\*Master Citizen Planner CE Credits**

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0003878

# Planning & Zoning

Training Workshops for  
Elected and Appointed Officials

Workshop Registration & Information

**Michigan Association of Planning**  
A Chapter of the American Planning Association



# Officials Training

2024

The Michigan Association of Planning's education programs provide participants with the skills and knowledge to make better land use decisions. Our knowledgeable and experienced instructors enable newly elected and appointed officials to better understand their roles and responsibilities, and reacquaint experienced ones with innovative planning tools and techniques. We make it easy for you to receive the education and training necessary to keep up with the ever-changing land use landscape. In person workshops include a meal and refreshments.

## Getting the Development You Want

March 5 | 5:30 - 8 PM

**Kirtland Community College, Grayling**  
*Instructor: Wendy Rampson, AICP, Michigan Association of Planning*

Good development is achieved when a municipality plans for it, and then adopts codes and a development review process to implement the plan. Learn how the master plan and zoning ordinance inform the development review process, how to balance the needs of everyone, and best practices for a productive process. Light meal included.

## Zoning Board of Appeals

March 6 | 6 - 8 PM

**Virtual**  
*Instructor: Leslie Sicklerman, AICP, City of Traverse City*  
This interactive, case study based workshop goes into greater depth on the issues of practical difficulty and unnecessary hardship. A summary of voting and membership requirements and other procedural requirements unique to ZBA operations are reviewed. Reference book included.

## Advanced ZBA: Beyond The Fundamentals

March 19 | 5 - 8:30 PM

**Kalamazoo Valley Community College, Texas Township**  
*Instructor: Julie Johnston, AICP, Johnston Consulting*  
A high level, interactive session for ZBA members, where recent court cases and statutes are reviewed and where participants will dig into four different case studies and discuss their findings. Basic ZBA knowledge is necessary to best participate. Reference book included.

## Planning and Zoning Essentials

*The most requested training product we offer.*

March 5 | 11:30 AM - 4:30 PM

**Kirtland Community College, Grayling**  
*Instructor: Sara Kopriva, AICP, Beckett & Raeder, Inc.*

March 21 | 11:30 AM - 4:30 PM

**Bavarian Inn Lodge, Frankenmuth**  
*Instructor: Jason Ball, AICP, Rowe Professional Services*

March 26 & 27 | 6 - 8 PM

**Virtual**  
*Instructors: Laura Haw, AICP, and Vidya Krishnan, McKenna*  
This course is designed to boost confidence by sharpening skills, identifying conflicts of interest, understanding legal foundations, examining roles and responsibilities, and more! This program is ideal for introducing new planning commissioners and zoning board of appeals members to their roles and responsibilities, and also for more experienced officials looking to refresh their skills and build upon existing knowledge. Roles and responsibilities, site plan review, comprehensive planning, zoning ordinances, variances, how to determine practical difficulty, and standards for decision-making are covered. Reference book included.

## Nonconformities

NEW!

March 14 | 6 - 8:30 PM

**Virtual | AICP CM Law Credit!**  
*Instructors: Michael Bila and Catherine Kaufman, JD, AICP, Bauckham, Thall, Seeler, Kaufman & Koehrs PC*  
Nonconformities can be vexing and how planners have approached them has changed over time. Join MAP for a deep dive into all types of nonconformities. The latest case law on the subject will also be covered.

## Housing Supply, Choice & Affordability

March 21 | 5:30 - 8:30 PM

**Bavarian Inn Lodge, Frankenmuth**  
*Instructor: Leah DuMouchel, AICP, Michigan Association of Planning*

A fast paced, 2.5 hour program that reviews master planning for housing, community engagement, zoning reforms, including a deep dive into one missing middle type-ADUs, plus how to tackle the approval processes and meetings that can stop the development a community has planned for. Reference book included.

## Zoning Administration

March 6 & 7 | 2 - 4 PM

**Virtual**  
*Instructor: Jacob Kain, AICP, City of Midland*  
This program is for zoning administrators in rural, suburban, or urban settings as well as municipal officials, other staff members, or citizens interested in a more complete understanding of all facets of zoning administration from legal basis to record keeping to enforcement. Reference book included.

## Zoning Ordinance: A to Z

March 19 | 12:30 - 4 PM

**Kalamazoo Valley Community College, Texas Township**  
*Instructor: Jill Bahm, AICP, Giffels Webster*  
Learn everything you need to know about this important regulatory tool. A history of zoning, alternative ways to zone, a tour of a typical zoning ordinance, including tips and best practices, zoning approval processes, and enforcement are all on the agenda. Reference book included.

## REGISTRATION FORM

Complete one form per registrant.

CONTACT INFORMATION:

NAME \_\_\_\_\_

AFFILIATION \_\_\_\_\_

EMAIL (confirmations and directions will be sent via email) \_\_\_\_\_

PHONE (with area code) \_\_\_\_\_

BILLING ADDRESS (include apt. or suite #) \_\_\_\_\_

CITY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP \_\_\_\_\_

Please list any special needs (dietary, barrier free access, etc.) \_\_\_\_\_

REGISTRATION INFORMATION:

☐ I'm a MAP Member

☐ Join MAP now for \$65 and receive the member discount. As a bonus, you will receive membership through June 2025.

MEMBER RATES	NON-MEMBER RATES	*\$25 late fee if you register LESS THAN 5 business days before workshop*
<input type="checkbox"/> \$130 <input type="checkbox"/> \$130 <input type="checkbox"/> \$90	<input type="checkbox"/> \$160 <input type="checkbox"/> \$160 <input type="checkbox"/> \$120	Planning and Zoning Essentials Mar. 5   Grayling Mar. 21   Frankenmuth Mar. 26 & 27   Virtual
<input type="checkbox"/> \$115	<input type="checkbox"/> \$145	Getting the Development you Want Mar. 5   Grayling
<input type="checkbox"/> \$100	<input type="checkbox"/> \$130	Zoning Administration Mar. 6 & 7   Virtual
<input type="checkbox"/> \$90	<input type="checkbox"/> \$120	Zoning Board of Appeals Mar. 6   Virtual
<input type="checkbox"/> \$85	<input type="checkbox"/> \$115	Nonconformities Mar. 14   Virtual
<input type="checkbox"/> \$125	<input type="checkbox"/> \$155	Zoning Ordinance Mar. 19   Texas Township
<input type="checkbox"/> \$125	<input type="checkbox"/> \$155	Advanced ZBA: Beyond the Fundamentals Mar. 19   Texas Township
<input type="checkbox"/> \$130	<input type="checkbox"/> \$160	Housing Supply, Choice & Affordability Mar. 21   Frankenmuth
<input type="checkbox"/> \$25 in person <input type="checkbox"/> \$10 virtual		Student (full time) Member Rate Workshop & Date: _____

PAYMENT INFORMATION: TOTAL: \_\_\_\_\_

☐ Check enclosed ☐ Invoice Me ☐ Visa ☐ Master Card  
(Make checks payable to: Michigan Association of Planning)

CARD # \_\_\_\_\_

EXPIRATION DATE \_\_\_\_\_

SECURITY CODE \_\_\_\_\_

CARDHOLDER'S NAME \_\_\_\_\_ BILLING ZIP CODE \_\_\_\_\_









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# Implementing community vision requires detailed strategies

[Brad Neumann, Michigan State University Extension](#) - April 01, 2016

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All too often, community master plans include wonderfully crafted visions and goals, but fall short on the detail needed in the form of individual strategies. It is detailed strategies that are most likely to lead to plan implementation.

Visioning is a participatory process where stakeholders and citizens develop a consensus on what a community will look, or be, like in the future. For community planning, this public participation technique often happens at the beginning of a planning process and can involve one or several public meetings. Visioning is a means for participants to express what a desirable future would look like, based on emphasized community values.

There are many ways to conduct a visioning session. Regardless of the approach, there are three general components to the process.

- First, participants must imagine the future. Meeting organizers usually ask a question like, “What are people saying about the community, what do the headlines in the paper read, in five, ten or 20 years?”
- After each participant has developed their own vision of the future, individuals share their vision with others and things each vision has in common are noted.
- Lastly, using the common aspects of the visions, a draft community vision is prepared and refined with subsequent opportunities for participant comments.



Ideally, the resulting vision statement reflects the consensus of the participants in the process. The community vision comprises peoples' values, wishes, fears and desires and the process has a tendency to produce an idealistic, seemingly intangible view of the future. Therefore, the process should be continued to develop a set of goals, objectives and strategies which move today's community toward the consensus community vision. The community vision will have individual components that lend themselves to individual goals. For instance, the City of Marquette, Michigan envisions itself as "A premier livable, walkable, winter city." One component of the vision is to better accommodate pedestrians and cyclists throughout the city. This component of the vision becomes a goal that will need to be further defined with a set of objectives.

By definition, objectives are narrower than goals and are considered to be achievable points of reference that describe what is targeted in order to achieve the associated goal. Almost always an objective should be SMART - that is Specific, Measurable, Attainable, Realistic, and Timely. As a community progresses from today to the future vision, the objectives provide reassurance that the community is on the path to achieving that vision. An example objective from the City of Marquette related to the goal of improved walkability is "Keep [streets] small and well linked."

For each objective there will be one or a number of strategies. A strategy is a method, procedure, or policy statement of a government's position that is designed to achieve an objective. Strategies are the actual ways the objective is implemented. An example strategy from Marquette is to "Integrate citywide walkability concepts into [street] redesign or maintenance projects." Lastly, it is important that there are people, a government department, or an agency that is tied to each strategy and committed to carrying it out.

It is the last two – the objectives and strategies – that are often missing or are incomplete in many master plans. Also, they often lack specifics or include words that fall short of being SMART - Specific, Measurable, Attainable, Realistic, and Timely. A detailed and effective strategy related to walkability would be "The city street department will integrate citywide walkability concepts into street redesign and maintenance projects in the next fiscal year." Compare that to "Study and implement, if feasible, citywide walkability concepts when appropriate." Further, there are likely to be several strategies for any one objective – as most projects require a multi-pronged approach. So, for the example above, additional strategies to implement the vision of becoming a walkable city might include adoption of a complete streets ordinance, adoption of form based zoning to define block sizes and façade transparency, dedicated funding to clear sidewalks of snow, and more.

[Michigan State University Extension](#) can help local leaders design visioning processes and other public engagement strategies for planning projects in your community.

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# REGULATING NONCONFORMITIES

circa 1940

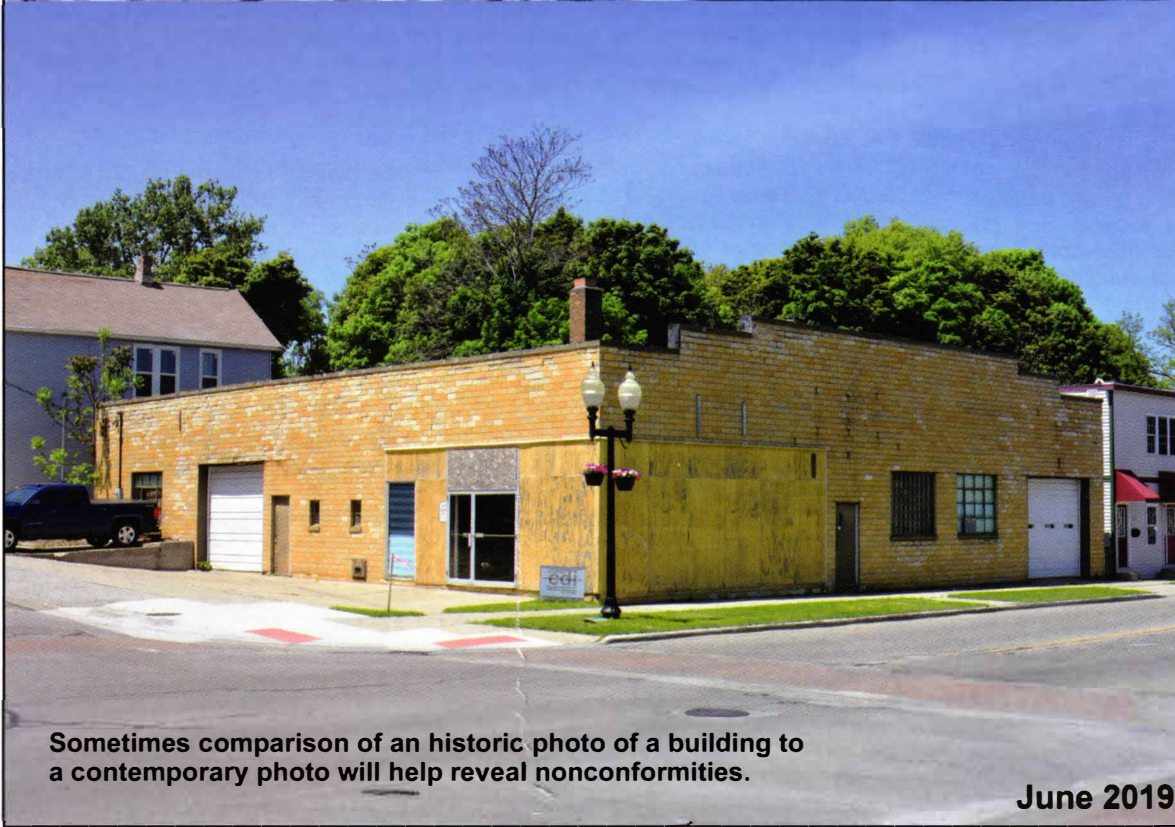


Photo by Kurt Schindler.

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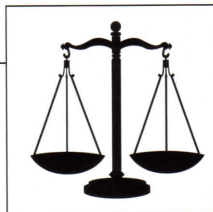
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## MICHIGAN COURT OF APPEALS

### Change to Nonconforming Use

Denial of a variance was upheld because nonconforming exterior neon lights were removed from a hotel and replaced with LED lights without proper permits, and the new lights covered a larger linear area than the previous neon lights did. **Southfield Lodge, Inc. v City of Southfield ZBA**. No. 343783. Decided June 25, 2019. Unpublished.\*

With regard to the relevant facts in the case, the Court stated the following:

"Appellant operates as a hotel in Southfield, Michigan. On February 23, 2015, the city of Southfield ("city"), amended Zoning Ordinance No. 1635, Chapter 45, Zoning Article 4 by adding Section 5.22-4 ("Section 5.22-4"), which regulated exterior lighting on buildings. Section 5.22-4 went into effect on March 5, 2015. Section 5.22-4 requires that the lighting on the exterior of a building cannot exceed "one (1) linear foot of neon or fiber-optic tube for each linear foot of building façade on the side of the building the tube is being placed upon." For approximately 15 years prior to the effective date of Section 5.22-4, appellant's hotel had neon tube lighting along the exterior of the hotel. Appellant's neon tube lighting had been in full conformity with the city's zoning laws prior to the effective date of Section 5.22-4. Around the time Section 5.22-4 went into effect, appellant removed the neon lighting from the building and installed the existing LED lighting on the hotel. When the lighting was modified from neon lighting to the existing LED lighting, there were changes made to the configuration and location of the lighting on the hotel. The new LED lights measured 1,028 linear feet, which was 690 linear feet more than was permitted under Section 5.22-4. Appellant filed for a variance with the ZBA because the existing lighting did not conform to the requirements of Section 5.22-4. The ZBA denied appellant's application concluding that the existing LED lighting was not "grandfathered" in because appellant had lost its entitlement to maintain the old neon lighting when it removed the neon lighting and unlawfully replaced it with the existing LED lighting, which was not in confor-

mity with Section 5.22-4 of the amended ordinance. The ZBA also concluded that the existing lighting was a self-created hardship and was not consistent with the "spirit and intent" of the amended ordinance. Appellant appealed the ZBA's decision to the circuit court arguing that the ZBA could not require that appellant obtain a variance to maintain its existing LED lighting because the existing lighting was a valid nonconforming use, and therefore, appellant had a vested right in its existing LED lighting."

The hotel argued its defense:

"that the modification of the lighting from the original neon tube lighting to the existing LED lighting did not expand, enlarge, or change the nature of the lighting, and therefore, appellant is entitled to maintain the existing lighting as a valid nonconforming use."

The ZBA disagreed:

"The ZBA does not dispute that appellant's neon tube lighting was lawfully installed and conformed to the city's zoning ordinance in effect at the time the neon tube lighting was installed on the hotel, and the ZBA does not dispute that appellant had a vested property right in the originally installed neon tube lighting. The ZBA's contention, however, is that appellant lost any right that it had to maintain the neon tube lighting after the effective date of Section 5.22-4 of the amended ordinance when appellant removed the neon tube lighting from the hotel and commenced work on the unlawful installation of the existing LED lighting. The trial court agreed with the ZBA that any vested right that appellant had in the neon tube lighting was lost at the time of the unlawful installation of the LED lighting." (emphasis added)

The Court of Appeals agreed with the trial court and ZBA decision and said

"A 'nonconforming use is restricted to the area that was nonconforming at the time the ordinance was enacted.' **Century Cellunet of Southern Mich Cellular, Ltd Partnership v Summit Twp**, 250 Mich App 543, 547; 655 NW2d 245 (2002). 'Expansion of a nonconforming use is severely restricted. One of the goals of zoning is the eventual elimination of nonconforming uses, so that growth and development sought by ordinances can be achieved.' *Id.*"

The Court of Appeals reiterated that 690 linear feet of LED lighting was added to the exterior of the hotel in violation of the ordinance (losing the nonconforming right to the neon lighting) and that "the circuit court did not err in finding that the ZBA's decision to deny appellant's request for a variance was supported by competent, material, and substantial evidence."

### Change of Class A Nonconforming Use

It was appropriate for a township to prosecute as an ordinance violation the actual change of a nonconforming use from a school to an excavating company without waiting for the planning commission to act on an incomplete application to change a Class A nonconforming use. **Township of Champion v Pascoe and Laitala**. No 344609. July 18, 2019. Unpublished.\*

The plaintiff township sought to enforce its zoning ordinance against an unauthorized change of a Class A nonconforming use from a school to an excavating company. The defendant sought to continue the trial court's summary disposition because the matter was "not ripe for judicial review," since defendants' application for a change of use had not been considered by the planning commission. The Court of Appeals reversed the trial court and remanded for further proceedings.

The Court of Appeals recited the following fact situation:

"At all times relevant to this dispute, the property at issue has been zoned for residential use. The local school district previously operated a school on the property pursuant to a lease. In 1984, the former owner of the property obtained a permit for a Class A nonconforming use that allowed the school to remain as it existed at the time of the application. The approved nonconforming use also extended to the structure of the school building and a bus garage on the property.

Pascoe purchased the property in 1995. In 2013, he leased some or all of the property to Laitala for operation of Laitala Excavating. In the fall of 2016, plaintiff's Zoning Administrator issued notices of zoning violations to defendants for operating a commercial business in a residential area. Plaintiff filed

(continued on Backcover)



# THREE NEW U.S. SUPREME COURT DECISIONS

By Mark A. Wyckoff, FAICP, Editor

## Exhaustion of State Remedies Requirement Overturned

Articles and other case summaries in *Planning & Zoning News (PZN)* since 1985 have often cited the U.S. Supreme Court decision in **Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City**. According to John Baker, attorney with Greene Espel PLLP in Minneapolis and chair of the American Planning Association's Amicus Committee, in a July 1<sup>st</sup> APA Blog (<https://www.planning.org/blog/9180554/what-did-and-didnt-change-with-supreme-court-knick-decision/>), two requirements were clearly articulated in this case:

"For over 30 years, plaintiffs alleging that state or local laws were applied in a way that caused a 'taking' of their property needed to satisfy two threshold requirements:

1. First, they had to wait for a 'final decision' regarding the application of the challenged law to their property.
2. Second, they needed to first try, and fail, to obtain just compensation for the taking under state-law procedures, before pursuing a takings claim under the U.S. Constitution."

On June 21, 2019, the U.S. Supreme Court overturned prong two in **Knick v. Township of Scott, Pennsylvania**. Baker writes:

"Specifically, the 5–4 majority held that if a final decision results in a taking within the meaning of the Fifth Amendment that was not accompanied by just compensation for that taking, then at that point the property owner has suffered a violation of his or her constitutional rights, and at that point he or she may proceed to federal court."

Baker says **Knick** "did not change substantive takings law." And that the "'final decision' requirement" remains in place. However, he cautions that

"The decision will likely increase the number of challenges to the outcome of land-use decisions that are filed in federal courts. However, the Court's reasoning also gives defendants in takings suits the opportunity to remove new takings suits to federal court." (underline added)

The Opinion in **Knick** was authored by Chief Justice Roberts. Following is his opening summary of the case which provides the rationale for the decision:

"The Takings Clause of the Fifth Amendment states that 'private property [shall not] be taken for public use, without just compensation.' In **Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City**, 473 U. S. 172 (1985), we held that a property owner whose property has been taken by a local government has not suffered a violation of his Fifth Amendment rights—and thus cannot bring a federal takings claim in federal court—until a state court has denied his claim for just compensation under state law.

The **Williamson County** Court anticipated that if the property owner failed to secure just compensation under state law in state court, he would be able to bring a 'ripe' federal takings claim in federal court. See *id.*, at 194. But as we later held in **San Remo Hotel, L. P. v. City and County of San Francisco**, 545 U. S. 323 (2005), a state court's resolution of a claim for just compensation under state law generally has preclusive effect in any subsequent federal suit. The takings plaintiff thus finds himself in a Catch-22: He cannot go to federal court without going to state court first; but if he goes to state court and loses, his claim will be barred in federal court. The federal claim dies aborning.

The **San Remo** preclusion trap should tip us off that the state-litigation requirement rests on a mistaken view of the Fifth Amendment. The Civil Rights Act of 1871, after all, guarantees

'a federal forum for claims of unconstitutional treatment at the hands of state officials,' and the settled rule is that "exhaustion of state remedies 'is not a prerequisite to an action under [42 U. S. C.] §1983.'" **Heck v. Humphrey**, 512 U. S. 477, 480 (1994) (quoting **Patsy v. Board of Regents of Fla.**, 457 U. S. 496, 501 (1982)). But the guarantee of a federal forum rings hollow for takings plaintiffs, who are forced to litigate their claims in state court.

We now conclude that the state-litigation requirement imposes an unjustifiable burden on takings plaintiffs, conflicts with the rest of our takings jurisprudence, and must be overruled. A property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it. That does not mean that the government must provide compensation in advance of a taking or risk having its action invalidated: So long as the property owner has some way to obtain compensation after the fact, governments need not fear that courts will enjoin their activities. But it does mean that the property owner has suffered a violation of his Fifth Amendment rights when the government takes his property without just compensation, and therefore may bring his claim in federal court under §1983 at that time."

Justice Kagan filed a dissenting opinion saying

"The majority today holds, in conflict with precedent after precedent, that a government violates the Constitution whenever it takes property without advance compensation—no matter how good its commitment to pay. That conclusion has no basis in the Takings Clause. Its consequence is to channel a mass of quintessentially local cases involving complex state-law issues into federal courts. And it transgresses all usual principles of stare decisis."

## Excessive Fines Violate U.S. Constitution

On Feb. 20, 2019, in **Timbs v. Indiana**, a unanimous U.S. Supreme Court overturned the previous decision of the Indiana Supreme Court on **Timbs** and ruled that "the Eighth Amendment's Excessive Fines Clause is an incorporated protection applicable to the States under the Fourteenth Amendment's Due Process Clause." The Indiana Supreme Court had opined that the U.S. Supreme Court had never ruled that the excessive fines clause applied to state governments.

An article by Richard Wolf in **USA Today** on Feb. 20<sup>th</sup> states:

"Liberals and libertarians alike have groused for years about what they see as increasingly greedy governments. A study by Harvard University and the National Institute of Justice found that about 10 million people owe more than \$50 billion as a result of the fines, fees and forfeitures. \*\*\* States and local governments increasing use funds collected in criminal and civil cases to pay for municipal services."

## Indiana Beach Walking Ok'd

The U.S. Supreme Court on February 19, 2019 denied certiorari on the case of **Gunderson v. Indiana**. That means the Indiana Supreme Court opinion in the case in 2018 stands. The case was very similar to the Michigan case of **Glass v. Goeckel**, 703 N.W.2d 58 (Mich.2005), cert. denied, 546 U.S. 1174 (2006). Both cases in state courts concluded there is a public trust right for citizens to walk along the Great Lakes beaches below the ordinary high water mark. For more information on the **Glass** decision see "The Michigan Supreme Court Declares that the Public Has a Right to Walk Along Great Lakes Beaches," in the Sept. 2005 issue of **PZN**, p. 6-9. □



# NONCONFORMING USES, STRUCTURES, & LOTS: How to Deal with Them

By Kurt H. Schindler, AICP, MSU Extension Distinguished Senior Educator Emeritus

## INTRODUCTION & DEFINITIONS

**N**onconformities are a source of confusion for many in the planning and zoning world. But the existence of nonconformities on a parcel, in a structure or land use, is one of the foundational concepts of zoning reflecting a very important principle: that zoning cannot outlaw a land use that already legally exists on a particular property. Stated another way, zoning must allow the continuance of lawful nonconforming lots, structures and land uses. That provision is fundamentally different than other police power ordinances, that instead require immediate conformance. For example, if the public health code is revised and rules are changed for food refrigeration in restaurants, then all restaurants must comply with the new regulation as soon as it becomes effective. No one can claim exemption because they were “nonconforming” or preexisted the new regulation. Protecting nonconforming uses is rare under most regulations – but it is central to the concept of zoning.

This article covers nonconformities in detail, starting with a definition, and instruction on how it is applied. Then it looks at the Michigan Zoning Enabling Act (MZEA) provisions on nonconformities and dissects them clause by clause. This will include some detail on court cases about nonconformities. Then the article explores the three different types of nonconformity: use, structure, and parcels. Michigan allows nonconformities to be classified so different classes can have different zoning provisions for each. This

## Basics on Nonconforming Uses

There are several terms of consequence in this article, starting with “nonconforming use.” A common definition of “nonconforming use” is: “A building, structure or use of land lawfully existing at the effective date of this Ordinance, or amendments thereto, and that does not conform to the regulations of the zoning district in which it is located.” This definition includes both nonconforming land uses, and structures. Some ordinances include “nonconforming lots” within the definition of “nonconforming use,” but most define them separately as follows: “A lot lawfully existing at the effective date of this Ordinance, or amendment thereto, and which fails to meet the area and/or dimensional requirements of the district in which it is located.”


Legally established nonconforming land uses, structures and lots are allowed to continue in the future provided they continue to be used in the same manner, and to the same extent as they existed at the time they became nonconforming (see **Edw C. Levy Co. v. Marine City Bd. of Zoning Appeals**, 293 Mich App 342, 2011). Illegally created lots, uses or structures do not have the authority to continue like lawful nonconforming uses do (see **Wyoming v Herweyer**, 321 Mich 611 (1948)); instead illegal nonconformities can be prosecuted as ordinance violations. Municipalities can regulate changes to legal nonconforming uses, and this article explores the range of permissible regulations under the Michigan Zoning Enabling Act (MZEA).

Last, the character of the parcel, use, or structure that makes it nonconforming runs with the land (not with the property owner), and the property can be sold or leased to someone else who has the same authority to use the nonconforming attributes of the property as the original owner (see **Civic Assoc. v Horowitz**, 318 Mich 333 (1947)). However, a nonconforming use cannot be severed from the property and transferred to someone else to use (see **Gackler Land Co v Yankee Springs Twp**, 138 Mich App 1 (1984); affirmed, 427 Mich 562 (1986)).

article will look at some of those classification schemes as well as different zoning approaches for nonconformities. Finally, the article will end with a discussion of the administrative side of nonconformities as exercised by the zoning administrator and zoning board of appeals. Reference material is presented separately on nonconforming use case law, zoning ordinance language, and a decision tree for use in processing requests involving nonconformities.

## Definition and How to Determine Nonconformities

Some people nickname nonconformities as the “grandfathering” clause in zoning – allowing something already in existence to continue. I have known the editor of **Planning and Zoning News** to cringe at the use of “grandfather” as an explanation of nonconformity. That is because the term is sexist, and because that explanation simplifies the concept too much.

Ordinance Requirement	Issue/Nonconformity	Photo(s)
<b>Examples of legal and illegal nonconformities.</b>	At the bottom of many of the following pages are examples of legal and illegal nonconformities. Many people struggle with the difference, and why illegal ones are subject to violation proceedings, but legal ones are allowed to continue because they preexisted the ordinance. The feature article explains legal nonconformities and how they are regulated, while these practical examples illustrate how principal buildings, accessory buildings and structures can be nonconforming, and what local zoning mechanisms can be used to deal with them.	These photos were all taken by Jerry Adams, retired City Planner of Cadillac, Michigan. They are locations in Cadillac, Northwest and Southwest Michigan, and Indiana. Jerry and Mark Wyckoff prepared the text for each of these examples. Some facts have been changed to facilitate illustration of these examples as hypotheticals.
1. Permanent storage of construction trailers in residential districts is not permitted.  2. Temporary storage with active construction underway is permitted.	1. The trailers pictured were being stored on a 40 acre residential site with no associated construction.  2. There is no nonconforming use. The trailers did not pre-exist the zoning requirement.  3. The ZBA denied a use variance request to store trailers on the property. The trailers were removed.	



The term “nonconformity” in the context of zoning, can refer to:

- A land use that was legal when it was first started because at the time there was not any zoning, or the zoning district allowed that land use, conditional use, or special use at the time; or
- A structure that was legal when it was first built in terms of zoning requirements at that time (size, height, form, placement [setbacks]); or
- The nonconforming aspects of lots or parcels. For example, a parcel/site-condominium-unit that was legal when it was first created/split in terms of zoning lot or parcel requirements (size, width, width-to-depth ratio, buildable site, building envelope, etc.) but no longer meets ordinance requirements because of changes to the ordinance; and
- The action that made the land use, structure, or parcel nonconforming with current zoning as a result of action by government (federal, state or local), as opposed to action by the current landowner, a previous owner or lessee.

If the action that created non-compliance with current zoning was taken by the current landowner, a previous owner or lessee, then that is a zoning violation – not a legal nonconformity. The violation does not go away or end when the property is leased, rented or sold to another person. However, there may be circumstances under which another legal principle applies, like that of a *statute of limitations*, or *acquiescence*, or *estoppel*, which may preclude the municipality from taking enforcement action. In those instances, assistance from the municipal attorney is critical to help the zoning administrator with ordinance enforcement.

If the action that created non-compliance with current zoning was taken by government then that is a legal nonconformity. Such government actions can include:

- Adopting the first zoning ordinance (making a pre-existing land use, structure, or parcel non-compliant with the new zoning ordinance).
- Adopting zoning amendments (new ordinance standards, changing the zoning district on the zoning map, and so on).
- Acquiring part of the parcel on behalf of a government or public utility. This may be to widen a road (parcel or setbacks may now be too small), install a new drain, and so on.
- Condemning part of a structure, as with a road widening, so now the structure is not large enough.
- Requiring an addition to a structure – so now the structure is too large, or infringes on required setbacks. (This would commonly be to comply with Americans with Disability Act or barrier free requirements; but would usually be processed by means of a variance.)
- Regulation by other laws such as court-orders, a statute requiring buffers from rivers lakes or wetlands, and so on.

It is common for part of a zoning request, or court case to involve a nonconformity, while other attributes of the lot, use or structure are not nonconforming. For example, the nonconformity may be just a part of the principal or accessory structure that infringes into a required setback – not the entire building. It may also not be the entire parcel that is nonconforming, it could just be the area of a single setback infringement. So, on any given property, there may be no part that is nonconforming, there may be one or a few nonconformities, or the whole lot, structure and uses may all be out of conformance with the ordinance.

Nonconformities on property do not end, or go away, simply by a change of ownership. They run with the land. They only disappear when a lot, use or structure become conforming. Once in conformance, the property must thereafter be

#### About the Author


**K**urt H. Schindler, AICP, Distinguished Senior Educator Emeritus in Government and Public Policy, with a focus in land use (planning, zoning, community development) for Michigan State University Extension. He retired from Extension in April 2017. Schindler is well-known to crowds attending Citizen Planner, Michigan Association of Planning, and MSU Extension programs. His work with MSU Extension has focused on land use (planning and zoning) with specialization in right-to-farm act/urban agriculture; property rights; due process; wind energy; public participation; joint planning act; form-based code; development in the new/global economy; placemaking; land division act; government fiscal sustainability; and water protection (ground, surface water, and wetlands). He also has more than 38 years of local planning and zoning experience in Michigan as a County Planning Director, consultant, and in MSU Extension.

maintained in conformance with the ordinance, and if it is not so maintained, the owner could be prosecuted for a violation of the ordinance.

There are only three ways a legal nonconformity can end in Michigan:

- Voluntary action by the owner, previous owner(s), or new owner(s) to bring the nonconformity into zoning compliance; or
- To end or abandon use of the nonconforming property. Abandonment needs to include several factors – not just nonuse over a period of time; or
- Purchase by government of the property to remove the nonconformity.

If one of those three actions has not happened, it is still a nonconforming use, parcel, or structure and its completion, resumption, restoration, reconstruction, extension, or substitution must be provided for in the local zoning ordinance.

Ordinance Requirement	Issue/Nonconformity	Photo(s)
1. Residences are not permitted in industrial zones.	<p>1. This is a nonconforming residential dwelling in an Industrial District.</p> <p>2. It is a small end lot. Abuts residential to the south, west, and north. Due to small size, configuration, and location the lot is generally not suitable for industrial use. Adjacent industrial business to the east is not interested in the property. Industrial zoning has prevented several sales for residential use.</p> <p>3. This may be a case where industrial district boundaries were “squared off” or too generous to begin with, but the result has had an unintended negative impact on this residential dwelling.</p> <p>4. At some future time it may be appropriate to be industrially zoned, but for now, the property should be rezoned to residential so that the property becomes conforming again.</p>	



## MICHIGAN ZONING ENABLING ACT PROVISIONS

### Sec. 208 of MZEA

Michigan has very specific provisions for nonconforming uses and structures. They are found in section 208 of the Michigan Zoning Enabling Act (MCL 125.3208):

*"Sec. 208. (1) If the use of a dwelling, building, or structure or of the land is lawful at the time of enactment of a zoning ordinance or an amendment to a zoning ordinance, then that use may be continued although the use does not conform to the zoning ordinance or amendment. This subsection is intended to codify the law as it existed before July 1, 2006 in section 216(1) of the former county zoning act, 1943 PA 183, section 286(1) of the former township zoning act, 1943 PA 184, and section 583a(1) of the former city and village zoning act, 1921 PA 207, as they applied to counties, townships, and cities and villages, respectively, and shall be construed as a continuation of those laws and not as new enactments.*

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

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

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

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

That is a relatively short provision of the MZEA. While short, it is loaded with meaning. So, let's examine it in detail.

### The Nonconformity

*"If the use of a dwelling, building, or structure or of the land is lawful at the time of enactment of a zoning ordinance or an amendment to a zoning ordinance, . . ."*

We have covered this already with regard to dwellings, buildings or structures. The key is that the nonconformity must have been lawful when it was created, otherwise, it is not protected going forward. Neither is a nonconformity protected going forward that is created by action of the owner, or a lessee or renter contrary to the zoning ordinance. That is simply a zoning violation.

Note that a nonconforming lot or parcel is not listed here, nor in the rest of Section 208. However, Michigan appellate courts have recognized as lawful, nonconforming lots of record that preexisted zoning or an amendment to a zoning ordinance; as do nearly all local zoning ordinances. See

for example **SBS Builders, Inc. v Madison Heights**, 38 Mich. App. 1 (1972).

### Nonconformity Can Continue


*"If . . . [it] is lawful . . . then that use may be continued although the use does not conform to the zoning ordinance or amendment."*

This is the "grandfathering" part (or as some call it, the "grandparenting" part): if it legally existed before adoption of the current zoning then that land use, parcel, or structure can continue. It can continue even if it does not comply with current (or future) zoning. It can continue even if it is sold to another person. When sold the new owner bought the rights to continue the nonconformity.

Basically, this is the clause that says zoning cannot outlaw something that already legally exists. For example, if someone has a corner store in a neighborhood and the municipality adopts exclusive residential zoning for that neighborhood, the corner store becomes a nonconformity and can continue to be used as a business. A new owner can continue to operate the store as a lawful nonconforming use. However, if the use of the property is converted to a conforming residential use, then it cannot thereafter be converted back to a corner store, without a change in zoning to permit it (not likely as that would be spot zoning, or an inappropriate use variance).

If zoning did not work like this, the store owner would have lost his property (the corner store business) with the stroke of a pen adopting the zoning. That would be a taking of property in violation of the Fifth Amendment of the U.S. Constitution (and in violation of a parallel provision of the Michigan Constitution).

However, while lawful nonconforming uses and structures may be continued, the primary goal of most zoning ordinances is the elimination of them, by gradual

Ordinance Requirement	Issue/Nonconformity	Photo(s)
1. In residential districts the ordinance does not permit placement of an accessory building (like this large garage/storage structure) on a lot without an existing principal building (dwelling). This formerly vacant lot was located directly across the street from the dwelling and residence of the lot owner.	<p>1. The definition of "lot" in the ordinance did not include contiguous land located across a public ROW (as is the case in some ordinances), so the zoning administrator denied a zoning permit for the structure.</p> <p>2. A variance request to use the lot for a garage/storage structure was filed, and the ZBA issued a variance, without making any finding of practical difficulty.</p> <p>3. The structure is now a legal nonconformity (but not a nonconforming use) because of the ZBA variance, but had the ZBA action been challenged in circuit court within the legal appeal period, the ZBA decision could have been overturned by the court because there was no practical difficulty and the use was not allowed without a principal dwelling.</p>	



conversion to conforming uses and structures. This is provided for in Section 208 (4) *“The elimination of the nonconforming uses and structures in a zoning district is declared to be for a public purpose and for a public use.”*

### The MZEA and Former Zoning Acts

*“This subsection is intended to codify the law as it existed before July 1, 2006 in . . . the former [zoning acts] . . . as they applied to counties, townships, and cities and villages, respectively, and shall be construed as a continuation of those laws and not as new enactments.”*

The MZEA was adopted and took effect July 1, 2006. Before that there were three different zoning enabling acts, one for cities and villages, one for townships, and one for counties. Nonconformity provisions existed in each of those old statutes, but they were not identical. This part of the MZEA indicates Section 208 is a codification of nonconformity requirements that focuses on making the provisions uniform. It also means that court cases from before 2006 usually still apply.

### Completion

*“The legislative body may provide in a zoning ordinance for the completion . . . of nonconforming uses or structures upon terms and conditions provided in the zoning ordinance.”*

There will be instances when an applicant received permits for construction under a former zoning ordinance, or before zoning. Then, before construction was started or completed, the zoning district, or use, or structure requirements were changed, or the first zoning ordinance was adopted. This provision of the statute enables the zoning ordinance to provide rules for how that nonconformity is to be completed. The rules can vary a lot. The most permissive might provide that the

project is allowed to be competed as was originally approved and continues going forward as a nonconformity. Or there may be any number of more restrictive rules, especially if there was a long period of time between when the permit was issued, and the new zoning regulations went in place, and the landowner or developer failed to act on the original permit during this period. Careful consultation with a municipal attorney is critical in these cases.

### Resumption

*“The legislative body may provide in a zoning ordinance for the . . . resumption . . . of nonconforming uses or structures . . . .”*

A nonconforming use, structure, or parcel might sit idle for a period of time. That may happen because it takes that long for it to be listed for sale and then actually sell. It may be idle while waiting for an insurance settlement for a repair, or it may be tied up in an estate. Here the MZEA is requiring rules in the zoning ordinance for the use of the nonconformity to start up again.

The passage of time cannot, by itself be a reason to conclude the nonconformity has been terminated. There are too many events that may stop use of a nonconformity that are beyond the control of a landowner(s). So just an amount of time without use (like 120 days, six months or even one year which are common) does not end a nonconformity. A well written zoning ordinance will list factors to use as evidence that a property owner ended, or abandoned, a nonconformity. It is a preponderance of factors, not necessarily all factors that have to be met, for example:

- Utilities have been disconnected;
- If there were signs, the signs have been removed or have fallen into disrepair;
- Fixtures within and outside the building have been removed;
- The property falls into disrepair;

- U.S. Mail delivery has been terminated or mail is forwarded to another address;
- The classification of the property for tax purposes has been changed to reflect another use; and
- Other similar changes to the nonconforming building or use.

### Restoration

*“The legislative body may provide in a zoning ordinance for the . . . restoration . . . of nonconforming uses or structures . . . .”*

Since the nonconforming structure can continue, it may also be desirable for that land use and structure(s) to be kept in good repair. Thus, the zoning ordinance should include provisions for the restoration of nonconformities.

This is particularly important for designated historic buildings and historic districts. Those provisions of zoning should be written to coordinate with the requirements of historic preservation ordinances.


### Reconstruction

*“The legislative body may provide in a zoning ordinance for the . . . reconstruction . . . of nonconforming uses or structures . . . .”*

When a nonconforming structure is destroyed by an event beyond the control of a landowner the owner’s rights to the nonconformity do not necessarily go away. So there needs to be provisions for replacement, or reconstruction of the nonconformity. Events like fire, flood, weather, tree, accident, or other damage is usually what causes reconstruction provisions in a zoning ordinance to apply. Many zoning ordinances refer to these events as *“acts of God.”*

If the owner wishes to continue the nonconformity, there needs to be provisions for reconstructing the structures again.

There is a great deal of variation in local

Ordinance Requirement	Issue/Nonconformity	Photo(s)
1.Zoning regulations require commercial parking on-site; restrict the distance between curb cuts for parking and nearby street intersections; and do not permit private parking to use the street as a maneuvering lane.	<p>1.This is preexisting nonconforming parking for a nearby business. Parking spaces on commercial property abut (perpendicular to) a public street with no space separating the parking from the street. To an unfamiliar driver, it would appear as public parking along a public street, as opposed to private parking serving adjacent businesses.</p> <p>2. Note the proximity of the paved spaces to the stop sign. Vehicles directly enter and exit from the street. The street is used as a maneuvering lane to access the parking areas located along both sides of the street.</p> <p>3. The city has effectively permitted enhancement of the nonconforming parking by allowing it to be paved. This will lengthen the time it remains nonconforming, but there is inadequate space on the lot for the amount of required parking and it is legally nonconforming.</p>	



ordinances as to how much damage may result in order to allow for reconstruction. For example, usually total destruction (a fire burned all of the building down) requires reconstruction fully in compliance with the structure requirements of the current zoning district and schedule of regulations. But a fire that only damaged a small part of the building may result in the application of requirements allowing reconstruction of that part of the building in the size and position it was originally, or with different characteristics that conform with existing zoning, depending on the provisions and the facts in a particular situation and specific ordinance provisions. Most commonly, if damage is more than 50% of the structure, or of its value, then it is not allowed to be reconstructed except in conformance with the ordinance. Some communities raise this to 60 – 70% to give the benefit of the doubt to the applicant. The most common dispute has to do with how to measure damage or valuation, which is another reason that communities often structure these provisions to give the benefit of doubt to the owner.

## Extension

*"The legislative body may provide in a zoning ordinance for the . . . extension . . . of nonconforming uses or structures . . ."*

From time-to-time an owner of a nonconformity may wish to *extend, enlarge, expand or add on* to a nonconforming structure, use or lot. These terms are often used interchangeably, but some ordinances distinguish between them. There is a great deal of variation in zoning ordinances as to how much extension would be allowed, and how one measures "extension." It can range from permitting no extension at all (see next paragraph) to a very generous amount of extension. Measurement is usually done by one or more of the following: square footage, appraisal value, state equalized evaluation, parcel

coverage, hours of operation, and others. In the case of a nonconforming parcel (because the parcel is too small) expansion in the size of the parcel may be desired. There are zoning ordinances that require the property owner to at least try to purchase adjacent land to expand the parcel size in order to eliminate the nonconformity.

In **Century Cellunet v Summit Township**, a published Court of Appeals opinion released March 29, 2002, the Court recited an oft referenced portion of **Norton Shores v Carr**, 81 Mich App 715, 720; 265 NW2d 802 (1978), [which was restated more recently in **Edw C. Levy Co. v. Marine City Bd. of Zoning Appeals**, 293 Mich App 342, 2011], where it says:

*"Expansion of a nonconforming use is severely restricted. One of the goals of zoning is the eventual elimination of nonconforming uses, so that growth and development sought by ordinances can be achieved. Generally speaking, therefore, nonconforming uses may not expand. The policy of the law is against the extension or enlargement of nonconforming uses, and zoning regulations should be strictly construed with respect to expansion."*

*"[I]t is the law of Michigan that the continuation of a nonconforming use must be substantially of the same size and the same essential nature as the use existing at the time of passage of a valid zoning ordinance."*

*The nonconforming use is restricted to the area that was nonconforming at the time the ordinance was enacted."* [Citations omitted.]

In **Century Cellunet** the Court of Appeals ruled against the township as it did not permit any extension of a nonconforming use. The Court said under the Township Zoning Act then in effect, the township must provide for some reasonable extension of a nonconforming use. How-

ever, the language in the MZEA, enacted in 2006, is different, and cities, villages, townships and counties now all have discretion in deciding whether or not to allow for extension or expansion of a nonconforming use.


In some cases, extension should be expressly provided for. For example, in cases where another law requires upgrading or additions to a nonconforming use, the zoning ordinance should not prevent extensions for this purpose. In other words, a community should not create a "Catch 22" where one law requires the addition and the local zoning does not allow it. For example, if barrier-free construction code requirements or the Americans With Disabilities Act requires an addition to a nonconforming structure for a ramp, or larger bathroom, the community should allow it, either expressly, or by means of a variance that is essentially automatic.

Many communities permit no extension, or enlargement, or expansion of a nonconforming use or structure as they want the use to be brought into ordinance conformance, and allowing it to be enlarged runs counter to that purpose. This is understandable, and acknowledged in the MZEA, but the objective should be achieved judiciously and with reasonable standards that provide relief if the burden imposed by the ordinance is too great in a particular situation. Many communities rely on the zoning board of appeals to consider these requests and provide a variance when needed to give a little relief when warranted.

## Substitution

*"The legislative body may provide in a zoning ordinance for the . . . substitution of nonconforming uses or structures . . ."*

As indicated earlier, courts have long recognized the goal of zoning ordinances

Ordinance Requirement	Issue/Nonconformity	Photo(s)
1. Public utility substations are required to be landscaped.	<p>1. A public utility substation was designed and constructed without required landscaping. The zoning administrator interpreted the ordinance as excluding public utility projects, resulting in the nonconforming situation. The question is whether it was legal because the zoning administrator authorized it, or illegal because the ordinance did not permit it that way.</p> <p>2. The subsequent zoning administrator made the utility aware of the prior mistake in approving the substation without the landscaping.</p> <p>3. The problem was voluntarily remedied by the utility company. However, the utility could have decided not to and the community may have had to resort to suing the utility company. A community is not prevented from <i>after the fact</i> efforts to gain ordinance conformance even when its own zoning administrator made a mistake when issuing a permit. Case law is uneven and hence unpredictable as to the likely outcome. As a result, attempting to persuade the utility company to voluntarily fix the problem, is best.</p>	



## Amortization of Nonconforming Uses

Unlike many other states, the MZEA does NOT provide for amortization of nonconforming uses. This is a technique that puts a time limit on how long a legal nonconforming use may remain, before it is required to be brought into conformity. It is commonly applied in other states to nonconforming signs.

Immediate amortization was ruled invalid by the Michigan Supreme Court in **Austin v Older** (1938). Timed amortization attempts in Lowell and Ann Arbor were ruled invalid for lack of state zoning enabling authorization (see **DeMull v Lowell**, Michigan Supreme Court (1963), and **Central Advertising Co v City of Ann Arbor**, Michigan Court of Appeals (1972)). In **DeMull**, the Court referred to an Attorney General advisory opinion indicating such authority would be unlawful, and the Michigan Legislature stopped consideration of a bill that would have enabled it. In 1978, the Legislature again considered legislation to authorize amortization of nonconforming uses and the sign lobby was successful in getting it removed from the bill that otherwise substantially updated Michigan's zoning enabling acts.

East Lansing however, was successful with adopting and having upheld by the Michigan Supreme Court, amortization of signs through a separate sign ordinance under the police power (rather than under zoning). See **East Lansing v Adams Outdoor Advertising**, 439 Mich. 209 (1992). Subsequent litigation refined that holding to not permit amortization of billboards as doing so would constitute a taking because billboards return an income to their owners. The approach of regulating by police power ordinance outside of zoning is used largely because it does not have to recognize nonconforming uses. See for example **Natural Aggregates Corp v Brighton Twp**, 213 Mich App 287 (1995).

to ultimately eliminate nonconformities. A step closer to that goal may include a transition from a current nonconformity to a different "more acceptable" nonconformity or one that is "less nonconforming." For example, if a dense neighborhood of old three story dwellings is zoned for exclusive residential use, and the nonconformity is a corner "party" store where milk, bread, snacks and alcohol is sold, some ordinances would permit an applicant to substitute the corner store with a single practitioner accountant's office, or allow a professional office on the ground floor and apartments on the upper floors. The office and limited apartments may be viewed as having less significant external impacts compared to the impacts of a corner store. Given the choice between (1) a corner store, (2) continuation

of a store without continued maintenance (blight), (3) government (or the neighborhood) having to potentially spend money to buy the nonconforming store rights, or (4) an office or office/apartments; the option for substitution may be viewed as the best option. There should be a process and standards in the zoning ordinance to guide such substitution decisions.

### Classes


*"... different classes of nonconforming uses may be established in the zoning ordinance with different requirements applicable to each class."*

I have already pointed out there is a great deal of variation among zoning ordinances in Michigan as to how nonconformities are handled. Variation as to if and

how substitution is allowed, how much damage before reconstruction is restricted or not allowed, how much a nonconformity can be extended, terms for restoration, and so on.

Sometimes that variation is also found within a single zoning ordinance. This part of the MZEA provides specific authorization to categorize different types of nonconformities. For example, nonconformities might be broken into categories based on the degree of negative impact they create for a neighborhood (e.g. from not very impactful to very impactful), or effectively, how easily the community wants the property replaced with a conforming use. The regulations for completion, resumption, restoration, reconstruction, extension, or substitution would be very strict or limiting for very negatively impacting nonconformities. On the other hand, they would be very accommodating for nonconformities which are more benign. The difficult task is deciding which nonconformities belong in which category so they can be specifically listed by category in the zoning ordinance. This may be why relatively few zoning ordinances that I have seen classify nonconformities. [The editor notes there is a large concentration of such ordinances in Upper Peninsula communities—perhaps because of the simplicity of the approach for administration. See for example the **Champion Township** court decision summary on page 2).]

A few zoning ordinances divide nonconformities into classes based on which zoning districts they are in. This approach permits different rules for completion, resumption, restoration, reconstruction, extension, or substitution for each zoning district. One district could be very restrictive on reconstruction (such as an industrial nonconforming use in a residential district), while another could have few restrictions (such as a nonconforming residence in an industrial district). One could argue

Ordinance Requirement	Issue/Nonconformity	Photo(s)
1. Industrial buildings are not allowed in residential districts.	<p>1. This nonconforming industrial building is located in a single family residential district, and adjacent to commercial uses; it has been vacant for a number of years. It was recently converted to a recreational training center to teach boxing skills to youth. No modifications were made to the building size or the site as a whole.</p> <p>2. This case illustrates the substitution of one nonconforming land use for another, as well as the restoration of a building for an alternative use, but the site remains nonconforming as the land is still zoned for residential use.</p> <p>3. The community could rezone the property, but it is in a transitional area and it is unclear what the long term land use will be in this area. At least this way, a vacant building is put back to use according to the substitution requirements of the zoning ordinance, and there are less negative impacts on adjacent residential structures, as the building was getting into an advanced state of disrepair.</p>	



this is not really classification, but rather simply different rules on nonconformities for each zoning district.

Some zoning ordinances have different rules for nonconformities based on the type of nonconformity it is: land use, parcel, or structure. Again, since the term “classification” is not defined in the MZEA, one might argue this is not classification. However, clearly this much variety in the regulation of nonconforming uses is permitted in the MZEA and few communities take advantage of the regulatory flexibility that is possible.

Classification of nonconformities is covered in greater detail on pages 12-14.

## Purchase a Nonconformity

*“The legislative body may acquire, by purchase, condemnation,<sup>1</sup> or otherwise, private property or an interest in private property for the removal of nonconforming uses and structures.”*

As stated earlier, there are two ways for a nonconformity to be terminated. The owner voluntarily ends it, or the government buys it. This sentence in the MZEA is where authority is granted for the government (that has the zoning ordinance) to buy the property rights of the nonconformity.

In the case where the parcel is nonconforming, the purchase may be of the entire parcel. In a case where the land use is nonconforming, the purchase may be a use easement that just pays the owner for the nonconformity rights. The owner still owns the parcel and can use it for anything allowed by the current zoning district. In a case where the structure is nonconforming, the purchase may just be the building, again leaving the owner with the land.

In other words, the purchase does not always need to be the entire parcel and all the structures, but it could be. Sometimes the government may want the entire parcel. But other times it may cost less to buy the covenant on the land use or just the building, and the parcel stays on the tax roll and may see future development in compliance with current zoning.

Purchase can be negotiated with the owner – willing buyer-willing seller. Or the government can use its power of eminent domain to obtain the nonconformity rights. However eminent domain requires involvement of the circuit court and the price paid will be the court-determined fair market value plus 25 percent.<sup>2</sup>

## To Pay for the Purchase

*“The legislative body may provide that the cost and expense of acquiring private property may be paid from general funds or assessed to a special district in accordance with the applicable statutory provisions relating to the creation and operation of special assessment districts for public improvements in local units of government.”*

This sentence in the MZEA is where the government (that has the zoning ordinance) is given authority to spend its money to buy the property rights for the nonconformity. The government can use money from its general fund, or money raised in a special assessment district. However, not included is any authority to levy a general millage for this purpose.

A special assessment district may be set up so that an area that benefits from the elimination of the nonconformity shares in the cost for the public expense. Commonly a special assessment is set up to pay for paving a road, or installing in-

frastructure such as a sewer or water line. Each parcel of land that fronts on the road, for example, pays its share of the cost of that road. For purchase of a nonconformity, a finding would have to be made that ending the nonconformity will be a benefit for the area. Then a determination has to be made to define a boundary around the “area.” The parcels within that “area” would be in the special assessment district and each would pay its share of the cost to buy the nonconformity. It is unlikely a governing body would levy such a special assessment unless a large percentage of the benefitting parties were to petition it to create the special assessment.

It is also possible the costs of acquiring a nonconformity could be split between the special assessment and the general fund if there were broader public benefits at stake.


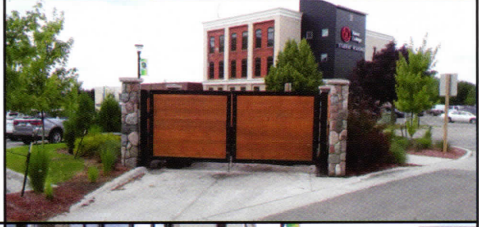

## Other

*“Property acquired under this subsection by a city or village shall not be used for public housing.”*

If the city or village government (that has the zoning ordinance) buys the parcel, then that parcel cannot be used for construction of public housing. However, if the government with zoning is a township or county, this restriction does not apply.

## CASE LAW ON NONCONFORMITIES

There are five court cases that cover key aspects of regulation of nonconformities – in some cases these are just the most recent cases dealing with these is-

Ordinance Requirement	Issue/Nonconformity	Photo(s)
1. Dumpsters and other accessory uses may not be positioned in a public ROW, such as a public sidewalk.	1. Dumpsters associated with an abutting business have been placed on a public sidewalk for years. It is not clear whether the placement preexisted the zoning requirement or is simply illegal. The location has led to complaints by pedestrians over the odors, and interference with pedestrian use of the sidewalk, as they sometimes encroach the sidewalk more than is shown in the photo.	
	2. Remedy reached: City and business owners jointly paid to construct two common use screened dumpster stations sited nearby on public property (in an alley as the alley was being reconstructed by the municipality), away from pedestrian movement and where garbage trucks can more conveniently access them.	
	3. The result is the sidewalk is now cleared for pedestrian use and additional conflict or litigation over whether the problem was an ordinance violation or a legal nonconformity was avoided.	



sues. Interested readers should read these cases in their entirety. They are summarized below. Some of these are unpublished cases. Unpublished cases mean they cannot be cited as precedent. Often cases are unpublished because they do not say anything new or the facts for the case are very unique and likely not applicable elsewhere. But sometimes an unpublished case provides a clear explanation of existing case law which is useful for teaching. The unpublished cases, here, are in that category. Please consult your attorney for guidance in relying on published and unpublished cases.

## Abandonment of a Nonconforming Use

In **Bialik v. Stambaugh Township**<sup>3</sup> the Michigan Court of Appeals held that the evidence of an owner's *intent to abandon must be shown*, along with evidence of *nonuse*, in order for a nonconforming use to be considered abandoned.

The plaintiff initially applied for and received a permit to repair or replace her nonconforming boathouse from the defendant township. While she was making the repairs, the roof collapsed and she started to rebuild the whole structure on the same footprint. Then, the township's zoning administrator stopped the work and denied a permit for the reconstruction because he thought the nonconforming use was discontinued.

At that point, the plaintiff appealed to the circuit court, which remanded the case to the township's zoning board of appeals (ZBA). The ZBA affirmed the zoning administrator's decision and, on appeal, the circuit court affirmed as well.

The Court of Appeals overturned the lower court's decision saying it found no evidence of the plaintiff's intent to abandon the boathouse use.

## Expansion of a Nonconforming Use

In order for a nonconforming use to be considered an illegal intensification or expansion, the Court ruled in **Charter Township of Ypsilanti v. Bragg**,<sup>4</sup> it needs to be proven that the *area used has increased*

*and that the use has changed completely.*

The plaintiff township sought to have an auto storage and dismantling yard declared a public nuisance. The defendant argued that this was a legal nonconforming use because the previous owner operated the same use since the 1940's. The township argued the previous owner dismantled things other than cars and the current owner only dismantles cars.

The trial court found that this did not change the use. It also found that the area used for the business was not expanded.

The Court of Appeals cited **Norton Shores v. Carr and Livonia Hotel, L.L.C. v. Livonia** in their ruling, which held that changing the nature of "junk" stored and dismantled is not a change in use, and concurred with the trial court.

## Relationship to Non-zoning Ordinances & Illegal Nonconforming Uses

In **Square Lake Hills Condominium Association v. Bloomfield Township**<sup>5</sup> the Court of Appeals held that police power ordinances are NOT subject to zoning nonconforming use requirements.

In an earlier case between these same two litigants, the Michigan Supreme Court had ruled that the defendant township's boat launching and docking ordinance was authorized by the Township Ordinances Act, M.C.L. 41.181 *et seq.* In this case the trial court found that the plaintiff's existing boat launching and docking facilities, which did not comply with the township's ordinance, were valid nonconforming uses.

On appeal, the township claimed that this ordinance is a police power ordinance and, as such, is not subject to nonconforming use requirements. The Court of Appeals agreed, and overturned the trial court decision.

In **Chesterfield Charter Township v. Kitay**<sup>6</sup> the Court of Appeals held *nonconforming use rights ONLY apply to uses subject to zoning ordinances*, and in order for nonconforming use rights to be applicable, the public health and safety must not be in danger and the *nonconforming use must have been legal to begin with.*

The plaintiff township sued the defen-

dant to enjoin him from using his property for the unsheltered storage of rubbish, debris, and junk. The trial court agreed and the defendant subsequently filed an appeal. In his appeal, the defendant claimed that he had been using his property since 1980 and that, as such, it was a valid nonconforming use.

Court of Appeals found that the defendant was being punished for his actions after the adoption of the ordinance in question in 1990. Additionally, it found that a municipality does not have to consider a "grandfather" clause when the public health and safety is at risk. It also found that there is no proof of this use being lawful to begin with, as required for nonconforming uses, and the ordinance in question was a regulatory ordinance (not a zoning ordinance), for which nonconforming use rights do not exist.

The Michigan Supreme Court declined to hear further appeals for this case.


## Vested Rights

In order for a new use to be considered valid and nonconforming the Court of Appeals ruled in **Belvidere Township v. Heinze**,<sup>7</sup> *substantial work must have been done towards its readiness for operation.*

In 1997, the defendant bought 35 acres within the plaintiff township to be used for a hog farm. In May 1998, the township passed a new ordinance requiring a special use permit for major livestock operations with more than 200 animals for more than 45 days.<sup>8</sup> At that point, the defendant had only made preparations for the operation.

When the township filed suit in court, the trial court found that the defendant had a valid nonconforming use. The township appealed the decision and, on appeal, the defendant claimed that the ordinance violated the Right-to-Farm Act.

The Court of Appeals found that the preparations the defendant made were not "substantial" enough to create a vested right (one must have substantial work done to have a vested right) and that the trial court did not have the most up-to-date version of the Right-to-Farm Act. The Court reversed the trial court's decision

Ordinance Requirement	Issue/Nonconformity	Photo(s)
1. Fence must have minimum one foot setback from public right-of-way.	1. Fence abuts public ROW. Has no setback, but 1' is required.	
2. In clear vision zones (street corners) fences may not exceed 30 inches in height.	2. Fence is 42 inches in height (instead of 30"). Does not meet clear vision requirements.	
	3. If the fence preexisted the zoning ordinance or an amendment with the current restrictions, then it is legally nonconforming and may continue as is. If the fence is thereafter proposed to be moved, it must be brought into conformance with the ordinance requirements.	
	4. However, if the fence were built illegally – without a permit and not in conformance with ordinance requirements – then it is an ordinance violation and must be reconfigured to conform to the ordinance requirements, or be removed.	



on the nonconforming use and remanded the Right-to-Farm Act issue so the trial court could consider the newest version.

More Court Cases

There are many more court cases on nonconformities. See Nonconformity Court Cases on pages 18-20 for a listing of most of them since 1981.

LOCAL EXAMPLES OF NONCONFORMING USE PROVISIONS

Examples of Nonconforming Use Provisions

As noted at the outset, there are generally three different types of nonconformities in zoning: the land use; the building/structure; and the parcel. Following are example approaches from local zoning ordinances to regulate each of these types of nonconformities.

Use

The use of the property may be for something that is no longer allowed in the respective zoning district, such as a retail store in an exclusive residential zoning district.

It is these types of nonconformities where substitution of one use for another may be effective. The example zoning language (see §8003.A. on page 21) has a set of rules which are specific for nonconforming uses. Included are such things as limits on how much the use can be expanded and measures of the expansion with size, hours of operation, and so on. It also prohibits any expansion onto an adjacent parcel for some nonconformities.

Sometimes it is useful to treat different types of nonconforming land uses differently. For that discussion see Nonconformity Classifications, below.

Structure

Nonconforming structures can involve any number of issues, but often involve a building that is the wrong size. It may be a three-floor building in a zoning district that only allows up to two floors. It may be a building which is too small compared to the minimum dwelling size and width. It may be an accessory building which is

larger, or taller than allowed. Structures can also be nonconforming because they do not comply with other dimensional requirements of zoning: placement within setbacks, number of parking spaces, ingress/egress requirements (access management), and so on.

The example zoning language (see §8003.D. on page 21) includes limits on the amount of expansion for buildings that are too large. The limit on expansion in these instances might be very restrictive. If the nonconformity is that the building is too small, then expansion of use may be limited, but expansion of the building could be seen as a solution – assuming it can be expanded in conformance with setbacks and so on.

Parcels

Nonconforming parcels may be too small because they have less than the required area, or are not wide enough, or there are other oddities in shape. There may be a different set of rules for a nonconforming parcel that is too small and already has structures on it and a parcel that is vacant.

For a nonconforming parcel that is vacant (see §8003.C. on page 21) the zoning ordinance might require a good-faith effort by the applicant to buy adjacent land. If that happens the nonconformity is resolved or made less nonconforming. But the ordinance cannot require this if adjacent property owners do not want to sell or demand an exorbitant price. If the nonconforming parcel was made even smaller after it became nonconforming that would be a violation of the ordinance, rather than a new nonconformity. Finally, the parcel has to be at least large enough to accommodate on-site sewage (septic tank, a health code, or police power ordinance requirement) if not in an area with public sewers.

For a nonconforming parcel that already has structures on it (see §8003.B. on page 21) the zoning ordinance might strictly limit expansion of existing structures, or only allow expansion that complies with setbacks and other ordinance requirements (parking, buffer, solid waste storage, and so on). Requirements may also include similar provisions for acquiring adjacent property.

Not found in the sample language (beginning on page 21) but a common provision is the definition for lot or parcel that is two separately described pieces of land next to each other and owned by the same person, but that is considered one lot or parcel for zoning purposes. The Michigan Land Division Act also has this same concept. The zoning regulation is that such contiguous parcels shall not be divided or reduced in size or sold separately. Usually such parcels are required to be combined in such number as necessary to meet, or come closest to meeting the minimum lot size requirement of the district.

Other Provisions


Sometimes a particular type of land use is treated differently than the parcel, structure or land use. For example signs are given a (stand-alone) special section in the Village of Kalkaska zoning ordinance. There, specific rules for nonconforming signs exist.

When drafting special rules, it is important to take care in drafting so that they are fully integrated with the rest of the ordinance. The safest way to do this would be to have the section on the special rules located in the ordinance article on nonconformities. One does not want a zoning ordinance that contradicts itself or creates confusion, as that results in questions about which part of the zoning ordinance applies. *Which set of regulations/standards come into play? Who handles what? Potential conflicts are not always that significant, but why even set yourself up for conflict?*

Nonconformity Classifications

Sometimes it is wise to recognize that not all nonconformities are equal. Some may be less problematic or objectionable to neighbors or the community. For those nonconformities, the rules may be more lenient in terms of resumption, restoration, reconstruction, extension, or substitution. Other nonconformities may be incompatible with the principal uses in the zoning district where the property is located. Regulation of those nonconformities may be very restrictive. The use of nonconformity classes provides more flexibility.

The task, or what could be a problem, is to decide what types of nonconformities

Ordinance Requirement	Issue/Nonconformity	Photo(s)
1. Ordinance does not permit restoration of damaged structures if the damage exceeds 50% of the replacement value of the structure.	1. Owner wanted to repair. The damaged structure was a pre-existing multiple-family residential structure in a single-family zoning district. It was a legal nonconforming use.  2. A variance request by the owner to repair the structure was denied. Restoration was determined to be well above the 50% threshold, for a legal nonconforming use, and the potential existed for the vacant lot to be developed as zoned for a single-family use.  3. The fire-damaged building was removed and the lot purchased by an adjacent single-family homeowner who wished to expand her yard area.	

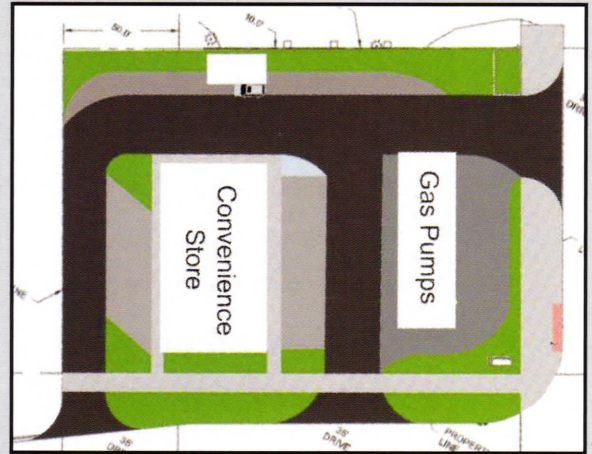


## Look for Opportunities for Gradual Elimination of Nonconformities

Once nonconformities on a property have been identified (see page 17), the next big challenge is figuring out how to apply the ordinance standards for nonconformities in a way that protects landowners' nonconforming use rights, while trying to achieve the ordinance (and MZEA) objective of eliminating nonconformities over time. It is often impossible or at least unrealistic to bring a nonconforming property into full ordinance conformance all at once. But it is often feasible to accomplish a little at a time. One key for successfully doing this is to *look for opportunities whenever a nonconforming property is slated for changes that require ordinance approval*. For example, if a gas station with a convenience store is changing owners, and the old pumps and underground tanks have to be replaced, that change may permit elimination of a nonconforming sign and nonconforming ingress and egress points.

At a minimum the principal sign face will have to be changed and the new owner may very well prefer a new sign (or package of signs) that would have to meet ordinance requirements and could be conditioned on removal of the old sign. Similarly, existing ingress and egress problems from nonconforming driveways could also be improved.

The illustration uses the black shaded area to show existing vehicular flow through the site. If the intersection were a busy one and new ingress and egress were restricted to left and right-turn in, and right-turn out only, there would be fewer traffic crashes associated with the driveways. Or, if the driveway opening between the gas pumps and the convenience store were closed there would be only one point of ingress and egress on each street, and increased distance from the intersection for one of the driveways reducing overall risk of traffic crashes. These are common access management objectives in zoning ordinances. While the location or size of the nonconforming building may not change, two other nonconformities may be improved (signage and access), if not eliminated.



Reducing access points from the existing three driveways to two by closing street access between the gas pumps and convenience store, or restricting driveway turning movements to left-in and right-turn only in, and right-out only, will improve traffic safety and potentially eliminate nonconformance with access management standards in the zoning ordinance.

Graphic by John Wallace, Cadillac City Planner

should be treated which way. The above example talked about only two classes (treated leniently or restrictively). It may be desirable to have several classes of nonconformities. But that makes the problem of pre-determining what goes in which class even larger.

One approach is the two-class system developed by Clan Crawford, Jr., J.D.<sup>9</sup> Rather than the zoning ordinance attempting to classify nonconformities by characteristics, Crawford handles classification more generally via an application process. If one has a nonconforming land use with any set of characteristics, it is a class B nonconformity. Class B nonconformities are to be eliminated as rapidly as permit-

ted by law without payment of compensation. The landowner may apply to the zoning board of appeals to have his or her land use to be moved into Class A. Class A nonconformities are those land uses designated by the zoning board of appeals upon finding the continuance would not be contrary to the public health, safety, or welfare, and would not significantly depress the value of nearby properties.


Crawford does not describe a Class C nonconformity, but presumably that could be those nonconformities whose characteristics are such, they would be candidates for purchase by the local government.

The process to become a Class A nonconformity would be a written application

using a form to solicit the necessary information, notices and hearings are the same as for a variance, and the appeals board's action is in writing including findings of fact, reasons, the decision, and conditions if any. Crawford also includes a process for revoking the Class A designation.

Another approach is to pre-determine which nonconforming land uses are Class A or B in the zoning ordinance. See §8003.A. on page 21, for one example of this approach

The City of Zeeland, Michigan, has an interesting nonconforming use section dealing with municipally-created nonconforming lots – potentially another type

Ordinance Requirement	Issue/Nonconformity	Photo(s)
1. Mechanical equipment in commercial and industrial districts must be setback 10' from the lot line, and must be screened from view.	1. Limited size and narrow configuration of a commercial lot, proximity of pre-existing abutting homes to the west, and equipment access issues render placement of new exterior mechanical equipment difficult. Best location is to the north. North side is highly visible to the public and equipment placement would require a setback variance.  2. A setback variance was granted by the ZBA based on site's practical difficulties. Conditions were attached: Placement of a privacy solid fence around the lower portion of the equipment painted with a color matching the building wall. Planting of a double row of landscape materials. The variance made the nonconformity legal but it was never a nonconforming use.	



# Zoning Administrator Steps for Processing a Zoning Application

- A. Receive the application and review to determine if it is complete.
  1. If complete go to step B.
  2. If not complete return it to the applicant for the missing items.
- B. Determine what type of case it is (e.g., appeal, variance, conditional use, special use, administrative PUD, permitted use, zoning amendment, conditional zoning amendment, PUD amendment). This step determines which procedure, notices, steps, standards that apply, deadlines, and who makes the final determination for the case.
- C. Distribute the application materials to other entities for their review (e.g., DPW, road agency, municipal engineer, consulting planner, and so on).
- D. Conduct a past records and decisions search. Gather information on past permits, special uses, PUD, site plans, nonconformities, enforcement actions, and more.
  1. To determine if nonconformities exist one needs to know the effective date of the zoning ordinance, any zoning amendments affecting the parcel, when the parcel was created, structures built, and land uses started.
  2. Determine if the nonconformity was discontinued or the municipality purchased it.
- E. Review the zoning application against the relevant standards in the zoning ordinance (use of a checklist for this is recommended).
- F. Start to process the zoning case (use of a step-by-step procedure checklist for this is recommended).
  1. Placed on the agenda of the planning commission or zoning board of appeals, or for the zoning administrator to do.
  2. Notices prepared, sent, and published, as applicable.
  3. Conduct site inspection(s).
  4. Staff report prepared, as applicable. Or notes for the file (if a permitted use) that includes (possibly a pro and a con) proposed findings of fact, reasons for the decision, the decision, and conditions if any.
  5. Public hearing is held, if applicable
  6. Decision is made by the applicable body.
- G. Documentation is completed with all materials on the case added to the zoning files for future use for past records and decisions search.



of classification. If a lot becomes an undersized parcel (in required area and/or width) due to the city obtaining a portion of that lot for purposes of a wider or new road right-of-way then that parcel/lot may be used for building purposes (principal and accessory buildings). The section also states yard requirement variances may be sought from the zoning board of appeals (ZBA). A variance for such a nonconforming parcel shall be for an indefinite period of time until the lot has been fully developed. This language implies the appeals board will issue yard variances

for these nonconforming parcels.

If using an approach similar to this, care should be taken to address what would happen if the ZBA does not grant yard variances for these parcels. Also care should be taken to address what would happen if the ZBA places time limits for use of its variance. (Note, once granted and used, a variance stays with the land and does not go away.) Finally, this system requires record keeping to identify the parcels getting this special treatment, especially if any development does not occur for a long period of time.

## ZONING ADMINISTRATOR DUTIES

A major, and very important part of a zoning administrator's job, is to determine if, and where, nonconformities exist for each zoning application. This is a task that needs to be done early in the review of each case. It should be done at the same time the zoning administrator is determining what previous zoning permits exist for that parcel, variances already granted, and other historic information. See page

Ordinance Requirement	Issue/Nonconformity	Photo(s)
1. Small, temporary, signs are permitted in the fronts of businesses in the downtown zoning district.  2. Specifications as to what constitutes a sign are not provided in the ordinance.	1. Using a display as a sign to indicate the type of business. The zoning administrator is not certain how to qualify it, sign or not, given the lack of ordinance clarity.  2. The display is not nonconforming, it is either legal as a sign, or illegal. The ordinance should be clarified by text amendment versus having the ZBA decide.	
1. Only one permanent sign is permitted in front of a motel.  2. Temporary signs are allowed for 30 days per year.  3. Major remodeling requires new zoning and building approval.	1. The smaller white background sign to the left of the larger blue sign is a nonconforming originally "portable" sign that has been permanently placed on the property.  2. There are other nonconforming freestanding signs that have been on the property for decades. Three are shown.  3. It is not clear which of the signs were erected with proper permits.  4. However, it is clear that the problem can be remedied, as the property is undergoing a total remodel under new ownership. This is a good time to require conformance with sign regulations.	



17 for a decision tree for this process.

It is important for the zoning administrator to first establish if there are any nonconformities associated with the use, the building, or the property. Knowing that is critical to be able to properly do the rest of the job and accurately issue or deny a permit or conduct a review of a site plan. (see page 14). The nonconforming use protections provided to properties with nonconformities, cannot be applied if the owner and zoning administrator do not know of them. It is the owners' duty to provide information that can help establish nonconformities and the zoning administrator's duty to apply the various protections afforded to nonconformities in the MZEA and ordinance once they are discovered. When so doing, of course the zoning administrator must follow established procedures and apply required standards to any proposed changes to a nonconforming use, structure or lot.

In one township I know of, a new zoning administrator did not do her homework to determine if a nonconformity existed on a particular property or not. In this case a nonconformity did exist. It was a building that pre-dated zoning and the placement on the lot did not meet subsequently required side yard setbacks. Not only did the nonconformity exist, but the applicant had previously been before the zoning board of appeals to document it and get approval to add on to the building. But the new zoning administrator did not check that history and only saw that the building infringed on the setback. So, she denied the permit for a second addition (that the zoning board of appeals had already approved) and started enforcement action for the first addition. You can use your imagination as to how unpleasant it was for the new zoning administrator to experience the fallout. Picture a story on the front page of the local newspaper and serious questioning of the new administrator's competence and you will be close to the actual situation.

That was a simple case. They can be much more complex. The planner for one city had a special use permit application

that involved a parcel where more than one nonconformity existed. The planner prepared a detailed staff report for the planning commission to use in review of the special use permit and site plan. One of the things the planner did was to include a second copy of the site plan in the staff report. On this copy the planner superimposed two boundaries. Each boundary was drawn around an area where the planner determined a nonconformity existed. The new zoning ordinance included ground and surface water buffers. One of the nonconformities was the presence of impervious surface in the parking lot within 50 feet of the water's edge. The other nonconformity was a part of the building that exceeded the new zoning ordinance's maximum height. That part of the building pre-dated any local zoning. The maximum building height standard in the new zoning ordinance reflected the local fire department's capacity for fighting fires. On the site plan the planner included the applicable section of the zoning ordinance where the standards for that type of nonconformity could be found. The staff report referenced those nonconformity standards for purposes of the special use permit and site plan review instead of the standards on impervious surface setback and building height found in the newer, other, parts of the zoning ordinance, because of the nonconformities on the property. If the nonconformities had not existed, the height and impervious surface setback provisions would have applied and the site plan would need to be in conformance with them.

Conducting the background research to establish if there are any nonconformities associated with the use, the building, or the property can be a challenge. Computers are excellent for keeping track of a parcel and all associated permits if one is fortunate enough to be in a community with such a system. Otherwise one depends on a well-organized paper filing system for past zoning actions. That works best if files are organized geographically. The local assessor can usually provide informa-


tion from the assessment card on dates of construction, additions, new garages, etc. Finding that date (or approximate year) may facilitate research on date of construction and locating an original permit. Sometimes comparison of photos at different points of time (as on cover) is helpful.

Zoning administrators need to become the lead investigator when it comes to nonconformities, pulling together pieces of information from aerial photos, tax records, register of deeds, and so on, until the puzzle is complete. The job of the zoning administrator is over 75 percent record keeping. Thus, keeping records is a vital part of the job. Those records are needed for proper review of every zoning application.

The first task the zoning administrator has upon receiving a complete application is to learn all the history of past zoning permits, variances, site plans, violations, and nonconformities for the lot/parcel at question. For example, if there is an exception for a side yard setback that variance still exists and needs to be known before acting on a zoning application. If the lot/parcel, structure(s), or land uses are partly or all nonconforming that needs to be known before acting on a zoning application. If nonconforming items exist, then the zoning administrator needs to know to turn to the part of the zoning ordinance on nonconformities and apply those procedures, standards and regulations.

The steps for processing a zoning application to ensure that nonconformities are not missed, are shown in the sidebar on page 14 as steps to process zoning cases.

Many (if not most) zoning ordinances charge the zoning administrator with the duty to determine if, and to what extent a nonconformity exists and to administratively apply nonconforming use provisions in the process of issuing permits based on his/her findings. But some zoning ordinances assign the task of dealing with nonconformities to the zoning board of appeals. If that is the case, then the zoning administrator's duty is preparing a staff

Ordinance Requirement	Issue/Nonconformity	Photo(s)
<p>1. Access to a private building cannot encroach on the public right-of-way.</p>	<p>1. This is a mixed-use building (retail 1<sup>st</sup> level/residential-2<sup>nd</sup> level) that needed improved access for second floor residential. Existing access is via the front door into and through the retail store.</p> <p>2. The best location pursuant to public safety and building design is along the side of the building, but that will result in public ROW encroachment and non-compliance with setback requirements.</p> <p>3. ZBA decided to approve access/steps conditioned on modifying original design to reduce amount of the variance and to require the applicant to add landscaping and agree to ROW maintenance. By granting the variance, the steps/setback is not an illegal nonconformity.</p>	



report to the ZBA that includes the past records and analysis of the nature and extent of nonconformities on the property, and guidance to the ZBA on the application of the nonconforming use provisions to the application. Thereafter, the decision on the request is left to the ZBA – per the terms of the ordinance.

## Summary

This article underscores the concept that zoning cannot outlaw a land use, structure or property that has one or more lawful nonconformities. Zoning has to include regulations on how nonconformities are handled, in terms of continuation, completion, resumption, restoration, reconstruction, extension, or substitution. All this is enshrined in the MZEA and case law.

Michigan communities typically have separate regulations for the different types of nonconformity: *use, structure, and parcels*. The MZEA allows Michigan communities to classify nonconformities so different zoning provisions for each type can be applied; this article reviewed some of those classification schemes.

Finally, nonconformities present a major part of the administrative duties of the zoning administrator. The zoning administrator has a major task with every zoning case to conduct a past records and decisions search to be able to document past permits and decisions on the parcel at question as well as to identify and describe all nonconformities. *Is it time to re-*

*view and possibly update the nonconforming use provisions in your ordinance, or to fully use them in review of every land use application?*

## FOOTNOTES

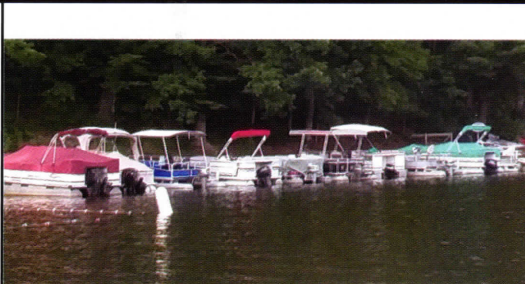

- 1 MCL 125.3208(4) of the MZEA reads: *"The elimination of the nonconforming uses and structures in a zoning district is declared to be for a public purpose and for a public use. The legislative body may institute proceedings for condemnation of nonconforming uses and structures under . . . [Acquisition of Property by State Agencies and Public Corporations Act]"*
- 2 Article X, Section 2 of the Michigan Constitution.
- 3 **Bialik v. Stambaugh Township** No. 276281. 2008 Mich. App. (April 29, 2008) unpublished. PDF to read entire case: [http://publicdocs.courts.mi.gov/opinions/final/coa/20080429\\_c276281\\_38\\_276281\\_opn.pdf](http://publicdocs.courts.mi.gov/opinions/final/coa/20080429_c276281_38_276281_opn.pdf).
- 4 **Charter Township of Ypsilanti v. Bragg** No. 249432, 2004 Mich. App., LEXIS 2120 (August 10, 2004) unpublished. PDF to read entire case: [http://publicdocs.courts.mi.gov/opinions/final/coa/20040810\\_c249432\\_48\\_249432\\_opn.pdf](http://publicdocs.courts.mi.gov/opinions/final/coa/20040810_c249432_48_249432_opn.pdf).
- 5 **Square Lake Hills Condo. Association v. Bloomfield Township** No. 196651, 1997 Mich. App., LEXIS 2472 (October 21, 1997) unpublished. PDF to read entire case: [http://publicdocs.courts.mi.gov/opinions/final/coa/19971021\\_c196651\(0047\)\\_196651\\_opn.pdf](http://publicdocs.courts.mi.gov/opinions/final/coa/19971021_c196651(0047)_196651_opn.pdf).
- 6 **Chesterfield Charter Township v. Kitay** No. 202586, 1999 Mich. App., LEXIS 1854

(January 26, 1999) unpublished. PDF to read entire case: [http://publicdocs.courts.mi.gov/opinions/final/coa/19990126\\_c202586\(0051\)\\_202586\\_opn.pdf](http://publicdocs.courts.mi.gov/opinions/final/coa/19990126_c202586(0051)_202586_opn.pdf).

- 7 **Belvidere Township v. Heinze** 241 Mich. App. 324 (May 26, 2000) No. 215599. LEXIS 132. LEXIS cite to read entire case: <https://advance-lexis-com.proxy2.cl.msu.edu/api/document?collection=cases&id=urn:contentItem:413S-X970-0039-44RS-00000-00&context=1516831>.
- 8 Such an ordinance, today, would no longer be enforceable due to restrictions of local jurisdiction by the Right to Farm Act.
- 9 Crawford Jr., Clan; **Handbook of Zoning and Land Use Ordinances – With Forms**; Prentice-Hall, Inc. 1974. Chapter 7, Sec. 701 and 702.

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Ordinance Requirement	Issue/Nonconformity	Photo(s)
1. Ordinance requires boat docks to be spaced 25 feet between docks.	<p>1. These docks have been illegally nonconforming for many years. The property, including the subject lake frontage, is in common ownership by multiple residents.</p> <p>2. Meeting required spacing would eliminate shoreline/ beach area suitable for safe swimming. There are no other beach areas on the lake available for free public use.</p> <p>3. Solution is to either amend the text of the ordinance to address common ownership dockage differently, or to grant a variance to reduce dock spacing. There were no other common ownership areas on the lake.</p>	
1. In residential districts the ordinance does not permit placement of an accessory building on a lot without an existing principal building (dwelling).	<p>1. This storage building is legally nonconforming as it preexisted the ordinance and was placed on a lot as a freestanding structure without benefit of a principal building. The lot was owned by the abutting lot owner.</p> <p>2. The owner of the nonconforming structure and the abutting lot constructed a new dwelling. The placement of the new dwelling received setback variances from the ZBA. As one of the variance conditions, the owner was required to combine lots thus removing the nonconforming status of the existing storage building.</p>	



# DOES THE PROPERTY HAVE NONCONFORMITIES?

## A Simplified Decision Tree to Help You Decide

By Kurt Schindler, AICP

**F**ollowing is one thought process, or decision tree, to use when determining if a parcel, structure or use has one or more non-conformities. Answer each of the questions before reaching a conclusion. Note that question #3 should be asked for ALL of the standards that may apply to the lot or parcel in question. Additional standards would typically include parking (number of spaces, location, arrangement), ingress, egress, garbage storage and screening, public water and sewer connections (or private well and septic connections), existing signage, surface drainage, landscaping, etc.

1. Which zoning district is the lot or parcel within? Turn to that zoning district in the zoning ordinance.
2. Is the existing lot or parcel of a shape and size that meets the standards for that zoning district?  
YES: The parcel complies with zoning (is not a nonconformity). Go to the next question.  
NO: This might be a nonconforming parcel. Go to the next question.
3. Is the existing dwelling, building, or structure of a form (height, size, placement, area, [setbacks: front, side, rear and from any waterbody; as well as any building spacing requirements], etc.) that it meets ALL of the standards for that zoning district?  
YES: The structure is permitted (not a nonconformity). Go to the next question.  
NO: This might be a nonconforming structure. Go to the next question.
4. Is the existing land use found among the list of permitted uses (use by right) for that zoning district?  
YES: The land use is permitted (not a nonconformity). Go to the next question.  
NO: This might be a nonconforming land use. Go to the next question.
5. Is the proposed use found among the list of possible special land uses for that zoning district?  
YES: The land use is permitted (not a nonconformity). Go to the next question.  
NO: This might be a nonconforming land use. Go to the next question.
6. Is the proposed use found among the list of possible conditional uses (class II special use, or some other name) or a PUD for that zoning district? [Many zoning ordinances do not have conditional uses, or the equivalent by another name, or PUDs. If that is the case then this question should be skipped.]  
YES: The land use is permitted (not a nonconformity). Go to the next question.  
NO: This might be a nonconforming land use. Go to the next question.
7. If all questions numbered 2 through 6 are answered "yes" then a nonconformity does not exist. The use of this decision tree ends here. Otherwise go to question 8.
8. If one or more questions numbered 2 through 6 were answered "no" then go to question 9. (Note: it is possible for part of a parcel to be a nonconformity, and other attributes which are not.) For each item that was answered "no" on a plot plan or site plan it is necessary to geographically segregate, or draw a line around, what does not comply with the current zoning requirements.
9. For each question numbered 2 through 6 that was answered "no" and is identified with a line around it on a plot plan or site plan, answer the following question: Is the item identified, when it first occurred (was built, parcel created, land use started) before zoning was adopted?  
YES: Those parts of the area(s) identified for which the answer is "yes" then that part is a nonconformity.  
NO: Those parts of the area(s) identified for which the answer is "no" then go to the next question.

10. Is the item identified, when it first occurred (was built, parcel created, land use started) in full compliance with zoning in effect at the time it first occurred?  
YES: Those parts of the area(s) identified for which the answer is "yes" then that part is a nonconformity.  
NO: Those parts of the area(s) identified for which the answer is "no" then go to the next question.

11. How did the item identified, after it first occurred (was built, parcel created, land use started) result in no longer complying with zoning requirements?  
BY AN ACTION OF THE OWNER: If the item identified was legal when it first occurred, but the owner (including previous owners) did something that means it no longer complies with zoning, that is a zoning violation. Consult with the municipal attorney about possible enforcement action or other recourse. (Examples: the parcel was in compliance but the owner or previous owner sold part of the parcel making it too small, or a building(s) no longer meets a required setback; structure(s) were in compliance but the owner or previous owner added to or removed parts of the structure so it no longer is the required size; or the owner or previous owner changed the land use so it is no longer in compliance with uses allowed in the zoning district.)  
BY AN ACTION OF GOVERNMENT: If the item identified was legal when it first occurred, but an action by government did something that makes the property so it no longer complies with zoning, that is a nonconformity. (Examples: the local government adopts its first zoning ordinance and the property is nonconforming; government changes (amends or replaces) the zoning ordinance and the property is nonconforming; government acquires part of the parcel for a public purpose (widen a road, install a public drain, etc.) resulting in the parcel being too small, setbacks too small, and so on.)

12. Did the nonconformity terminate, or cease to exist?  
YES, BY ACTION OF THE OWNER: A owner of a nonconformity can voluntarily choose to end the nonconformity. Evidence of doing so needs to include several factors – not just passage of time. Abandoning a nonconforming use might be a condition of a subsequent zoning permit for a different land use, or may be shown by its absence on a subsequent site plan.  
YES, BY PURCHASE BY THE GOVERNMENT: A government acquired, by purchase, condemnation, or otherwise, the interest in the property to remove the nonconforming uses, structures, or acquired the land in whole. If this happened the nonconformity no longer exists.  
NO: It is still a nonconforming use, parcel, or structure and its completion, resumption, restoration, reconstruction, extension, or substitution must be provided for.

Note: A single property can have part(s) that are in compliance with the ordinance, part(s) that may be a violation of the ordinance, and part(s) that may be nonconformities; or any combination. For example, the land use may still be allowed (in conformance with zoning) and an old addition to a structure may be a violation, while the parcel size (and front setback) may be a nonconformity because government purchased the front ten feet to widen the road. □



# NONCONFORMITY COURT CASES

Following are published and unpublished appellate court decisions in Michigan on nonconformities since 1981. Many people over several decades had a hand in assembling this list. There was an attempt made for this to be a comprehensive listing of nonconformity cases during this period, but omissions are possible (e.g. there are two new cases on page 2, that are not on this list). Please note that unpublished cases are not precedential, except in the court that issued the opinion. The list can be used to help find cases that provide guidance with particular problems or questions, but please consult your municipal attorney for interpretation and application of cases to current circumstances.


## Abandonment of Nonconforming Uses

- Requiring continuity for nonconformity not allowed. **Soechtig v. Greenbush Twp.**, Michigan Court of Appeals (Unpublished No. 301757, June 12, 2012)
- Contempt of court for violation of court order concerning zoning violation. **Charter Twp. of Portsmouth v. Woys**, Michigan Court of Appeals (Unpublished, No. 302319, February 9, 2012)
- Abandonment of nonconforming use. **Soo Twp. v. Pezzolesi**, Michigan Court of Appeals (Unpublished No. 299359, October 25, 2011)
- Temporary disuse is not abandonment. The burden is on the municipality to show abandonment of a nonconforming use. The Right to Farm Act also does not make farms exempt from zoning. **Padgett v. Mason County Zoning Commission et al.**, Nos. 236458 and 236459, 2003 Mich. App., LEXIS 3160 (December 9, 2003). Unpublished.
- In order for a nonconforming use to be considered abandoned by the owner, there needs to be evidence of intent to abandon as well as actual discontinuance. **Livonia Hotel, L.L.C. v. City of Livonia**, 259 Mich. App. 116 (October 21, 2003).
- Use stopped for 12 years no longer a nonconformity. **St. Clair Shores (City) v. Andler et al.**, No. 232277, (October 11, 2002). Unpublished.
- More than 50% removed (as specified in zoning) nonconformity is lost. **Gerrish Township v. Doering**, No. 216584, 2000 Mich. App., LEXIS 2212 (May 26, 2000). Unpublished.
- When a use temporarily stops during a period of change of ownership, it does not automatically mean the nonconforming use was abandoned. *"The temporary cessation or temporary vacancy of a nonconforming use does not, by itself, operate to result in abandonment of a nonconforming use."* **Charter Township of Breitung v. Zeeb**, No. 219336, 2000 Mich. App., LEXIS 2160 (May 19, 2000). Unpublished.
- Eliminating a nonconforming use may not hold up in court if the regulation in question *"denies the owner economically viable use of his land"*. **Adams Outdoor Advertising v. East Lansing**, 232 Mich. App. 587 (November 20, 1998).
- Abatement of a legal nonconforming use must be supported by the owner's intent to abandon. **Township of Sands v. Racine**, No. 192408 (June 24, 1997). Unpublished.
- Nonconforming sign was removed, nonconformity was lost. **Adams Outdoor Advertising Inc. v. Village of Vicksburg**, No. 4:96CV111 (February 3, 1997) unpublished.

- Gas station that was vacant for two years (zoning says after six months nonconformity ends) was lost. **Village of Carleton v. Miteff**, No. 170115 (December 5, 1995). Unpublished.
- Removal of dock to replace it with a new one: nonconformity still exists. **Stortboom v. Chrisman**, No. 143775, (March 10, 1994). Unpublished.
- Former beauty shop is not a nonconformity. **Porter v. Denton Township**, No. 126648 (October 15, 1991). unpublished (Per curiam).

## Expansion of Nonconforming Uses

- Nonconformity (commercial use in residential zone) is entire parcel. **Azzar v. City of Mackinac Island**, Michigan Court of Appeals (Unpublished Opinion No. 331308, May 23, 2017).
- Must have standing to challenge expansion of nonconforming use. **Gregory Stewart, et al. v. City of Detroit, et al.**, No. 276720. (March 4, 2008). Unpublished.
- When considering the scope and extent allowed for a nonconforming use, it is necessary to look at more uses on the property than simply what was there at the time the nonconforming use became nonconforming. **City of Essexville v. Carrollton Concrete Mix, Inc., et al.**, No. 263757. Court of Appeals. (March 29, 2007). Unpublished.
- Among other things township's ordinance provision disallowing the expansion of a nonconforming use violated the Township Zoning Act. **Romeo Plank Investors, L.L.C. v. Macomb Township**, No. 266415. Decided (February 20, 2007). Unpublished.
- A nonconforming use must be substantially the same size and essential nature as the use at the time of the passage of a valid zoning ordinance. **Berrien Township v. Maxwell**, No. 256487, 2005 Mich. App. LEXIS 3155 (December 20, 2005). Unpublished. See also **Century Cellunet v. Summit Twp.**
- The regulations for nonconforming uses in zoning ordinances must be consistent with the required nonconforming use regulations in the zoning enabling statute. *"A nonconforming use must be substantially the same size and essential nature as the use at the time of the passage of a valid zoning ordinance"*. **Century Cellunet of Southern Michigan Cellular, LPD v. Summit Township**, 250 Mich. App. 543 (March 29, 2002).
- A reiteration of the requirement for a valid nonconforming use to have been conforming before the enactment of the ordinance that made it nonconforming. **Troy v. Papadelis, et. al.**, 226 Mich. App. 90 (October 21, 1997).
- Making a large sitting room into smaller rooms with baths is expansion of a nonconforming use. **Kopietz v. City of the Village of Clarkston et al.**, No. 185309, 1997 Mich. App., LEXIS 1528 (May 6, 1997). Unpublished.
- Expanding a greenhouse onto an adjacent lot is enlarging a nonconformity which is not protected by the Right of Farm Act. **City of Troy v. Papadelis**, No. 172026, 1996 WL 33364405 (May 10, 1996). Unpublished.
- Skeet shooting range existed prior to zoning gets to continue as a nonconformity and townships regulation is restricted by the Sport Shooting Ranges Act. **Klark v. Ann Arbor Lodge No. 1253, Loyal Order of Moose, Inc.**, No. 143678, (June 17, 1994). Unpublished.

Ordinance Requirement	Issue/Nonconformity	Photo(s)
1. Off-premises business signs, with very limited exception, are not permitted by ordinance.	1. This is a nonconforming off-premises, billboard-sized sign that has existed for decades. It also exceeds sign standards for permitted on-premises free-standing signs.	
2. City allows for (promotes) sign maintenance.	2. The sign surface needed maintenance. This sign was totally repainted. Size, placement, etc. did not change. The sign partially blocks visibility of a new retail store (behind the sign), and that business would benefit if the sign went away. However, it is being maintained as a nonconforming sign under the terms of the ordinance.	



- The zoning ordinance must be very clear, especially regarding nonconforming uses, if it is going to stand up in court. **Farmington Hills v. Hacker**, No. 133387 (November 3, 1993). Unpublished.
- Nonconforming accessory use cannot be expanded beyond what zoning allows. **Higgins Township v. Bonardi**, No. 136551 (February 9, 1993). unpublished.
- When determining if an easement can be added to an existing setback to meet a required setback, it is important to make sure that the owner in question actually owns an interest in the easement. **Riviera Terrace Condo. Ass'n v. Stype**, No. 118674 (June 8, 1992). per curiam, unpublished.
- Garage that was never conforming is thus never legally nonconforming. **Mange v. Waldron**, No. 123902 (May 8, 1992) unpublished, per curiam.
- Nonconforming auto-related service business cannot expand to include storing vehicles. **Verhey v. Independence Charter Township**, No. 124817 (February 7, 1992) unpublished, per curiam.
- A continuing legal nonconforming use must remain substantially the same size and nature as before. **Camp Kingston Hills, Inc. v. Koylton Township Zoning Board**, No. 131142 (April 19, 1991). Unpublished, per curiam.
- Apiary is illegal expansion of existing nonconforming farm use. **Jerome Township v. Melchi**, 184 Mich. 228 (February 28, 1990).
- Docks, sale of items, annexation to a village. **Village of Lake Orion (Orion Township) v. McBride et al.**, No. 102910 (June 26, 1989). Unpublished, per curiam.
- Nonconforming golf course new maintenance building is illegal expansion. **High v. Cascade Hills Country Club**, 173 Mich. 856 (January 9, 1990).
- ZBA variance for nonconforming expansion, with conditions, is not a forced dedication. **Troy v. Aslanian**, 170 Mich. App. 523 (August 2, 1988).
- Nonconforming parking of a large dump truck, then replaced with a larger dump truck is still nonconforming, but addition of a "trailer pup" is illegal expansion. **Independence Township v. Eghian**, 161 Mich. App. 110 (April 29, 1987).
- Nonconforming adult oriented business restrictions are okay, but other special use regulations were not upheld. **Cinema Blue of Saginaw, Inc. v. Township of Thomas**, No. 83 CV 7264 BC.

### Illegal Nonconforming Uses

- Without laches and estoppel defenses, enforcement of zoning could proceed after years of not doing so. **Charter Twp. of Lyon v. Petty**, Michigan Court of Appeals (Published Opinion No. 327685 (317 Mich. App. 482; 2016 Mich. App. LEXIS 1877, October 13, 2016)).
- Commercial use in agricultural district not allowed: was not a nonconforming use. **Township of Macomb v. Svinte**, Michigan Court of Appeals (Unpublished No. 318064, December 18, 2014).
- Nonconforming uses must be lawful in order to avoid a violation. **Jefferson Township v. Tiser**, No. 256426, 2005 Mich. App., LEXIS 3041 (December 6, 2005). Unpublished.
- Veteran's license, other ordinances, and not a nonconforming use. **Township of Clement v. Sheltrown**, No. 261098, 2005 Mich. App., LEXIS 1677 (July 12, 2005). Unpublished.
- Not a nonconforming use. **St. Amant v. Taylor**, No. 252656, 2005 Mich. App., LEXIS 915 (April 12, 2005). Unpublished.
- A nonconforming use must have been legal at the time the zoning ordinance that made it nonconforming was adopted. **Huron Valley Night Hawks v. Township of Manchester**, No. 251643, 2005 Mich. App., LEXIS 638 (March 10, 2005). Unpublished.
- Easement (for road/access to lake) is a nonconforming use. **Hart v. Ward**, No. 248725, 2004 Mich. App., LEXIS 2863 (October 26, 2004). Unpublished.
- Maintaining blighted conditions on a parcel cannot be defend-

ed by saying that it is consistent with a prior nonconforming use. **Pine River Township v. Finch**, No. 192710 (April 25, 1997). Unpublished.

- Reiterating other points from these court cases, in order for a nonconforming use to be legal, it had to have been legal at its beginning. **Rochester Hills v. Southeastern Oakland County Resource Recovery Authority (SOCRR)**, 192 Mich. App. 385 (December 30, 1991); reversed, 440 Mich. 852 (June 19, 1992); reconsideration denied, 1992 Mich. LEXIS 2229 (September 9, 1992).

### Vested Rights

- Nonconformity continues with new land owner. **Trail Side LLC v. Village of Romeo**, Michigan Court of Appeals (Unpublished Opinion July 6, 2017, No. 331747).
- Prohibition of short-term rentals. **Laketon Twp. v. Advanse, Inc.**, Michigan Supreme Court Order (485 Mich. 933; 773 N.W.2d 903; 2009).
- Whether short-term rentals were allowed under the ordinance in effect when the defendant began using the property in this manner. **Laketon Twp. v. Advanse, Inc.**, Michigan Court of Appeals (Unpublished No. 276986, March 24, 2009).
- This case was an appeal of the case immediately below. In this case, the Michigan Supreme Court vacated the order of the Court of Appeals and ordered additional fact finding be done by the township board rather than the trial court. **VanFarowe v. Cascade Charter Township and Goodwood Plat Owners**, No. 135507. 480 Mich. 1168. (April 23, 2008).
- There must have been substantial work completed towards establishing a nonconforming use to make it legal nonconforming. **Brian VanFarowe, et al. v. Cascade Charter Township, et al.**, No. 264189. (November 8, 2007). Unpublished.
- Plaintiff obtained zoning amendment that was petitioned for election. But petitions rejected as inadequate. Plaintiff obtained zoning permit and spent money preparing the site. Then court ordered petitions accepted. **Elizabeth Soss v. Whiteford Township et al. and Gateway Fireworks, L.L.C. v. Whiteford Township et al.**, Nos. 278914 and 278915. Decided (October 4, 2007). Unpublished.
- Use of building violated the zoning ordinance in effect at that time precluding any vested, nonconforming use for the current owner. **Mid-Michigan Rentals, Inc. et al. v. City of Mount Pleasant**, No. 240655, 2003 Mich. App., LEXIS 2761 (October 28, 2003). Unpublished.
- One is not exempt from that new ordinance provision because either his properties were converted or his plans were submitted before the amendment. **Holland v. Wolters**, No. 218288, 2000 Mich. App., LEXIS 2217 (May 26, 2000). Unpublished.
- Denial of use of a nonconforming use could be a temporary taking. **Cipa v. City of Eastpointe**, No. 184244 (September 27, 1996). Unpublished.
- Work, money spent, that is not on actual construction is not a vested interest. **Schubiner v. West Bloomfield Township**, 133 Mich. App. 490 (April 2, 1984).
- It can be a legal nonconforming use, due to the doctrine of laches. **Hancock v. Hueter**, 118 Mich. App. 811 (August 25, 1982).

### Nonconformance with Police Power Ordinances

- A blight ordinance was a regulatory ordinance rather than a zoning ordinance and thus, was not subject to prior nonconforming use provisions. **Elmwood Township v. William and Jeanette Miller**, No. 272870. Decided (March 8, 2007). Unpublished.
- Regulation of the water and sewer systems were "reasonable expressions of the Township's authority" to maintain the public health, safety, and welfare. **Sullens v. Township of Sumpter**, No. 214224, 2000 Mich. App., LEXIS 1099 (September 26, 2000). Unpublished.
- Must determine if a legal nonconforming use. **People v. Strobridge**, 127 Mich. App. 705 (August 1, 1983). (Per curiam.)




## Miscellaneous

- Three out of five votes of ZBA members required to reverse Zoning Administrator. **Edw C. Levy Co. v. Marine City Bd. of Zoning Appeals**, Michigan Court of Appeals (293 Mich. App. 333; 2011 Mich. App. LEXIS 1294; Published No. 296023 July 19, 2011).
- Revoking a nonconformity, civil versus criminal action. **Kevin Halash, et al. v. Township of Exeter Zoning Board of Appeals and Jon Greca**, No. 274368. Decided (February 28, 2008). Unpublished.
- Signs, validity of the ordinance. **Adams Outdoor Advertising, Inc. v. Holland**, 234 Mich. App. 681 (April 2, 1999).
- Septic system. **Plonski v. Courtland Township**, No. 1:96CV944, 1997 U.S. Dist., LEXIS 17312 (September 11, 1997).
- In following a zoning ordinance's requirements for nonconforming uses, it is important to follow them carefully. **Kopietz v. City of the Village of Clarkston**, No. 168097, 211 Mich. App. 666, LEXIS 298 (June 27, 1995).
- Repair of dilapidated home. **Bredschneider v. Frenchtown Charter Township**, No. 164349, (June 27, 1995). Unpublished.
- Expansion of campground. **Croasdel v. Township of Fenton**, No. 145368 (June 29, 1994). Unpublished.
- In order for a nonconforming use to be legal, it must be on land owned by the owner of the nonconforming use. **Gerish Township v. Esber**, 201 Mich. App. 532 (September 20, 1993).
- A nonconforming use issue must exhaust all administrative remedies before going to court. **Lyon Charter Township v. Lazechko**, 197 Mich. App. 681 (December 29, 1992).
- Satellite antenna, FCC preemption, not getting permits precluded any legal nonconforming status. **Bloomfield Hills v. Gargoro**, 178 Mich. App. 163 (July 6, 1989).
- Single-wide mobile homes. **Gackler Land Co. Inc. v. Yankee Springs Township**, 427 Mich. 562 (December 30, 1986).
- Nonconforming parking lot. **Peterson v. Lapeer**, 106 Mich. App. 148 (May 5, 1981).

- Race track, zoning after purchase of property, city harassment of owners. **Harmark, Inc. v. Hartford (City) et al.**, No. 4:00 CV 170, 2001 U.S. Dist., LEXIS 3436 (February 16, 2001). Unpublished.
- Egg production, intensive livestock operations, and substantive due process. **Schoolcraft Egg, Inc. v. Schoolcraft Township**, No. 216268, 2000 Mich. App., LEXIS 862 (August 11, 2000). Unpublished.
- Evidence of a possible variance to fix a nonconforming use status issue should be considered in court proceedings. **Department of Transportation v. Van Elslander et al.**, 460 Mich. 127 (June 22, 1999).
- Special use permit and setbacks. **Herrera v. Delhi Leasing, Inc.**, No. 200582, 1998 Mich. App., LEXIS 1852 (July 7, 1998). Unpublished.
- Addition, flooding, not a nuisance *per se* if a legal nonconforming use. **Deisler v. City of Dearborn**, No. 192534 (April 8, 1997). Unpublished.
- ZBA must show sufficient evidence for meeting standards. **Reenders v. Parker**, 217 Mich. App. 373 (July 2, 1996).
- The zoning ordinance should outline procedures for approving the expansion of nonconforming uses or disallowing that expansion altogether. **Rudell v. Buchanan Township**, No. 177219 (January 19, 1996). Unpublished.
- Variance. **Ellen v. City of East Detroit**, No. 170691 (January 26, 1996). Unpublished.
- Built larger than shown on site plan, variance denial upheld. **Paris v. Taylor ZBA**, No. 147794, (September 1, 1994). Unpublished.
- Spot zoning had occurred and rezoning was "arbitrary, unreasonable, and was not related to the public health and safety". The court ordered that the rezoning nullified. **Ackley v. Township of Roscommon**, No. 145296 (March 2, 1994). Unpublished.
- Mobile home parks. **Township of Heath v. Sall**, 442 Mich. App. 434, (December 21, 1993). Unpublished.
- Mobile home parks, part two. **Township of Heath v. Sall**, 442 Mich. 434 (June 22, 1993).
- Sand and gravel mine. **Lake Angelo Assocs. v. White Lake Township**, 198 Mich. App. 65 (January 20, 1993).
- Off-site improvements. **Nasierowski Bros. Inv. Co. v. Sterling Heights**, 949 F. 2d 890 (6th Circuit) (November 22, 1991).
- Mobile home parks, part three. **Heath Township v. Sall**, 191 Mich. App. 716 (September 9, 1991); reversed, 442 Mich. 434 (June 22, 1993).
- Lots without access can be a takings and vested nonconforming rights. **Bevan v. Brandon Township**, 438 Mich. 385 (September 9, 1991); amended, 439 Mich. 1202 (October 15, 1991); certiorari denied, 502 U.S. 1060 (January 21, 1992).
- If there is a legal nonconforming use, the zoning ordinance cannot be enforced to disallow it. **Eveline Township v. H & D Trucking Co.**, 181 Mich. App. 25 (November 6, 1989).
- Condemnation of nonconforming property. **Centerline v. Chmelko**, 164 Mich. App. 251 (November 2, 1987). □

## Nonconforming Uses as Secondary Issues

- Whether the trial court correctly reversed the decision of the Norton Shores Zoning Board of Appeals (ZBA) and ordered the defendant-city to issue the plaintiff the requested building permit. **Lamar OCI N. Corp. v. City of Norton Shores**, Michigan Court of Appeals (Unpublished No. 272583, May 1, 2008).
- Farm, special exemption permit needed for nonconforming use. **Gillette v. Comstock Township**, No. 240198, 2004 Mich. App., LEXIS 321 (February 3, 2004). Unpublished.
- All administrative remedies must be exhausted before a court will hear an appeal of a local government decision. **Bengston v. Delta County**, No. 224167, 2001 Mich. App., LEXIS 468 (May 18, 2001). Unpublished.

Ordinance Requirement	Issue/Nonconformity	Photo(s)
1. Limited space for outdoor dining on a public sidewalk is permitted with special approval.	<p>1. This outdoor dining area was approved, but the portable landscape barrier was subsequently illegally expanded to increase space for outdoor dining. Now it impacts pedestrian movement, particularly the movement of wheelchairs. The expansion creates a dimensional nonconformity regarding the required distance between barrier and street curb.</p> <p>2. This is an illegal nonconformity use because of positioning of the barrier. It should be processed as a zoning violation.</p> <p>3. The solution is to require repositioning the barrier to conform to the previously approved dimension.</p>	



# EXAMPLE ZONING LANGUAGE FOR NONCONFORMITIES

By Kurt Schindler, AICP

The City of Midland, Michigan, has a nice section on nonconformities<sup>1</sup> in its zoning ordinance.<sup>2</sup> The Midland example is well-formatted. It has a table at the beginning that offers a summary of nonconformities (types of nonconformities) and basic requirements associated with each. It's a convenient way for the public to identify how many nonconformities will be treated without having to wade through page after page of regulations.

Following is an example prepared by the author. Its targeted use is townships, but could be adapted for cities or villages as well.

## ARTICLE 80: NONCONFORMITIES

### 8001. Purpose

Within the districts established by this Ordinance or by amendments thereto, there exist buildings and structures and uses of parcels, lots, buildings, and structures which were lawful before this Ordinance was adopted or amended and which would be prohibited, regulated or restricted under this Ordinance. These uses are referred to as nonconformities and may continue until they are discontinued, damaged or removed but are not encouraged to survive. These nonconformities are declared by this Ordinance to be incompatible with the buildings and structures and uses of parcels, lots, buildings and structures permitted by this Ordinance in certain districts. It is further the intent of this Ordinance that such nonconformities shall not be enlarged, expanded or extended except as provided herein nor to be used as grounds for adding other buildings and structures and uses of parcels, lots, buildings and structures prohibited elsewhere in the same district.

### 8002. Regulations

No such nonconforming use of land shall be moved in whole or in part to any other portion of such land, or to a different parcel, not occupied on the effective date of adoption or amendment of this Ordinance, except as provided in Section \_\_\_\_.

### 8003. Extensions

A nonconforming structure and use may not be added to, extended, reconstructed, structurally altered or expanded during its life; and a nonconforming parcel may not be used or built upon; except for any one or combination of the following and subject to the following restrictions:

- A. If the nonconformity land use is a use which is not otherwise allowed in the district; then the use and the structures upon which the use is associated shall not be expanded more than what is shown in the table, below, for the class of the nonconformity. Class A nonconformities are those where the goal is for continuation with restriction. Class B nonconformities are those where the goal is for eventual elimination, with continuation as provided by law.
- B. If the nonconformity is that the parcel is too small and already has existing uses and structures; then the structures shall not be expanded more than:
  1. fifty (50) percent of the ground area occupied by the structure at the time of adoption of this Ordinance, or
  2. spatially possible while such expansion shall comply with all applicable setback regulations in this Ordinance.
  3. whichever is less. Any expansion of the structure shall comply with all other provisions of this Ordinance. Nothing here is intended to prevent the acquisition of adjacent land to bring the parcel into compliance, or to lessen the nonconformity if the use is permitted in the zoning district.
- C. If the nonconformity is that the parcel is too small, and the parcel is vacant; then a use or structure shall not be permitted unless contiguous land is added to the parcel, to make the parcel large enough, except the zoning administrator can issue a permit

for a dwelling and its accessory buildings after documenting the nonconformity and the following standards are met:

1. It is documented by the applicant that parcel existed prior to \_\_\_\_\_, and
  2. The parcel is 15,000 square feet or greater, and
  3. The parcel is in a subdivision, and
  4. The parcel is in the rural residential district, and
  5. Is large enough to accommodate required on-site sewage, if needed; well, with proper isolation; as determined by the Manistee-Mason District Health Department.
- D. If the nonconformity is that the structure is too small; then the use shall not be expanded more than fifty (50) percent in hours of operation or level of service, or other similar extension than what exists at the time of adoption of this Ordinance. Nothing here is intended to prevent any amount of addition to the size of the structure, if:

1. The size of the structure is the only nonconformity,
2. The addition results in the structure being in full compliance, or as a second choice, closer to compliance, and
- 3 No structure shall be replaced or reconstructed unless it results in being in full compliance except as provided in section \_\_\_\_ of this Ordinance.

### 8004. Pre-existing Agricultural Operations [for urban, over 100,000 population cities]

An Agriculture operation that was present prior to the adoption of this section of this Ordinance and does not conform to this Ordinance for Agriculture shall be considered a nonconforming use for the purposes of scale and type of Agriculture and is subject to the following provisions:

- A. Scale shall be measured by the total square footage of the Agricultural Operation, including the square footage of structures.
- B. Type is defined by the variety of crop(s) produced.
- C. Nonconforming agricultural operations are subject to Article 8001. *et seq.*, of this Ordinance.
- D. Any change in scale or type beyond what is allowed in the nonD. conforming provisions of this Ordinance will cause the nonconforming Agriculture Operation to lose its nonconforming status which will require compliance with this ordinance.

### 8005. Repairs and Maintenance

Nothing in this Ordinance shall prevent the repair, reinforcement, improvement or rehabilitation of nonconforming buildings, structures, or part thereof existing at the effective date of this Ordinance, rendered necessary by wear and tear, deterioration or depreciation; nor prevent compliance with the provisions of the P.A. 230 of 1972, as amended, (being the State Construction Code Act, M.C.L. 125.1501 *et seq.*), relative to the maintenance of buildings or structures; provided, however, that the cost of such repair, reinforcement, improvement, rehabilitation or compliance shall not exceed sixty (60) percent of the replacement value of such building at the time such work is done; and provided, further, there shall be no change of use which would expand the nonconformity of such building at the time such work is commenced; and provided, further, there shall be no change of use of said building or part thereof.

### 8006. Building Damage

- A. No building damaged by fire, act of God or other causes to the extent that the damage is total (i.e. the insurance coverage, if it existed, would pay the full amount insured) shall be repaired or rebuilt, except
  1. in conformity with the non-use provisions of this Ordinance; and in conformity with the permitted and/or special use provisions of this Ordinance, or



Class	Zoning Districts	Uses in the Nonconformity Class	Maximum amount of expansion	Maximum expansion into contiguous parcel	Re-construction
A.	Environmental	<ul style="list-style-type: none"> <li>• Campgrounds.</li> <li>• Group camp organizations.</li> <li>• Recreation areas.</li> <li>• Access sites to surface water.</li> </ul>	75% of size, hours of operation, level of service	Double the land area	May be reconstructed if destruction is less than 90%.
	Working Lands (agr.)	<ul style="list-style-type: none"> <li>• Any farm-related service.</li> <li>• Any farm-related industrial (e.g., food or agricultural product processing).</li> <li>• Residential.</li> </ul>			
	Rural Residential				
	Residential	<ul style="list-style-type: none"> <li>• Retail under 20,000 square feet.</li> </ul>			
	Commercial	<ul style="list-style-type: none"> <li>• Industrial under 20,000 square feet.</li> </ul>			
	Industrial	<ul style="list-style-type: none"> <li>• Commercial.</li> <li>• Service enterprise.</li> </ul>			
	All zoning districts	<ul style="list-style-type: none"> <li>• Any nonconforming land uses which is a possible special use in the respective zoning district.</li> </ul>			
B.	Environmental	<ul style="list-style-type: none"> <li>• All uses not listed as a possible use by right, special use, in the respective zoning district; or a class A nonconformity.</li> </ul>	25% of size, hours of operation, level of service	Not allowed	May be reconstructed if destruction is less than 25%.
	Working Lands (agr.)	<ul style="list-style-type: none"> <li>• All uses not listed as a possible use by right, special use, in the respective zoning district; or a class A nonconformity.</li> </ul>			
	Rural Residential				
	Residential	<ul style="list-style-type: none"> <li>• Retail 20,000 square feet and over.</li> <li>• Retail not fully enclosed within in a building.</li> <li>• All uses not listed as a possible use by right, special use, in the respective zoning district; or a class A nonconformity.</li> </ul>			
	Commercial	<ul style="list-style-type: none"> <li>• Industrial 20,000 square feet and over.</li> <li>• Industrial not fully enclosed within a building.</li> <li>• All uses not listed as a possible use by right, special use, in the respective zoning district; or a class A nonconformity.</li> </ul>			
	Industrial	<ul style="list-style-type: none"> <li>• All uses not listed as a possible use by right, special use, in the respective zoning district; or a class A nonconformity.</li> </ul>			

2. reconstruction, repair or restoration of the original use shall be completed within one (1) year following the damage and resumption of use takes place within ninety (90) days of completion. The one (1) year may be extended by the Appeals Board if it finds one of the following conditions to exist:

- a) The delay was not avoidable due to weather;
- b) The delay was a result of a criminal investigation;
- c) The delay was a result of a dispute between the owner and an insurance company concerning what is covered by insurance, or
- d) Property held in probate.

B. When repairing or rebuilding any building pursuant to the provisions of this section which is located in a high risk erosion area, affirmative steps to minimize future erosion damage may be required. The Administrator, as a condition for approval of restoration plans, may require any or all of the following:

1. The planting of vegetation on the bank to help stabilize the bluff.

2. The use of surface runoff control devices to mitigate any accelerated erosion which may occur during the rebuilding or repairing of the structure.

3. The relocation of the building further back from an eroding bluff when the Administrator determines that the structure is likely to suffer further erosion damage within one to three years. The Zoning Administrator's determination shall be based on the findings of the Shorelands Erosion studies conducted pursuant to Article III Chapter 1 Part 323 of P.A. 451 of 1994, as amended, (being the Shorelands Protection and Management part of the Natural Resources and Environmental Protection Act, M.C.L. 324.32301 *et. seq.*)

#### 8007. Completion

Nothing in this Ordinance shall require any change in the construction or intended use of a building or structure, the construction of which shall have been diligently prosecuted prior to the passage of this Ordinance or any amendment thereto, and the construction of which shall have been completed within twelve (12) months after said date of adoption.



#### 8008. Non-Use.

- A. Any building, structure or land that has been used for nonconforming purposes but which has not intended to be continued as a nonconforming use by the owner shall not thereafter be used unless it conforms to the provisions of this Ordinance. The owner's intent to no longer continue use of the nonconforming use shall be established by a preponderance of the following points of physical evidence:
1. Utilities have been disconnected
  2. If there were signs, the signs have been removed or have fallen into disrepair,
  3. Fixtures within and outside the building have been removed,
  4. The property falls into disrepair,
  5. U.S. Mail delivery has been terminated or mail is forwarded to another address,
  6. The classification of the property for tax purposes has been changed to reflect another use, and
  7. Other similar changes to the nonconforming building or use.
- B. Action to find a nonconforming use was intended to be discontinued by the owner may be delayed if any of the following is ongoing:
1. Property held in Probate;
  2. Insurance settlement in dispute; or
  3. Criminal investigation.

#### 8009. Historic Buildings

A variance to Section \_ of this Ordinance to expand and replace nonconforming buildings may be granted by the Board of Appeals if any one of the following conditions is met:

- A. The proposed expansion or replacement is an enhancement of an historic district, building, or adjacent historic building.

#### 8010. Change of Tenancy or Ownership

There may be change of tenancy, ownership or management of an existing nonconforming use, building or structure, provided there is no change in the nature or character of such nonconforming use, building or structure.

#### 8011. High Risk Erosion

The above provisions of this article notwithstanding, an existing structure not in conformity with the DEQ established high risk erosion setback requirements, under Article III Chapter 1 Part 323 of P.A. 451 of 1994, as amended, (being the Shorelands Protection and Management part of the Natural Resources and Environmental Protection Act, M.C.L. 324.32301 *et. seq.*), shall not be altered, enlarged, or otherwise extended in a manner which increases its nonconformity. If a nonconforming structure deteriorates or becomes damaged, it may be restored to its condition before the deterioration or damage if the repair costs do not exceed sixty (60) per cent of the replacement value of the structure in any twelve (12) month period. If, in any twelve (12) month period, the cost of restoring the nonconforming structure is in excess of sixty (60) percent of its replacement value, the requirements for new permanent structures shall apply.

#### 8012. Nonconforming Special Uses

- A. There are uses which were permitted by right under the Anytown Township Zoning Ordinance in effect immediately prior to this Ordinance which are not permitted uses under this

Ordinance. Of those uses, there are some which are listed as potential special uses in this Ordinance. Those existing uses which were permitted uses, and are listed as special uses in this Ordinance, shall not be considered nonconforming uses.


- B. Those uses, or parts of uses, which exist as a permitted use immediately prior to this Ordinance, and are listed as special uses in this Ordinance shall be considered to be an approved existing special use with the configuration shown on a site plan drawn to reflect how the use exists at the time of adoption of this Ordinance. Parts of uses which are nonconforming immediately prior to the adoption of this Ordinance shall continue to be nonconforming under this Ordinance. A permit in existence pursuant to this subsection shall be known as a Pre-existing Special Use Permit.
- C. An owner of a Pre-existing Special Use Permit may, at no charge to the owner, obtain from the Commission a certification of a site plan reflecting how the use exists at the time of adoption of this Ordinance with identification of nonconforming parts, if any. In the case of a dispute over facts on what existed at the time of adoption of this Ordinance, aerial photographs flown in \_\_\_\_\_, 20\_\_ by [county] County or other aerial photographs, flown to the same or greater standards for mapping as the county's photos, taken after the County photos but before the adoption of this Ordinance, shall be given the greatest weight as evidence to establish a certified site plan. For purposes of this section, the above-mentioned photo(s) may be accepted as the site plan for the Pre-existing Special Use Permit.
- D. When a special use owner applies to amend the unwritten Special Use Permit for expansion or change, a written Special Use Permit shall be prepared for the entire use and parcel. In review of the Special Use Permit amendment application for expansion or change, the Commission shall only review and act on the expansion or change portion of the Special Use Permit. If the application for amendment of the Special Use Permit is approved, approved with conditions, denied or denied in part, the action shall not change or alter those parts of the special use that are shown on the Pre-existing Special Use Permit.

#### 8013. Nonconforming Uses

The administrator shall survey the Township and file with the Commission a written statement of the nature and extent of the nonconforming uses after adoption of this Ordinance, or any amendments thereto. The determination of when a nonconforming use may be replaced, extended, substituted or substandard parcels used shall be determined in the first instance by the administrator. Any determination concerning nonconformities may be appealed to the Appeals Board.

#### FOOTNOTES

- 1 Article 4.00, City of Midland Zoning Ordinance Number 1585 of January 1, 2005: <https://cityofmidlandmi.gov/DocumentCenter/View/2081/Article-4--Nonconformities-PDF>
- 2 City of Midland Zoning Ordinance Number 1585 of January 1, 2005: <https://cityofmidlandmi.gov/492/Zoning-Ordinance> □

Ordinance Requirement	Issue/Nonconformity	Photo(s)
1. Freestanding or temporary signs may not be placed in clear vision zones of public or private streets.	<p>1. The white temporary (sandwich) sign in the foreground is illegally positioned in the required clear vision zone at the corner. The yellow temporary sign across the street in the background, is located out of the clear vision zone.</p> <p>2. Unless the white temporary sign was regularly placed without adequate setback before the present ordinance sign requirements, then it is an illegal sign that should be processed as an ordinance violation, since it would not be a legal nonconforming sign. That said, the white sign is probably in the public right-of-way and the road authority could require it to be moved back, even it were legally nonconforming, and even if the zoning administrator could not, because of the safety hazard.</p>	



## PLANNING & ZONING NEWS®

Mark A. Wyckoff, FAICP, Editor  
715 N. Cedar Street, Suite 2  
Lansing MI 48906-5275  
PH (517) 886-0555  
www.pznews.net



NORMAN TWP. PLAN. COMM.  
1273 S SEAMAN RD  
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## SEPTEMBER

- 11-13 **MI ECONOMIC DEVELOPMENT BASIC COURSE.** Radisson Hotel, Lansing. Sponsored by Michigan Economic Developers Assn. Fees: \$625 - \$850. For more information email: [cjorae@medaweb.org](mailto:cjorae@medaweb.org).
- 19 **SITE PLAN REVIEW WORKSHOP.** Monroe Community College. The program not only explains the site plan review and approval process, but also provides the practical tools and techniques for understanding and interpreting a site plan – a critical skill for every board member. 6:00 PM - 9:00 PM EDT. Sponsored by the City of Monroe's Citizens Planning Commission and the Department of Community Development. The fee for this workshop is \$55. Contact: Jeff Green at the City of Monroe [jeffrey.green@monroemi.gov](mailto:jeffrey.green@monroemi.gov) or 734.384.9106.
- 19 **MARIJUANA REVENUE: From Excise to Property Taxes – Who gets what and how much?** This webinar will cover the distribution of revenue collected under the new recreational marijuana law. It will also discuss the experiences of states like Washington and Colorado with marijuana revenue and what that might tell us about how much revenue state and local governments in Michigan can expect to bring in under the new law. Webinars run 3 - 4:30 p.m. (EST). Webinars will be recorded. Cost: \$15 per webinar. To register or for more information visit: <https://events.anr.msu.edu/mrtma>. Other webinars in this series:
- THE LATEST FROM LARA ON MARIJUANA REGULATION - October 24** - Join staff from the Michigan Department of Licensing and Regulatory Affairs (LARA) Bureau of Marijuana Regulation as they share timely information in advance of the December 2019 deadline for the publication of final administrative rules for marijuana regulation.
- 25-27 **MICHIGAN ASSOCIATION OF PLANNING ANNUAL CONFERENCE.** Radisson Hotel, Kalamazoo. For more information and to register visit <https://www.planning-mi.org/planning-michigan-conference>.
- 25-27 **MML CONVENTION DETROIT.** For the agenda and to register visit: <http://blogs.mml.org/wp/events/>.

## OCTOBER

- 2-4 **RECLAIMING VACANT PROPERTIES CONFERENCE 2019.** Equity First: Revitalizing Communities Together. Atlanta Marriot Marquee. An estimated 1,000 urban, suburban and rural leaders will gather in Atlanta, Georgia, for the ninth Reclaiming Vacant Properties Conference hosted by the Center for Community Progress. <http://www.reclaimingvacantproperties.org/>.
- 7 **AARP MI AGE-FRIENDLY STATE AND COMMUNITIES CONFERENCE.** Crowne Plaza West, Lansing. This interactive conference helps to prepare forward-thinking city planners and public officials for this demographic phenomenon. This one day conference is free, but you must pre-register. 9:00 AM - 3:30 PM. Contact AARP: 877-926-8300.
- 17 **2019 MASTER CITIZEN PLANNER (MCP) WEBINAR SERIES.** MSU Extension educators will provide an overview of topics of interest to planning and zoning officials the third Thursday of October and December from 6:30-7:30 p.m. MCPs will earn one hour of continuing education per webinar. Cost per webinar: \$10 for MCPs; \$20 for Regular Registrants. For more information contact: [Janean.Dancaj@msu.edu](mailto:Janean.Dancaj@msu.edu), 269-657-8213 x2, [dancaj@msu.edu](mailto:dancaj@msu.edu).

**Oct. 17. New Economy Business Retention and Attraction** - Crystal Wilson. Attracting and retaining talented workers is critical to business success in the global new economy. Talented, well-educated people choose location first, then look for a job. Talented workers and businesses are attracted to quality places. This webinar will provide you with strategies that your community can use to transition from the old economy to new economy business attraction and retention best practices and policies.

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(continued from page 2)

a complaint in the circuit court 2017, requesting injunctive relief. Defendants admitted that Laitala & Laitala Excavating on the property maintained that this was consistent with the prior nonconforming use allowed by the 1984 permit. Plaintiff responded that defendants' use of the property was not properly extended and enlarged the property's nonconforming use.

Defendants also asserted that they had attempted to clarify the nature of the nonconforming use, but had failed to have the Planning Commission hold a public hearing and issue a decision. Blocked by the Zoning Administrator's response, plaintiff noted that its application to "change" the nonconforming use designation was returned to Pascoe multiple times for providing incomplete information.

The Court of Appeals rejected the trial court's claim the matter was not ripe for adjudication because defendants were alleged to be presently in violation of zoning ordinance provisions that prohibited extending, enlarging or changing a nonconforming use without approval of the planning commission; and the planning commission may or may not take action in the future to change the Class A classification and thereby remedy the alleged violation. The Court said "circuit courts plainly have jurisdiction to enforce zoning ordinances. This includes disputes regarding the expansion of prior nonconforming uses." The Court of Appeals cited **City of Hillsdale v Hillsdale Iron & Metal Co**, 358 Mich 377 (a case with a similar fact situation) in support of its conclusion. □

**\*Unpublished Opinions** are not precedent and not binding under the rule of stare decisis (MCR 7.215(C)(1)). See **People v Tanner**, 496 Mich 199, 250 (2014). Unpublished cases need not be followed by any other court, except in the court issuing that opinion. But, a court may find the unpublished case persuasive and dispositive, and adopt it or its analysis. Unpublished cases often recite stated law or common law. You are cautioned in using or referring to unpublished cases and should discuss their relevance with legal counsel. □