

NUTZ & BOLTS OF PLANNING AND ZONING

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Elk Rapids Township

Planning Commission and Zoning Board of Appeals

I. Overview of Planning and Zoning

A. Objectives of Planning and Zoning

1. promote the public health, safety, and general welfare
2. regulate orderly development of property in appropriate locations and relationships
3. avoid the overcrowding of population
4. facilitate adequate provision for a system of public services
 - transportation – roads
 - utilities – water and sewer
 - education – schools
 - recreation – parks, bicycle paths, trails, playing fields

B. Constitutional Implications: Authority and Limitations

1. Zoning ordinances are constitutionally permitted as a legitimate exercise of a state's police powers – states have the power to regulate activity to promote public health, safety, and general welfare.
2. Municipalities have no inherent authority to enact or adopt zoning ordinances. The general police power rests in the State of Michigan. Municipalities derive their powers to impose zoning regulations from the State.
3. Municipalities cannot go beyond what the State has authorized under the enabling legislation.

C. Enabling Acts

1. Zoning Statutes
Michigan Zoning Enabling Act (PA 110 of 2006; MCL 125.3101, *et seq.*)
2. Planning Statutes
Michigan Planning Enabling Act (PA 33 of 2008; MCL 125.3801 *et seq.*)

II. Relationship Between Master Plan and Zoning Ordinance

A. Statutory Mandate

1. Section 203 of the Michigan Zoning Enabling Act requires that a zoning ordinance *shall be based upon a plan* designed to
 - promote the public health, safety, and general welfare,
 - encourage the use of lands in accordance with their character and adaptability,

- limit the improper use of land,
- conserve natural resources and energy,
- meet the needs of the state's residents for food, fiber, and other natural resources, places of residence, recreation, industry, trade, service, and other uses of land,
- insure that uses of the land shall be situated in appropriate locations and relationships,
- avoid the overcrowding of population,
- provide adequate light and air,
- lessen congestion on the public roads and streets,
- reduce hazards to life and property,
- facilitate adequate provision for a system of transportation, sewage disposal, safe and adequate water supply, education, recreation, and other public requirements, and
- conserve the expenditure of funds for public improvements and services to conform with the most advantageous uses of land, resources, and properties.

B. Best to Have a Separate Formal Plan – Even though no formally adopted master plan is required for adoption of a valid zoning ordinance. The plan may emanate from the zoning ordinance or zoning map itself.

1. The master plan serves a different function than the zoning ordinance and map.
2. Courts have set aside zoning ordinance provisions of municipalities without a lawful or adequate plan. Determined by circumstances of each township (e.g., stable community -vs- rapidly changing community, etc.).
3. The value of a master plan is dependent upon the township's commitment to follow it and keep it current. The township must anticipate changing conditions in the community.

C. Differences Between Zoning Ordinance and Master Plan

1. The master plan is implemented through the zoning ordinance.
 - Zoning ordinance regulates the current, existing land uses and is the law to be followed until changed by amendments (text or map) or variances.
 - Master plan sets forth the land use goals of the township and the proposed future land uses.
 - A master plan that has been adopted by the Planning Commission and evidences a reasonable, diligent and good faith planning effort supports the

reasonableness of the zoning ordinance and of decisions made consistent with the master plan.

2. The zoning ordinance and the master plan may be inconsistent by virtue of their different functions. The objective, however, is to make zoning decisions with an eye toward achieving greater consistency. Zoning decisions that are clearly inconsistent with the master plan are more likely to be declared invalid by a court.
3. Consider zoning amendments and revisions to master plan in conjunction. Keep both current.

III. Relationship Between Planning Commission and Zoning Board of Appeals

A. Planning Commission Duties:

1. Meet at least four times per year (quarterly);
2. Hold public hearing; develop and adopt master plan;
3. Hold public hearings; recommend to legislative body adoption of zoning ordinance and map, and all text and map township board amendments (rezonings);
4. Holds public hearing; decide all special use and planned unit development (“PUD”) applications as specified in zoning ordinance;
5. Reviews all site plans as specified in zoning ordinance; and
6. Adopt rules for the transaction of business.

B. Zoning Board of Appeals Duties:

1. Hear and decide upon the interpretation of zoning ordinance;
2. Hear and decide upon appeals made from a review, order, requirement, decision, or determination made by a body or an official administering the zoning ordinance;
3. Hear and act upon requests for variances from the zoning ordinance;
 - A variance is essentially a license to violate the law – it is special permission granted to the property owner to not comply with the terms of the Zoning Ordinance. Zoning Boards of Appeals that grant an excessive number of variances can significantly affect the ability of the Planning Commission and the legislative body to implement the master plan and zoning ordinance.
 - Variances that are granted without sufficient justification and compliance with the zoning ordinance standards can severely weaken the zoning ordinance by making the regulations easy to ignore; those variances are likely to be overturned by a court if challenged.
4. Hear appeals regarding special land uses or PUDs, but only if expressly authorized by the zoning ordinance and Elk Rapids Township has not authorized appeals to be hear by the ZBA;
5. Rehear a case, if authorized by the zoning ordinance;
6. Under Paragon Properties v. City of Novi, give the township final answer to a rezoning request; and
7. Adopt rules for the transaction of business.

IV. Rezoning Property

- A. Reasons to Rezone Property
 - 1. Comply with the master plan.
 - 2. Avoid a takings claim.
 - 3. Comply with the general trend of land use in the area.
- B. Criteria to consider when faced with a rezoning application
 - 1. What is the character of the surrounding property? Will the requested rezoning be considered spot zoning?
 - 2. What is the suitability of the property for various uses? Can it be reasonably used as currently zoned?
 - 3. What will be the effect of rezoning the property on surrounding property values?
 - 4. What will be the effect of rezoning the property on the value of the property in question?
 - 5. What is the general trend of property use in the area?
 - 6. What does the master plan indicate the land shall be zoned?

V. How to Run an Effective Meeting

- A. Applicability of the Open Meetings Act (“OMA”)
 - 1. The OMA applies to all regular and special meetings of all public bodies.
 - 2. The OMA defines a “meeting” to include the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public issue.
 - a. Work sessions are considered meetings under the OMA.
 - b. The OMA does not apply to social or chance gathering that is not designed to avoid the OMA’s provisions.
 - Do not jointly discuss matters affecting public policy!
 - c. The OMA does not apply to an educational conference that is not designed to avoid the OMA’s provisions.
 - Do not jointly discuss matters affecting public policy!
- B. Requirements of the Open Meetings Act
 - 1. All decisions must be made at a meeting open to the public.
 - 2. The place of the meeting must be available to the general public.
 - 3. The general public cannot be required to sign-in or provide other specified information as a condition of attendance.
 - 4. The right to attend a public meeting includes the right to tape record, videotape, or broadcast the public meeting live on radio or television.
 - 5. A public meeting must include an opportunity for public comment.
 - 6. A public body may establish reasonable regulations to minimize disruption and to regulate public comment at public meetings.
- C. Open Meetings Act
 - 1. Notice Requirements
 - a. Include the name, telephone number and address of public body
 - b. Include the time and place of the meeting
 - c. Include a statement regarding the purpose of the meeting
 - d. Include a notice under the Americans with Disabilities Act - furnish accommodations upon request within designated number of days

- e. Schedule of regular meetings must be posted within 10 days following the first meeting of the public body in each fiscal year at the township's principal office and at other locations considered appropriate by the public body
 - f. If a regular meeting is rescheduled, notice must be posted within three days after the meeting at which the change is made
 - g. Rescheduled regular or special meeting – must be posted at least 18 hours before the meeting – posting must be visible to the public throughout the 18 hour period
 2. Closed Meetings Issues relevant to Planning Commission or Zoning Board of Appeals
 - a. Consultation with attorney concerning pending litigation
– but only if an open meeting would have a detrimental financial effect on the litigation or settlement position of the public body
 - b. Other matters exempt from disclosure by state or federal law
– Includes correspondence from attorney subject to the attorney client privilege
 - c. All decisions must be made in an open meeting.
 - d. A separate set of minutes for the closed session is required.
 3. Minutes of Meetings
 - a. Minutes should include the date, time, place, members present, members absent, any decisions made, and the purpose for which a closed session was held.
 - b. Minutes should include all roll call votes.
 - c. Proposed minutes must be available for public inspection no more than eight business days after the meeting to which they refer.
 - d. Approved minutes must be available for public inspection no later than five business days after the meeting at which they are approved.
 - e. Corrections must be made no later than the next meeting after the meeting to which the minutes refer.
 - f. Corrected minutes must be available no later than the next subsequent meeting after correction, and they must show both the original entry and the correction.
- D. Public Hearings – Notice Requirements
 1. Public hearing notice may be necessary for Planning Commission consideration of zoning ordinance and amendments, special use applications, and PUD applications.
 2. The public hearing notice should be as informative as possible.
 - a. Describe the proposed project or other matter to be considered by the Planning Commission.
 - b. Describe the property involved with both the street address as well as the tax parcel number or legal description
 3. Americans With Disabilities Act consideration for public hearing notice.
 4. Display ad versus fine print ad should be considered.
- E. Public Hearings – Practical Considerations
 1. Beware of people who carry brief cases.
 2. Divide the hearing between the public comment phase and then, after the hearing has been closed, the deliberation phase.
 - a. During deliberation, only Planning Commission members should speak unless questions are directed to third parties

- b. During the deliberation, the public should be restricted from participating; otherwise the public hearing continues forever.
 - c. Additional documentation should only be received for review after the public hearing if the fact this will occur is announced at the time of the public hearing and if those in opposition have a reasonable time to review the document(s) submitted and to submit additional documents as a response.
 3. Complicated matters (where lawyers are involved, etc) generally should be taken under advisement before a decision is made.
 - a. To make a wise and correct decision, taking the matter under advisement is helpful.
 - b. To have adequate documentary support for the decision made, the decision should generally be put in writing with the reasoning and rationale set forth clearly.
 - c. If there are conditions and/or restrictions, these need to be put in writing and reviewed to ensure they are clear and unambiguous so that they are enforceable.
- F. Public Hearings – Typical Process
 1. The chair opens public hearing and announces the subject.
 2. The chair summarizes the procedures/rules to be followed during the hearing.
 3. Staff or the chair presents the main points of the application and recommendation.
 4. Correspondence or persons speaking in support of the application are recognized, beginning with the applicant.
 5. Correspondence or persons speaking in opposition to the application are recognized.
 6. Rebuttal comments by applicant are allowed.
 7. The chair closes the public hearing. The chair explains the next steps, including that the Planning Commission may or may not make a decision at that meeting.
 8. Planning Commission deliberates and may either
 - make a decision, or
 - take matter under advisement and direct staff and attorney to draft a proposed decision to be reviewed, modified, accepted or rejected by PC.
- G. Public Hearings – Hints for a More Orderly Meeting
 1. Printing the hearing rules/procedures on the agenda may be helpful.
 2. Do not attempt to answer every question; some comments cannot be answered.
 3. Take a recess when needed (i.e., if things are getting out of hand).
 4. Don't force a decision at the meeting of the hearing; table the matter if necessary and request any additional information needed.
 5. The Planning Commission is responsible for the long term interests of the entire community, not just the interests of those who attend the meeting.
 6. Role of the Chair
 - a. The chair announces agenda items.
 - b. The chair enforces meeting procedures and rules.
 - c. The chair maintains order throughout the meeting.
 - e. The chair ensures courtesy is maintained, and speakers are not interrupted.
 7. Establish and enforce rules and procedures for meetings.
 - a. Limit speaking time, when necessary.

1. The applicant should be given as much time as needed, within reason, to present the case.
 2. Helpful tip: All comments should be directed to and through the chair. This will help avoid debates between members of the audience, and between the Planning Commission members and members of the audience or the presenter.
 - b. Limit the number of times one person may speak.
 - c. Require sign-up sheets for those intending to speak.
 - d. Ask if there is a spokesperson for a group in the audience.
 - e. After the public hearing is closed, the public is not involved in the discussion unless the Planning Commission asks the audience direct questions. This should be done with care and caution.
 8. Meeting Rules for Planning Commission Members
 - a. All comments should be directed through the chair.
 - b. All deliberations should be conducted in the open.
 - Make all comments out loud during deliberations.
 - If a Planning Commission member has a question, ask the chair or the applicant rather than whispering to a person sitting nearby.
 - c. Express opinions.
 - d. Deliberation should focus on ensuring conformance with the ordinance standards.
 9. Handling Angry and Emotional People
 - a. Allow persons the opportunity to speak and present evidence at the hearing.
 - b. Make sure that the rules are followed and order is maintained.
 - c. Recognize emotional responses and treat them with concern and understanding. Try reflective listening.
 - d. Keep the discussion to the issues involved.
 - e. Planning Commission members must control their own emotions at all times.
- H. Documenting Decisions
1. Importance of the Planning Commission Record
 - a. For PUDs and Special Uses, denials generally cannot be appealed to the ZBA, but rather are appealed directly to the Circuit Court.
 - b. The record made at the Planning Commission level will be essential to the appeal.
 - c. Document the facts, reasons and rationale for the decision and all conditions or restrictions imposed.
 2. Essential Features of Motions
 - a. A maker and supporter are required.
 - b. The motion should describe the nature of the request.
 - c. The motion should state the action taken on the request (approve, approve with conditions, deny).
 - d. The motion should state any conditions attached.
 - e. The motion should state the rationale for the conclusion, indicating how the facts support the decision reached (focus on standards contained in the zoning ordinance).
 3. Tips for making effective motions

- a. Motions should be carefully phrased to withstand scrutiny by a court.
 - b. Motions should be clear and concise – be sure all members are clear on the motion.
 - c. Motions should refer to relevant sections of the zoning ordinance and relevant staff reports.
 - d. Whenever possible, motions should be made in the positive.
 - This helps eliminate confusion associated with negative motions (e.g., when a motion to deny means that a “yes” vote is actually a “no” to the request).
 - e. Conditions may be imposed on any zoning decision, except rezonings (unless the rezoning is part of a PUD rezoning).
4. Conditions must be:
- a. Reasonable and intended to protect natural resources, the health, safety and welfare, or the social and economic well being of the residents of the community;
 - b. Related to a valid exercise of the police power;
 - c. Necessary to meet the intent and purpose of the zoning ordinance; and
 - d. Related to the standards established in the zoning ordinance for the land use or activity under consideration.