



Charter

The

2006

Michigan Zoning

Enabling

Act



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Introduction

The new **Michigan Zoning Enabling Act (ZEA)**, Public Act 110 of 2006, [MCL 125.3101](#), et seq., will repeal the Township Zoning, the County Zoning, and the City and Village Zoning Acts on July 1, 2006, and replace those acts with a combined law designed to promote consistency in zoning procedures and approvals.

Each township with a zoning ordinance should begin to review that ordinance to determine whether the ZEA will require amendments to the ordinance. Townships are urged to consult their local planning consultants and legal counsel for specific guidance on appropriate changes to their ordinances, zoning bodies, and zoning procedures.

This guide attempts to focus on the implications of the new law that may potentially affect a number of township zoning ordinances. It does not address topics such as airport zoning not likely to affect most townships.

In general, the more comprehensive a township's zoning ordinance, the more likely text amendments will be required to comply with the ZEA. Although the substantive provisions of the ZEA concerning such matters as special land uses, site plan review, PUD, conditional zoning, etc., appear to be largely unchanged from the comparable existing provisions in the TZA, there are some slight differences in text. The more a zoning ordinance has included existing statutory language on these substantive issues, the more likely those provisions may need to be amended.

Note that these changes affect only townships that have a zoning ordinance. If your township does not currently zone and does not have a zoning ordinance, you do not need to take any action.

If your township already has a planning commission that has been given zoning powers by the township board, refer to Part I (see page 2).

If your township currently has a planning commission AND a zoning board OR if your township has ONLY a planning commission, you must ALSO refer to Part II (see page 11).

(Note that a "zoning board of appeals" is NOT a "zoning board." Every township that has a zoning ordinance must have a zoning board of appeals.)

Part I: What every township that zones should know about the ZEA

How much of your zoning ordinance do you need to change?

Compliance with the new ZEA will likely require some amendments of the "typical" township zoning ordinance. It is not possible for the MTA to inform its members precisely which provisions of their respective zoning ordinances will require amendment, due to differences in zoning ordinances throughout the many townships that zone.

MTA Legal Counsel recommend that each township with a zoning ordinance should try to have any necessary text amendments adopted and in effect by July 1. The township should begin now to review that ordinance to determine whether the ZEA will require it to be amended. Townships are urged to consult their local planning consultants and legal counsel for specific guidance on appropriate changes to their ordinances, zoning bodies, and zoning procedures.

Note, however, that not all ordinance provisions that differ from the ZEA will be unauthorized by law. Section 202 of the ZEA permits a township to "provide by ordinance for the manner in which the regulations and boundaries of districts or zones shall be determined and enforced or amended, supplemented, or changed." (MCL 125.3202) It is the opinion of MTA Legal Counsel that this allows a township to impose additional notice requirements or other procedures on itself by ordinance. For example, where a township's zoning ordinance includes current TZA notice requirements that exceed the ZEA's requirements, by requiring two notices, etc., the township may continue to follow those provisions, even though they may represent the requirements of the TZA.

In addition, although the ZEA makes significant changes to township authority for nonconforming uses/structures and variances, few immediate ordinance amendments will be required by the ZEA. For example, townships that currently have zoning ordinance provisions specifically authorizing use variances—and wish to discontinue that authority—will be required to amend those provisions. Townships that do not currently include specific procedures and the ZEA's clarified standards for granting variances (non-use, and possibly use) must amend their ordinances to include them.

What rules should you follow to amend your zoning ordinance?

■ For zoning ordinance changes completed before July 1, 2006:

The **TZA** will continue to govern all steps of the text amendment process until July 1, 2006. MTA's [General Law](#) or [Charter Township](#) *TZA Zoning Ordinance Checklists* are available on the MTA Web site or by fax or mail by contacting MTA at (517) 321-6467.

■ For zoning ordinance changes not completed before or changes started after July 1, 2006:

A township that does not complete the amendment process before July 1, 2006, will be subject to the requirements of the new **ZEA** with respect to all steps of the process not completed as of July 1, 2006. Revised ZEA Zoning Ordinance Checklists will be available from MTA before July 1, 2006.

Should you include the new ZEA requirements in your zoning ordinance?

A township has three options for how to handle changes to the zoning ordinance as a result of the ZEA:

- 1) Delete the old requirements and specify the new requirements;
- 2) Delete the old requirements and simply reference the ZEA, without specifying the new requirements; or
- 3) Simply delete the old requirements and add no new provisions at all. For example, zoning notices must be given in the manner specified by the ZEA regardless of whether or not those requirements are included in the ordinance.

MTA Legal Counsel recommend that it is legally unnecessary and also inadvisable to specify the details of ZEA requirements in the ordinance text, because any future amendments based on subsequent changes in the law will have to go through the complete process to amend the zoning ordinance.

In some townships, the zoning ordinance has been relied on as a “manual” of the township’s zoning policies and procedures. The review and editing required by the change in the law now provide an opportunity for a township to do a major “overhaul” of its zoning ordinance and to develop a separate zoning policy manual for use by all township officials and employees involved in the zoning process.

Significant changes in the ZEA

1. Zoning notice requirements

All zoning application/hearing notices must now be published once in a newspaper of general circulation at least 15 days before the date of the meeting at which the application will be considered (or the hearing held, if a hearing is involved). (MCL 125.3103)

The notice must:

- 1) Describe the nature of the zoning request/application/action
- 2) State the time, date, and place of the meeting
- 3) Indicate the property that is the subject of the request (*If the request involves 10 or fewer adjacent properties, the notice must also include a list of all existing street addresses within the properties.*)
- 4) Indicate when and where written comments will be received concerning the request.

If the notice is for planning commission or township board action to adopt an **initial** zoning ordinance, this is the only notice required.

For **all** other zoning notices, if the request involves 10 or fewer adjacent properties (*or the request is for a zoning board of appeals interpretation of the zoning ordinance or appeal of an administrative decision regarding a specific parcel*), the notice must **also** be sent by mail or personal delivery to:

- 1) Owners of property for which the approval is being considered
- 2) All persons to whom real property is assessed within 300 feet of the property
- 3) Occupants of all structures within 300 feet of the property (regardless of whether the property or occupant is located in the township.) If the name of the occupant is not known, the term "occupant" may be used.

Notice of a request for a zoning board of appeals interpretation of the zoning ordinance or appeal of an administrative decision notice must **also** be sent to the person requesting the interpretation. (MCL 125.3604)

Note: It is the opinion of MTA Legal Counsel that Section 202(1) of the ZEA authorizes a township to require additional or greater notice requirements. (MCL 125.3202) For example, a township could simply standardize all its zoning notices to the most comprehensive form of notice required by the ZEA, or a township could require additional notice, such as publishing twice. However, the township will be obligated to comply with any additional requirements it imposes on itself. A potential liability will be created if the township fails to comply with its own requirements, as well as all statutory requirements.

2. Zoning ordinance adoption, text amendment, and rezoning procedures

A. Procedures for adopting, amending, supplementing, or enforcing the ordinance

Section 202(1) of the ZEA now authorizes a township to provide by ordinance for the "manner" in which the zoning ordinance shall be amended, supplemented or changed. (MCL 125.3202)

In the opinion of MTA Legal Counsel, this does **not** mean that a township can choose, for example, to give **less notice** than the ZEA requires; but it **does** authorize a township to impose **additional or greater** publication requirements, etc., governing the manner in which amendments will be noticed to the public and considered by the township. In other words, the requirements in the new law are the **minimum requirements** that every township must comply with, but a township may decide to impose additional or greater requirements on itself by enacting appropriate provisions in the zoning ordinance.

Note: MTA Legal Counsel do not recommend imposing such additional or greater requirements, because the township will be obligated to comply with any additional requirements it imposes on itself. A potential liability will be created if the township fails to comply with its own requirements, as well as all statutory requirements.

B. Optional township board consideration of planning commission/zoning board recommendation on zoning ordinance text amendment or rezoning

The TZA requires that, when a township board reviews the planning commission/zoning board's recommendation on a proposed zoning ordinance text amendment or rezoning, if the township board considers changes to the recommendation to be necessary, the township board must refer the matter back to the planning commission/zoning board for a further report within a specified time period.

Section 401(3) of the ZEA changes this "refer-back" requirement to an **option**. (MCL 125.3401)

The typical township zoning ordinance does not include any reference to this requirement. A township that does have provisions detailing the procedures for text amendments or rezonings may wish to those provisions to reflect the discretion of the township board under the new law. (As with all of the other matters discussed so far, each township may also choose under Section 202(1) to impose on itself ordinance requirements going beyond the statutory requirements.)

Note: It is advisable to mention that constitutional "due process" considerations may still affect whether a township board can approve a text amendment (or rezoning proposal) that is substantively different from the proposal submitted for public hearing before the planning commission/zoning board, without a further properly noticed public hearing at a planning commission/zoning board meeting.

C. Township board public hearing on zoning ordinance text amendment or rezoning

Section 11 of the TZA provides an opportunity for a property owner to require that the **township board** also hold a public hearing at a township board meeting on a proposed zoning ordinance/text amendment (and probably also a proposed rezoning). However, this opportunity is only available where the township board has referred the planning commission/zoning board recommendation back to the zoning board/planning commission to consider changes.

Section 401(4) of the ZEA now requires the township board to grant a hearing on a proposed zoning ordinance text amendment when properly requested by a property owner, before township board adoption of a proposed amendment or rezoning, regardless of whether or not the township board had previously referred the proposal back to the planning commission/zoning board for further consideration of changes desired by the township board. (MCL 125.3401)

The property owner's request for such a township board hearing must be by certified mail, addressed to the township clerk. If such a request is received, the township board is required to hold the requested public hearing at a board meeting, preceded by notice of a hearing as otherwise required by the ZEA for a text amendment or rezoning, as applicable. (MCL 125.3401)

The typical township does not have provisions in its zoning ordinance addressing this circumstance. A township that does have any such provisions will need to amend them to conform with the new law (by spelling out the particular requirements, referencing the applicable law, or simply deleting the provision in its entirety).

3. Special land use and planned use development procedures

A. Special land uses

Section 502(1) of the ZEA requires the zoning ordinance to "specify" the "procedures and supporting materials required for the application, review, and approval of a special land use". Section 16b of the TZA presently has similar language. (MCL 125.3502)

The applicable provisions of each township zoning ordinance will need to be amended as necessary to comply with this requirement in the context of the new ZEA. In the opinion of MTA Legal Counsel, a township may comply with this requirement, at least as to procedures, by detailing the applicable procedures in the provisions of the zoning ordinance addressing special land uses, or by including a reference in those provisions to the applicable procedures detailed either elsewhere in the ordinance or in the ZEA.

Note on special land use hearings: As with the existing TZA, the new ZEA technically does not impose these new requirements for notice of a public hearing. Both laws actually require only notice of the request (application) for special land use approval, and of the right of the applicant or a property owner/occupant within 300 feet of the subject property to request a public hearing on the application.

If no request for a public hearing is received the township could review the special land use application without a public hearing, unless such a hearing is required by the zoning ordinance itself. However, since any such public hearing request does trigger a further publication and mailing of the actual public hearing notice, most townships by ordinance or policy dispense with the notice of the statutory right to require a public hearing and simply schedule and give notice of the public hearing itself on the special land use application. This practice is certainly permissible under the TZA and, in the opinion of MTA Legal Counsel, also under the ZEA.

B. Planned unit developments

Where a zoning ordinance designates a "planned unit development" (PUD) as a special land use or otherwise subjects a PUD proposal to the procedures governing special land uses, the typical zoning ordinance may spell out or reference various procedures and notice requirements for a PUD approval and any rezoning required as part of the approval.

Section 503(4) of the ZEA requires the PUD regulations in a zoning ordinance to specify the procedures required for application, review, and approval of a PUD. (MCL 125.503)

The applicable provisions of each township zoning ordinance will need to be amended as necessary to comply with this requirement in the context of the new ZEA. In the opinion of MTA Legal Counsel, a township may comply with this requirement, at least as to procedures, by detailing the applicable procedures in the provisions of the zoning ordinance addressing special land uses, or by including a reference in those provisions to the applicable procedures detailed either elsewhere in the ordinance or in the ZEA.

4. Zoning board of appeals (ZBA)

A. ZBA hearing notice

See the zoning notice requirements on page 5.

B. Alternate members

Section 601(6) greatly simplifies the use of alternate members by allowing them to serve in the event of a regular member's absence or abstention due to conflict of interest:

"The legislative body may appoint not more than 2 alternate members for the same term as regular members to the zoning board of appeals. An alternate member may be called as specified to serve as a member of the zoning board of appeals **in the absence of a regular member if the regular member will be unable to attend 1 or more meetings**. An alternate member may also be called to serve as a member for the purpose of reaching a decision on a case in which the member has abstained for reasons of conflict of interest. The alternate member appointed shall serve in the case until a final decision is made. The alternate member has the same voting rights as a regular member of the zoning board of appeals." (MCL 125.3601)

Since both the TZA and the ZEA require the circumstances in which alternate members may be called to serve to be "specified" in the zoning ordinance, many township zoning ordinances already include language regarding alternate ZBA members. These ordinance provisions will

all need to be amended to specify the new circumstances under the ZEA in which an alternate member may be called to serve.

C. Thirty days to appeal ZBA decisions to Circuit Court

Case law and Michigan Court Rules presently establish a 21-day time limit to file an appeal of right from a ZBA decision in the Circuit Court.

Section 606(3) of the ZEA changes this timeline to **30 days** after the ZBA approves the minutes of its decision, or otherwise certifies its decision in writing. (MCL 125.3606)

Zoning ordinance provisions either stating or referencing an appeal period of other than 30 days will need to be appropriately amended (revised or deleted).

5. Variances

A. Variance procedures and standards must be established in zoning ordinance

Section 604(7) of the ZEA now requires a zoning ordinance to establish procedures for zoning board of appeals to review variances. It also requires a zoning ordinance to establish standards for approving variances. (MCL 125.3604)

Every zoning ordinance must be amended as necessary to include appropriate provisions establishing procedures for reviewing and standards for approving the variances available in the specific township (non-use variances in all townships; or both non-use and use variances in some townships).

B. Dimensional (non-use) variances

Section 23 of the TZA presently provides a legal standard of "practical difficulties or unnecessary hardship" for the granting of a non-use (dimensional, etc.) variance by the ZBA. Many township attorneys believe case law has reduced this language to only apply the "practical difficulties" standard for a non-use variance. (MCL 125.293)

Section 604(7) of the ZEA clarifies this issue by expressly imposing the "**practical difficulties**" standard for **non-use** variances. (MCL 125.3604)

As a result, zoning ordinance provisions with "unnecessary hardship" or similar language will need to be amended to comply with the clarified legal standard of "**practical difficulties**" for the granting of **non-use** variance relief.

Note: Section 604(8) of the ZEA also clarifies that the authority to grant "non-use" variances applies to the "construction, structural changes, or alteration of buildings or structures related to dimensional requirements of the zoning ordinance or to any other non-use related standard in the ordinance". (MCL 125.3604)

According to MTA Legal Counsel, this new language will likely require many townships to amend the zoning ordinance where it is necessary or advisable to clarify the extent of the non-use variance authority.

C. Use variances

The MTA Legal Counsel and many township attorneys have expressed the opinion that a township ZBA does not presently have authority to grant a "use variance" because, unlike the enabling statute for city and village zoning ordinances, the TZA does not include any explicit "use variance" language.

Section 604 of the ZEA addresses this issue head on. (MCL 125.3604)

Section 604(9) gives a township ZBA the authority to grant variances from **uses** of land in **ONLY** the two following limited situations:

1) If, as of February 15, 2006, the township had an ordinance that uses the specific phrase "use variance" or "variances from use of land" to expressly authorize the granting of use variances by the ZBA,

OR

2) If, before February 15, 2006, the township actually granted a use variance.

Only a township falling into one of these two categories **may** exercise use variance authority after July 1, 2006. A **two-thirds vote of the regular members** of the zoning board of appeals is now required to approve a **use** variance. (MCL 125.3604)

Section 604(11) makes clear that this authority is permissive. No township is required to allow for use variances. Even a township with use variance authority under the ZEA has the option to amend its zoning ordinance to eliminate any authorization for its ZBA to grant use variances.

A township that **does** fall into either of the above two situations likely must amend its zoning ordinance provisions pertaining to use variances. The ordinance should properly reference the "unnecessary hardship" legal standard for use variances mandated by Section 604(7) of the ZEA and address the two-thirds vote requirement to approve a use variance imposed by Section 604(10) of the ZEA. Or, such a township may amend its zoning ordinance to eliminate use variance authority.

Townships that did not either grant a use variance before February 15, 2006, have ordinance provisions expressly authorizing the granting of a "use variance" or "variances from uses of land" as of February 15, 2006, will not have any authority to grant use variances under the ZEA. Such townships are not likely to have any existing ordinance provisions requiring amendment to address the use variance provisions in the new law.

A township with a zoning ordinance that specifically states the ZBA does **not** have authority to grant a use variance is in the same situation: no text amendment regarding use variances is necessary.

6. Nonconforming uses or structures

A. Regulations

A major change in the new ZEA is its treatment of nonconforming uses and structures.

The TZA stated that a township **shall** provide in its zoning ordinance for the completion, restoration, reconstruction, extension, or substitution of **nonconforming uses** upon reasonable terms set forth in the zoning ordinance. (MCL 125.286)

Section 208(2) of the ZEA now says that a township “**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.” (MCL 125.3208)

According to MTA Legal Counsel, “The substitution of the word ‘may’ for ‘shall’ means each township now has some discretion as to not only how to provide for the extension, etc., of nonconforming uses, but whether to include any such provisions at all in the zoning ordinance.” This means that a township may choose to not allow a nonconforming use or structure to be completed, resumed, restored, reconstructed, extended or substituted. The new language mirrors language in the former City and Village Zoning Act (MCL 125.583a), so townships considering changes to their nonconforming use policies may wish to review case law relating to that statute.

A township is not required to amend any zoning ordinance provisions that otherwise treat nonconforming uses or structures according to the township's policy on nonconforming uses (strict or permissive). However, each township should review the relevant provisions of its zoning ordinance to determine whether to retain, with or without change, provisions that were previously mandated by law, but are now discretionary.

B. New right to appeal decisions regarding nonconforming uses or structures

Section 607 of the ZEA creates a specific right to Circuit Court review of a decision by any township official or board made under Section 208, such as a decision to purchase or condemn nonconforming use or structure, or a decision to not allow a nonconforming use or structure to be completed, resumed, restored, reconstructed, extended or substituted. (MCL 125.3607) Such an appeal must be filed within 30 days after the decision is certified in writing or the minutes that record the decision are approved. (MCL 125.3606)

MTA Legal Counsel believe that there is no legal necessity for a zoning ordinance to include provisions concerning this statutory right of appeal. However, if a zoning ordinance has existing provisions contrary to the ZEA, those provisions should be revised or deleted.

Part II: Every township with a zoning board should prepare to replace it with a planning commission

Some townships have a zoning board created under the TZA instead of a planning commission established under the Township Planning Act (TPA). A zoning board is different from a zoning board of appeals or a planning commission.

How do you know if you have a zoning board?

Zoning Board/Planning Commission Comparison		
	Zoning Board	Planning Commission
Action to Establish	Township board resolution (No requirement to publish in newspaper)	Township board resolution published in a newspaper of general circulation, subject to public referendum.
Number of Members	4-7 members	5-9 members
Appointed By	Township board	Township supervisor, with township board approval
Appointment Criteria	Qualifications and fitness to serve	Registered voters who are representative of major interests in township
Term of Office	4 years	3 years
Removed By	Township board for misfeasance, malfeasance or nonfeasance, with written charges and public hearing	Township supervisor, with township board approval, following a hearing
Township Board Member	Not permitted	Required
Meetings Per Year	2 minimum	4 minimum
Officers' Terms	2 years	1 year

Under the new ZEA, all **zoning boards** will be phased-out by July 1, 2011. Between now and then, the ZEA allows a zoning board in existence on July 1, 2006, to continue as a **zoning commission**, with the same authority under the ZEA as it presently has as a zoning board under the TZA, but with some additional notice requirements.

As of July 1, 2011, Section 301(2) of the ZEA strips all authority from all zoning commissions/zoning boards. After that date, only a planning commission can exercise the authority of any previous zoning board or zoning commission.

MTA recommends that townships with zoning boards skip the zoning commission step entirely and simply establish a planning commission with zoning powers. This can be done immediately or at any time before July 1, 2011.

MTA also recommends that any township that establishes a new zoning program/ordinance at any time before July 1, 2011, should also skip the zoning commission step entirely and go straight to establishing a planning commission with zoning powers.

If your township has a zoning board, your zoning ordinance likely includes provisions that refer to the "zoning board." That language does not have to be amended before July 1, 2006, but it must be amended at least by July 1, 2011. The ZEA explicitly allows a zoning board to "continue" as a zoning commission, subject to the transfer of its powers to a planning commission by not later than July 1, 2011.

Many zoning ordinances also specifically require the first regular member of the ZBA to also be a member of the zoning board. Where a township wishes to keep that language, the ordinance must be amended to change "zoning board" to either "planning commission" or "zoning commission."

A. Switching from a zoning board to a zoning commission

Although MTA recommends that every township with a zoning board switch directly to a planning commission with zoning authority, a township board may deem it appropriate to go from zoning board to zoning commission and then later to a planning commission.

MTA Legal Counsel recommend that every township in this situation at least start reviewing the process of establishing a planning commission under the Township Planning Act and transferring zoning powers to the planning commission. Townships that do not initiate this process sooner, rather than later, may simply lose track of the statutory deadline and find themselves at July 1, 2011, with a zoning board/zoning commission that has no authority under the ZEA or the township zoning ordinance.

Where a township chooses to retain its existing zoning board for some period of time after July 1, 2006, it is at least advisable to appropriately amend the zoning ordinance text to reflect the new "zoning commission" terminology and requirements to eliminate confusion and potential liabilities.

These text amendments will need to consider the new membership requirements of a zoning commission under the ZEA, which differ from the membership requirements for a zoning board under the TZA, and other provisions of the ZEA governing a newly created zoning commission.

The ZEA provisions governing a zoning commission differ in several respects from the TZA provisions governing a zoning board. The more detail a zoning ordinance has with respect to such matters as the regular meeting schedule, notices of regular meetings, annual reports to the township board, etc., the more likely the zoning ordinance will require appropriate amendments to conform with the relevant provisions of the ZEA on these and other substantive matters relating to the zoning commission.

Section 306 and other provisions of the ZEA address various procedural requirements relating to adopting a zoning ordinance, text amendment, or rezoning. However, these provisions generally omit any reference to the zoning "plan" upon which Section 203 requires the zoning ordinance to be based, and as to which Section 305 requires the zoning commission to make recommendations to the township board. The failure to include references to the "plan" in the various provisions of the ZEA relating to the procedures for zoning ordinance amendments, etc., seems to leave something of a vacuum with respect to the process for considering the "plan" where the township has a zoning commission.

This is not a problem for any township with a planning commission, because land use "plan" matters in such a township are governed by the Township Planning Act in considerable detail. A township converting from a zoning board/zoning commission to a planning commission under the Township Planning Act will also not have any difficulty with this issue, for the same reason.

However, a township with a zoning commission, whether previously existing as a zoning board before July 1, 2006, or created by resolution on or after that date, may experience some confusion in determining the procedures referenced in the ZEA for adopting or amending a land use plan.

Frankly, this same problem presently exists under the TZA. MTA has consistently addressed this problem by advising any township with a zoning board to use the same procedures for adopting or amending a zoning ordinance for adopting or amending a land use plan. MTA Legal Counsel believe it is appropriate to extend that same advice to any township with a zoning board/zoning commission involved with land use plan/amendment matters when the ZEA takes effect July 1, 2006.

B. Switching from a zoning board to a planning commission

The township board may create by resolution a township planning commission with the power to make, adopt, extend, add to or otherwise amend and carry out plans for the unincorporated portions of the township, as provided by the Township Planning Act (TPA) (MCL 125.323(1)).

Note: *At the time this was written in May 2006, the Township Planning Act was undergoing a similar legislative combination with the county, city and village planning acts. Consult the statutes to ensure information included in this document is accurate when used.*

The resolution creating a planning commission takes effect 60 days after publication in a newspaper of general circulation in a township (MCL 125.323(2)).

Within 60 days following publication of the resolution by the township board, a petition signed by a number of qualified and registered voters residing in the unincorporated portion of the township equal to no less than 8 percent of the total vote cast for all candidates for governor at the last general election for governor may be filed with the township clerk requesting that the resolution to establish a planning commission be submitted to the electors for their approval or rejection. If a petition is filed, the resolution to establish a planning commission does not take effect until it is approved by a majority of the electors voting on it at the next regular or special election that allows reasonable time for proper notices and printing ballots or at any special election called for that purpose. The township board provides the manner of submitting the resolution to the electors and determining the results (MCL 125.323(2)).

Following approval of the resolution to establish a planning commission, the township clerk must, within 10 days, transmit copies of the resolution to the Secretary of State and the county planning commission or regional planning commission exercising planning jurisdiction in the township, if one exists (MCL 125.323(4)).

Planning commission membership

The planning commission must consist of no less than five or more than nine members. The members must represent major interests of the township, such as agriculture, recreation, education, public health, government, commerce, transportation and industry.

The TPA states that all members must be qualified township electors and property owners. However, Attorney General Opinion 5197, dated May 23, 1977, states that property ownership cannot be used as a criteria for sitting on a township planning commission. It is MTA Legal Counsel's opinion that townships should follow that opinion and not require property ownership for planning commission membership. However, if currently serving planning commission members are only property owners, the commission's composition would not be illegal if the township board could substantiate the fact that they did not preclude consideration of non-property owners.

The township supervisor with township board approval appoints the planning commission members. Members may be removed by the township supervisor, after a hearing, with township board approval (MCL 125.324(2)).

One member of the planning commission *must* be a member of the township board (MCL 125.324(1)). However, that member is the only township board member who can serve on the commission (AG 6837 of 1995). Because the supervisor appoints and removes planning commission members, the supervisor cannot appoint him or herself to serve on the planning commission (AG 6834 of 1995; AG 6737 of 1992).

The zoning administrator enforces the zoning ordinances; reviews applications for rezonings, special uses and site plans; makes recommendations to the planning commission, and assists them with zoning questions. Although there is no specific statute prohibiting the zoning enforcement officer from serving on a planning commission, MTA Legal Counsel believe there are strong arguments against it. The TPA defines the term "citizen member" as a member of a township planning commission holding no other office, except that he or she may be a zoning board of appeals member (MCL 125.321). In addition, due to enforcement actions taken by a township zoning enforcement officer, individuals are often required to come before the planning commission to apply for rezonings, special land use permits, site plan approval or other actions. If the zoning enforcement officer also sat on the planning commission, he or she would be serving in both an enforcement role and an administrative or legislative role, which could give rise to actual or the appearance of conflicts of interest.

Planning commission members serve three-year terms. On a newly established planning commission, one-third of the members serve for one year, one-third serve for two years and one-third serve for three years (MCL 125.324(3)).

A successor must be appointed no more than one month after the preceding commission member's term has expired. All vacancies for unexpired terms must be filled for the remainder of the term (MCL 125.324(3)).

Members of the planning commission may be compensated for their services as provided by the township board (MCL 125.324(4)). A township planning commission member may not refuse to accept the compensation established by a township board for serving on its planning commission (AG 6961 of 1997).

The planning commission may develop a policy to establish travel and expense reimbursement procedures for its members and employees when engaged in performing authorized activities, including attending conferences and meetings (MCL 125.324(4)).

The planning commission must prepare and submit a detailed budget to the township board for approval. Planning commission expenditures must be within the amounts appropriated by the township board (MCL 125.324(4)).

The planning commission must elect a chairperson, vice chairperson and secretary from its members and create and fill other offices or committees, as it considers advisable. Each officer's term is one year (MCL 125.325(1)).

Planning commission meetings

The planning commission must hold at least four regular meetings each calendar year, determining the time and place of the meetings by resolution. Planning commission business must be conducted at a public meeting that is noticed and conducted in compliance with the Open Meetings Act (MCL 125.325(2)).

A special meeting of the planning commission can be called by the chairperson or by two members upon written request to the secretary, who must give 48-hours written notice to the planning commission members (MCL 125.325(2)).

The planning commission must adopt rules for transacting business and keep a public record of its resolutions, transactions, findings and determinations. It must make an annual written report to the township board concerning its operations and the status of planning activities, including recommendations regarding actions by the township board related to planning and development (MCL 125.325(4)).

All documents and records prepared, owned, used, in the possession of or retained by the planning commission in the performance of an official function must be made available to the public in compliance with the Freedom of Information Act (MCL 125.325(4)).

MTA recommends giving planning commission and zoning board of appeals members the oath of office

Even though planning commission members and zoning board of appeals members are not required by law to take the oath of office, MTA recommends that they do so. Taking the oath tends to lend credibility to the position to which a person has just been appointed or assigned. It also provides an opportunity to create a "paper trail" for the township board to the date of appointment and, therefore, to the expiration date of that person's appointment so the board knows when to make future appointments.

Sample Resolution to Establish a Planning Commission with Zoning Authority

WHEREAS, the township board of _____ Township, _____ County, Michigan wishes to proceed under the terms and provisions of the Township Planning Act, Public Act 168 of 1959, as amended (MCL [125.321](#), *et seq.*) and create a planning commission for the township,

NOW, THEREFORE, BE IT RESOLVED:

1. Establishment: The township board hereby creates a township planning commission consisting of ____ (5, 6, 7, 8, or 9) members. The planning commission is formed under the authority of and subject to the powers, duties, and limitations provided in the Township Planning Act, Public Act 168 of 1959, as amended (MCL [125.321](#), *et seq.*), and further subject to the terms and conditions of this resolution and any amendments to it.

2. Appointments and Terms: The first members of the planning commission shall be appointed no sooner than 60 days following the publication of this resolution. The township supervisor, with the approval of the township board, shall appoint all planning commission members. When the planning commission is first established, the first members will be appointed to staggered terms, so one-third shall serve for one year, one-third for two years, and one-third for three years. After that, all planning commission members shall serve for terms of three years each, with one-third of the terms expiring each year. Successors shall be appointed not more than one month after the term of the preceding commission member has expired. Vacancies shall be filled for the remainder of the term.

3. Members: Planning commission members shall be registered voters of the township who are representative of major interests as they exist in the township, such as agriculture, recreation, education, public health, government, commerce, transportation, and industry. One member of the township board shall be appointed to the planning commission.

4. Compensation: The planning commission members may be compensated for their services as provided by township board resolution.

5. Officers and Meetings: The planning commission shall elect a chair, vice-chair, and secretary from its members, and may create and fill other offices or committees as it deems advisable. It may appoint advisory committees outside of its membership. The terms of all officers shall be one year. The planning commission shall meet at least four times each year, and any additional times as it determines necessary to accomplish its functions.

6. Authority to Make Master Plan: Under the authority of the Township Planning Act, Public Act 168 of 1959, as amended (MCL [125.321](#), *et seq.*), the planning commission shall make a master plan as a guide for the development of those portions of the township outside of any incorporated village. The *(township board/planning commission—pick one and select corresponding language in Paragraph 7)* shall have final approval of the master plan and any subsequent amendments.

7. Recommending Authority: The planning commission shall make recommendations concerning new plats and other land development matters referred to it by the township board. All final decisions of said planning commission, except those to *(adopt the master plan—include if planning commission is given final approval of the master plan in Paragraph 6 above)* to elect its own officers and adopt its own rules of procedure, shall be subject to the approval of the township board before they can take effect.

8. Amendments to Authorizing Statute: Any amendments made to the Township Planning Act, Public Act 168 of 1959, as currently amended (MCL [125.321](#), *et seq.*), shall hereby be declared to automatically control the activities and function of the planning commission.

9. Zoning Powers: All powers, duties, and responsibilities provided by the *(If this resolution is adopted before July 1, 2006, use this: Township Zoning Act, Public Act 184 of 1943, MCL [125.271](#), et seq.). If this resolution is adopted on or after July 1, 2006, use this: Michigan Zoning Enabling Act, Public Act 110 of 2006, [MCL 125.3101](#), et seq.)* for zoning boards are hereby transferred to the planning commission as of the effective date of this resolution, unless the zoning board is nearing the completion of its zoning plans, in which case the transfer of functions shall be postponed until the zoning plans are completed or for a period of one year, whichever occurs first. Any existing zoning ordinance shall remain in full force and effect until otherwise amended, altered or repealed by the township board

10. Effective Date: This resolution shall take effect 60 days following its publication in a newspaper of general circulation in the township, unless a legal referendum petition is filed as provided by the Township Planning Act, Public Act 168 of 1959, as amended (MCL [125.321](#), *et seq.*), and then when the establishment of a planning commission has been approved by a majority of the electors voting at a subsequent regular or special election. The township board reserves the right to amend or repeal this resolution at any time hereafter by a majority vote of the membership of the township board.

11. Submissions and Publication: The township clerk shall, within 10 days after this resolution is adopted, transmit copies of the resolution to the secretary of state for the State of Michigan, and to the county planning commission or regional planning commission exercising planning jurisdiction within the township. The clerk shall also, within 30 days after this resolution is adopted, publish it in a newspaper of general circulation in the township. The clerk shall prepare and sign a certificate of these submissions and publication.

CERTIFICATE

The undersigned, as the duly elected and acting clerk of the township, hereby certifies that this resolution was duly adopted by the township board at a regular meeting of said board, at which a quorum was present, held on _____, and that copies of the resolution were transmitted and published as directed.

Township Clerk

Oath of Office

STATE OF MICHIGAN,

County of _____

I do solemnly swear (*or affirm*) that I will support the Constitution of the United States, and the Constitution of this State, and that I will faithfully perform the duties of the office of _____ in and for the Township of _____, County of _____ and the State of Michigan, according to the best of my ability, so help me God.

Signature

Subscribed and sworn to before me, this _____ day of _____, 20__

_____, (County), Michigan

Sample "Paper Trail"

History of Planning Commission (6 members, 3-year staggered terms)

Term Start	Stagger			Appt./ Reappt.	Oath Taken	Member	Vacancy	Term End	Replaced By
1/8/2000	1			12/7/1999	12/7/1999	Margaret Fair		1/8/2003	Margaret Fair
1/8/2000	1			12/7/1999	12/7/1999	Amy Wise		1/8/2003	Amy Wise
1/8/2001		2		12/3/2000	12/3/2000	Mike Smart		1/8/2004	Mike Smart
1/8/2001		2		12/3/2000	12/3/2000	Monica Quick		1/8/2004	Ida Jones
1/8/2002			3	12/4/2001	12/4/2001	Robert Roberts		1/8/2005	
1/8/2002			3	12/4/2001	12/4/2001	John Good		1/8/2005	
1/8/2003	1			12/19/2002	1/8/2003	Margaret Fair		1/8/2006	
1/8/2003	1			12/19/2002	12/19/2002	Amy Wise	9/7/2004	1/8/2006	Sue Swift
1/8/2003	1			10/5/2004	10/5/2004	Sue Swift		1/8/2006	
1/8/2004		2		12/2/2003	12/2/2003	Mike Smart		1/8/2007	
1/8/2004		2		12/2/2003	12/2/2003	Ida Jones		1/8/2007	

This chart could be adapted for any board or commission appointed by the township board, with or without staggered terms. Note that specific staggered terms are required for a planning commission (or zoning commission), zoning board of appeals, fire or police administrative board, and fire or police civil service commission. (*Not an exhaustive list*)

Charter Township Zoning Ordinance Checklists

Updated for use with MZEA

The steps specified in these updated checklists are intended to reflect requirements of law.¹ However, in some instances the requirements of law are only applicable in certain circumstances. An example of such a step would be the mailing of zoning commission/planning commission public hearing notices to public utilities, railroads, etc; such mailings are only required where the designated entity has registered its name and address with the township clerk for the purpose of receiving zoning public hearing notices.

These updated checklists also reflect steps MTA Legal Counsel believe are required based on a reasonable interpretation of the applicable ZEA provision, but as to which other competent legal counsel could possibly interpret differently.

The checklists include steps that are not explicitly imposed by a statutory requirement, but are fairly implied by a statutory requirement and followed as a matter of good procedure. For example, although the ZEA does explicitly require the Township to mail public hearing notices to certain persons and entities in certain circumstances, the ZEA does not explicitly require the Township to document the occurrence of the required mailings. The checklists nevertheless include a step referencing the filing of appropriate affidavits of such required mailings in the township records, as the documentation of such mailings may be critical in the event of a legal challenge to the procedural validity of a rezoning or text amendment ordinance.

In all of these types of situations, the preparation of the updated checklists has been guided by the importance of following a cautious approach, where following a different but less defensible interpretation of the statute could facilitate a defect in the ordinance process. This approach is particularly appropriate considering the absence of any governing case law at this time on any aspect of the new ZEA.

Issues Related to Zoning Ordinance Filing Requirements

Four particular statutory interpretation issues flow from Section 401(10) of the ZEA, which states as follows:

"The filing and publication requirements under this section supersede any other statutory requirements relating to the filing and publication of county, township, city or village ordinances."

This statutory language, while quite plainly worded, still requires some careful examination of whether other statutory requirements are "relating to the filing and publication of ...township ordinances," and are thus superseded.

¹ Section 202(1) of the ZEA authorizes each township to provide by ordinance for the "manner" in which the zoning ordinance shall be amended, supplemented or changed. In our April 20, 2006 memorandum on the ZEA we expressed the opinion that this language cannot be interpreted to authorize a township to give less notice than the ZEA requires; but does authorize a township to impose upon itself additional or greater publication, etc. requirements governing the manner in which proposed rezonings and zoning ordinance text amendments will be noticed to the public and considered by the township. The updated checklists are of course based on only the statutory requirements, and are not intended to reflect such additional or greater requirements as a township may choose to impose on itself.

First, in the context of a charter township, MTA Legal Counsel have concluded the requirement of Section 20(2) of the Charter Township Act (CTA) (MCL 42.20) prohibiting an ordinance from being "finally passed by the township board at the same meeting at which it is introduced" is not superseded by Section 401(10) of the ZEA.

This requirement of the CTA does not relate to the "filing and publication of ... township ordinances". It relates to whether a proposed ordinance can be adopted at the same meeting at which it is first introduced. Accordingly, the two checklists for charter townships continue to include steps requiring a proposed ordinance to be introduced at a Township Board meeting, and then publicized before adoption (at a subsequent meeting).

Second, on a closely related matter, also in the context of a charter township, MTA Legal Counsel have concluded the requirement of Section 20(2) of the CTA prohibiting an ordinance from being passed by the township board "before it is published in the form in which it is introduced" is also not superseded by Section 401(10) of the ZEA.

Section 401(10) of the ZEA only purports to supersede other statutory requirements relating to the filing and publication of township "ordinances". Although the pertinent language from Section 20(2) of the CTA does indeed relate to "publication," the subject of the publication requirement is the proposed ordinance "in the form in which it is introduced". The updated checklists for charter townships therefore continue to include steps relating to the publication of a proposed ordinance as required by Section 20(2) of the CTA.

Third, also in the context of a charter township, MTA Legal Counsel have concluded the requirements of Section 8 of the CTA relating to the publication of an adopted ordinance are superseded by Section 401 of the ZEA.

Since both Section 401 of the ZEA and Section 8 of the CTA impose requirements relating to the "publication" of adopted township "ordinances," the CTA requirements are superseded.

Accordingly, the updated checklists reflect a uniform post-adoption publication requirement for general law and charter townships pursuant to Section 401 of the ZEA (publish notice of ordinance adoption in newspaper, with either complete amendatory ordinance or legally proper summary of ordinance, within 15 days after adoption). **As of July 1, 2006 charter townships will no longer have the option, derived from Section 8 of the CTA, to comply with the post-adoption "publication" requirement by posting the complete text of the adopted ordinance and publishing a short newspaper notice describing the purpose or nature of the ordinance and identifying the locations in the township where the complete ordinance was posted.**

Fourth, with respect to both general and charter townships, MTA Legal Counsel have concluded the requirement imposed by MCL 41.185 regarding the filing of an attested copy of an ordinance with the county clerk (if the township does not maintain a township office open to the public during regular hours on each business day) is not superseded by Section 401(10) of the ZEA. That conclusion reflects a cautious approach that is more consistent with open government and access to public records.

There is no question the relevant aspect of MCL 41.185 does relate to the "filing...of...township...ordinances," which is the language used in ZEA Section 401(10). However, MTA Legal Counsel have nevertheless concluded this statutory requirement is not

superseded by the filing requirements under Section 401 of the ZEA, because that Section of the ZEA does not address in any manner the filing of a township ordinance with a county clerk. This is thus a different situation from the third item discussed above, where both Section 401 of the ZEA and Section 8 of the CTA address publication of an adopted ordinance. Where, as here, Section 401 of the ZEA does not impose any requirement relating to the filing of an adopted ordinance with a county clerk, MTA Legal Counsel are reluctant to conclude that provision supersedes the filing requirement imposed by MCL 41.185.

Prevailing Michigan Supreme Court precedent indicates that an unambiguous statute must be applied pursuant to its plain language, and need not be further interpreted. However, MTA Legal Counsel believe there is some uncertainty as to whether the Legislature intended Section 401(10) of the ZEA to supersede even types of ordinance "filing" requirements not addressed at all in said Section 401. The resulting conclusion---that the pertinent townships must continue to file an attested copy of adopted ordinances with the county clerk---facilitates openness in local government and easier access to the ordinances of a township which does not maintain a township office open to the public during regular hours on each business day.

Township Board Referral to Planning Commission

One other legal issue merits special comment. Section 401(3) of the ZEA allows but no longer requires the township board to refer the matter back to the planning commission if the township board considers changes to the recommendation to be necessary. In such a circumstance Section 401(5) of the ZEA allows the township board to consider and vote upon the adoption of a zoning ordinance (text amendment or rezoning) "with or without amendments". This language may give the township board considerably more latitude to avoid obligatory "refer back" situations, but it is also the subject of potential legal issues.

For example, if a five-acre parcel was noticed for public hearing and recommended for rezoning, in the opinion of MTA Legal Counsel the township board cannot also approve rezoning an additional adjacent three-acre parcel, as an "amendment" of the recommended rezoning of the five-acre parcel, without a further properly noticed public hearing by the planning commission on the proposed rezoning of the adjacent three-acre parcel). This is addressed in the updated checklists by referring to approving the proposed text amendment/rezoning, with or without "permissible" amendments/changes.

**CHECKLIST OF STEPS FOR ZONING ORDINANCE TEXT AMENDMENT
(Charter Township--MZEA)**

I. STEPS TO BE TAKEN BY PLANNING COMMISSION (*Same steps apply where Township has a Zoning Commission, prior to July 1, 2011.*)

- ___ 1. TEXT AMENDMENT INITIATED by Planning Commission, Township Board, or citizen.
- ___ 2. SCHEDULE PUBLIC HEARING on proposed amendment during any regular meeting or special meeting, if not scheduled for a regular meeting date.
- ___ 3. PREPARE NOTICE of public hearing/meeting of Planning Commission on proposed amendment, for publication, mailing and posting. Notice is required to:
 - A. Describe nature of proposed amendment.
 - B. State time and place proposed amendment will be considered.
 - C. Indicate time and place written comments will be received.
 - D. State times and places tentative proposed text may be examined.
 - E. Include name of public body, with address and telephone number.
- ___ 4. PUBLISH NOTICE of public hearing/meeting in newspaper of general circulation in Township at least 15 days before date of public hearing/meeting.
- ___ 5. MAIL NOTICE of public hearing/meeting by regular first class mail to each electric/gas/pipeline public utility company, telecommunication service provider, and railroad operating within Township, and manager of each airport within Township, at least 15 days before date of public hearing/meeting. Note: This step only applies to extent designated entity has registered name and address with Clerk for purpose of receiving zoning public hearing notices.
- ___ 6. POST NOTICE of public hearing/meeting at Township Hall at least 18 hours before scheduled time of public hearing/meeting, if not on regular meeting date.
- ___ 7. FILE AFFIDAVITS of publication, mailing and posting of Notice in Township records.

- ___ 8. At a regular or special meeting, the PLANNING COMMISSION FORMALLY OPENS PUBLIC HEARING on proposed amendment:
 - A. Introductory comments on proposed amendment by Planning Commission or other initiating party.
 - B. Acknowledge written comments received on proposed amendment.
 - C. Receive comments on proposed amendment by persons attending hearing.
- ___ 9. Formally CLOSE PUBLIC HEARING and DISCUSS proposed amendment.
- ___ 10. APPROVE MOTION recommending approval or disapproval of proposed amendment.
- ___ 11. SUBMIT RECOMMENDATION TO COUNTY PLANNING COMMISSION for advisory review and recommendation. Note: This step is required unless County Board of Commissioners has passed a resolution waiving county right of review. Where submittal to County Planning Commission is required, right of review is also waived if County Planning Commission recommendation is not received by Township Board within 30 days from date of County Planning Commission receipt of Planning Commission recommendation.
- ___ 12. SUBMIT TO TOWNSHIP BOARD summary of comments received at Planning Commission public hearing/meeting and recommendation of Planning Commission on proposed amendment (and, where applicable, recommendation of County Planning Commission). Note: Matter is referred to Township Board regardless of whether Planning Commission and County Planning Commission recommend approval or disapproval of proposed amendment.

II. STEPS TO BE TAKEN BY CHARTER TOWNSHIP BOARD.

- ___ 1. Township Board may on its own initiative hold an additional public hearing regarding proposed amendment, and is required to hold public hearing upon request of any property owner by certified mail to Clerk. Notice of any such public hearing must be given in same manner as required for public hearing by Planning Commission. (See Part I, Steps 4-6).
- ___ 2. TOWNSHIP BOARD CONSIDERS PLANNING COMMISSION RECOMMENDATION at any regular meeting or at special meeting, and:
 - A. Disapproves proposed amendment, with no further action by Planning Commission.

- B. Approves proposed text, in ordinance form, with or without permissible amendments.
- C. Refers proposed text back to Planning Commission for further consideration and comment within time specified by Township Board.

PROCEED TO STEPS 3-14 ONLY IF TOWNSHIP BOARD DESIRES TO APPROVE TEXT AMENDMENT (Option B or C above).

- ___ 3. INTRODUCE complete text of proposed text amendment ordinance at Township Board meeting in written or printed form.
- ___ 4. PUBLISH or POST the complete text of the proposed ordinance as it was introduced, indicating when it will be considered for adoption.
 - A. For PUBLICATION option:
 - (1) Publish the complete text of the proposed ordinance as it was introduced at least one time in a newspaper circulating in the Township.
 - B. For POSTING option:
 - (1) Post the complete text of the proposed ordinance as it was introduced at the Township Clerk's office and at five other public places in the Township, or at the Township Clerk's office and on the Township's Web site;
 - and
 - (2) Publish a notice of the posting at least once in a newspaper circulating in the Township within seven days after the posting was done. The notice of posting must describe the purpose or nature of the proposed ordinance and identify the locations in the Township where the complete text of the proposed ordinance was posted.
- ___ 5. FILE AFFIDAVIT OF PUBLICATION from newspaper and/or affidavit of posting in Township ordinance records.
- ___ 6. ADOPT ORDINANCE (amending Zoning Ordinance) by motion approved by majority of Township Board membership, on roll call vote.
- ___ 7. FILE ORDINANCE with Township Clerk within 15 days after adoption.

- ___ 8. PUBLISH notice of ordinance adoption in required form in newspaper of general circulation in Township, with either complete text amendment ordinance, or legally proper summary of ordinance, within 15 days after adoption.
- ___ 9. FILE AFFIDAVITS OF PUBLICATION from newspaper and/or posting in township ordinance records.
- ___ 10. FILE ATTESTED COPY OF COMPLETE ORDINANCE WITH COUNTY CLERK (not required if township office is open to the public during regular hours on each business day).
- ___ 11. (Where applicable) MAIL COPY OF NOTICE OF ORDINANCE ADOPTION to manager of airport registered with Township Clerk to receive zoning notices.
- ___ 12. RECORD ORDINANCE in Township ordinance book within one week after publication of ordinance, with Certificate of Township Clerk recording date of adoption of ordinance, names of Board members voting thereon, how each member voted, date of publication and name of newspaper (and, where applicable, date of filing of ordinance with County Clerk, and date of mailing notice of ordinance adoption to airport manager).
- ___ 13. AUTHENTICATE THE RECORD by Supervisor and Township Clerk signing the ordinance Certificate.
- ___ 14. DISTRIBUTE copies of revised Zoning Ordinance pages to members of Township Board, Planning Commission, Zoning Board of Appeals, and other appropriate Township officials.

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 Bauckham, Sparks, Rolfe, Lohrstorfer & Thall, P.C.
 Effective July 1, 2006

**CHECKLIST OF STEPS FOR REZONING OF PROPERTY
(Charter Township--MZEA)**

I. STEPS TO BE TAKEN BY PLANNING COMMISSION (*Same steps apply where Township has a Zoning Commission, prior to July 1, 2011.*)

- ___ 1. RECEIVE APPLICATION with fee established by Township Board and information required to process application, including:
- A. Name and address of applicant and owner of land proposed to be rezoned.
 - B. Street number or other common description of land proposed to be rezoned.
 - C. Legal description of land proposed to be rezoned.
 - D. Present zoning classification and requested zoning classification of land proposed to be rezoned.

- ___ 2. SCHEDULE PUBLIC HEARING on rezoning request, during any regular meeting or special meeting, if not scheduled for a regular meeting date.

NOTE: If proposed rezoning is inconsistent with Township land use plan, consideration of amendment of land use plan may be necessary before or at the same time as approval of requested rezoning, and any such proposed amendment of land use plan must be processed in accordance with applicable legal requirements. Consult township attorney.

- ___ 3. PREPARE NOTICE of public hearing/meeting of Planning Commission on requested rezoning, for publication, mailing and posting. Notice is required to:
- A. Indicate property proposed for rezoning, including listing of all existing street addresses within the property if 1-10 parcels are proposed to be rezoned.
 - B. Indicate present zoning classification and requested zoning classification of land proposed to be rezoned.
 - C. State time and place rezoning request will be considered.
 - D. Indicate time and place written comments will be received concerning rezoning request.
 - E. State times and places zoning ordinance/zoning map/land use plan may be examined.

F. Include name of public body, with address and telephone number.

- ___ 4. PUBLISH NOTICE of public hearing/meeting in newspaper of general circulation in Township at least 15 days before public hearing/meeting.
- ___ 5. MAIL NOTICE of public hearing/meeting by regular first class mail to each electric/gas/pipeline public utility company, telecommunication service provider, and railroad operating within affected zoning district, and manager of each airport within Township, at least 15 days before date of public hearing/meeting. Note: This step only applies to extent designated entity has registered name and address with Clerk for purpose of receiving zoning public hearing notices.
- ___ 6. MAIL NOTICE of public hearing/meeting by regular first class mail (or personally deliver) at least 15 days before date of public hearing/meeting to:
 - A. Applicant(s).
 - B. Owner(s) of property proposed to be rezoned.
 - C. All persons to whom real property is assessed within 300 feet of boundaries of property proposed to be rezoned.
 - D. Occupants of all structures within 300 feet of property proposed to be rezoned; if name of an occupant is not known, address to "occupant."

Note: This set only applies if an individual property or ten or fewer adjacent properties are proposed to be rezoned. Where this step is required the 300-foot requirement applies to properties/occupants located within or outside Township boundaries.
- ___ 7. POST NOTICE of public hearing/meeting at Township Hall at least 18 hours before scheduled time of public hearing/meeting, if not on regular meeting date.
- ___ 8. FILE AFFIDAVITS of publication, mailing and posting of notice of public hearing/meeting in Township records.
- ___ 9. At a regular or special meeting, the PLANNING COMMISSION FORMALLY OPENS PUBLIC HEARING on requested rezoning:
 - A. Receive comments of applicant(s)/owner(s) on proposed rezoning.
 - B. Acknowledge written comments received on proposed rezoning.
 - C. Receive comments on proposed rezoning by persons attending hearing.

- ___ 10. Formally CLOSE PUBLIC HEARING and DISCUSS proposed rezoning:
 - A. Determine whether proposed rezoning is consistent with Township land use plan.
 - B. Review permitted uses and special exception uses which property could be used for if rezoning is approved.
 - C. Evaluate whether property is appropriate to be used for uses allowed in requested zoning district.
- ___ 11. APPROVE MOTION recommending approval or disapproval of proposed rezoning.
- ___ 12. SUBMIT RECOMMENDATION TO COUNTY PLANNING COMMISSION for advisory review and recommendation. Note: This step is required unless County Board of Commissioners has passed a resolution waiving county right of review. Where submittal to County Planning Commission is required, right of review is also waived if County P.C. recommendation is not received by Township Board within 30 days from date of County P.C. receipt of Planning Commission recommendation.
- ___ 13. SUBMIT TO TOWNSHIP BOARD summary of comments received at Planning Commission public hearing/meeting and recommendations of Planning Commission on proposed rezoning (and, where applicable, recommendation of County Planning Commission). Note: Matter is referred to Township Board regardless of whether Planning Commission and County P.C. recommend approval or disapproval of proposed rezoning.

II. STEPS TO BE TAKEN BY TOWNSHIP BOARD.

- ___ 1. Township Board may on its own initiative hold an additional public hearing regarding proposed rezoning, and is required to hold public hearing upon request of any property owner by certified mail to Clerk. Notice of any such public hearing must be given in same manner as required for public hearing by Planning Commission (See Part I, Steps 4-7).
- ___ 2. TOWNSHIP BOARD CONSIDERS PLANNING COMMISSION RECOMMENDATION at any regular meeting or at special meeting, and:
 - A. Disapproves proposed rezoning, with no further action by Planning Commission.
 - B. Approves proposed rezoning, in ordinance form, with or without permissible changes.

- C. Refers proposed rezoning back to Planning Commission for further consideration and comment within time specified by Township Board.

PROCEED TO STEPS 3-14 ONLY IF TOWNSHIP BOARD DESIRES TO APPROVE REZONING (Option B or C above).

- ___ 3. INTRODUCE complete text of the proposed ordinance at Township Board meeting in written or printed form.
- ___ 4. PUBLISH or POST the complete text of the proposed ordinance as it was introduced, indicating when it will be considered for adoption.
 - A. For PUBLICATION option:
 - (1) Publish the complete text of the proposed ordinance as it was introduced at least one time in a newspaper circulating in the Township.
 - B. For POSTING option:
 - (1) Post the complete text of the proposed ordinance as it was introduced at the Township Clerk's office and at five other public places in the Township, or at the Township Clerk's office and on the Township's Web site;
 - and
 - (2) Publish a notice of the posting at least once in a newspaper circulating in the Township within seven days after the posting was done. The notice of posting must describe the purpose or nature of the proposed ordinance and identify the locations in the Township where the complete text of the proposed ordinance was posted.
- ___ 5. FILE AFFIDAVIT OF PUBLICATION from newspaper and/or affidavit of posting in Township ordinance records.
- ___ 6. ADOPT ORDINANCE (amending zoning map/zoning ordinance) by motion approved by majority of township board members, on roll call vote.
- ___ 7. FILE ORDINANCE with Township Clerk within 15 days after adoption.
- ___ 8. PUBLISH notice of ordinance adoption in required form in newspaper of general circulation in Township, with either complete text amendment ordinance, or legally proper summary of ordinance, within 15 days after adoption.

- ___ 9. FILE AFFIDAVITS OF PUBLICATION from newspaper and/or posting in township ordinance records.
- ___ 10. FILE ATTESTED COPY OF ORDINANCE with County Clerk (not required if township office open regular hours on each business day).
- ___ 11. (Where applicable) MAIL COPY OF NOTICE OF ORDINANCE ADOPTION to manager of airport registered with Township Clerk to receive zoning notices.
- ___ 12. RECORD ORDINANCE in Township ordinance book within one week after publication of ordinance, with Certificate of Township Clerk recording date of adoption of ordinance, names of members voting thereon, how each member voted, date of publication and name of newspaper in which ordinance was published (and, where applicable, date of filing of ordinance with County Clerk, and date of mailing of notice of ordinance adoption to airport manager).
- ___ 13. AUTHENTICATE THE RECORD by Supervisor and Township Clerk signing the ordinance Certificate.
- ___ 14. CHANGE ZONING MAP and distribute copies of revised Zoning Ordinance pages (if any) to members of Township Board, Planning Commission, Zoning Board of Appeals, and other appropriate Township officials.

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Effective July 1, 2006

(Township Letterhead)

_____ TOWNSHIP, _____ COUNTY

**FINAL DECISION OF THE _____ TOWNSHIP
ZONING BOARD OF APPEALS**

**For an appeal by right of this decision to be timely, it must be made
to the circuit court for the county in which the property is located
within 30 days of the date of this order. (MCL 125.3606)**

Appeal Number: _____

Hearing Date: _____

Applicant: _____

Address: _____

Phone / Fax: _____

Type of Request to ZBA (*variance, interpretation of zoning map, administrative appeal,
other—please specify*): _____

ZBA Findings of Fact: _____

ZBA Decision: _____

Reasons for Decision: _____

Votes of ZBA Members:
(Yes) (No) _____
(Yes) (No) _____
(Yes) (No) _____
(Yes) (No) _____
(Yes) (No) _____

Signature(s) of Designated ZBA Member(s):

I, _____, Secretary of the _____ Township
Zoning Board of Appeals, certify that on this date I witnessed the signatures set forth
above and attest to the accuracy of this final decision report.
