

---

## RISK CONTROL SOLUTIONS

---

A Service of the Michigan Municipal League Liability and Property Pool and  
the Michigan Municipal League Workers' Compensation Fund

### ZONING DECISIONS

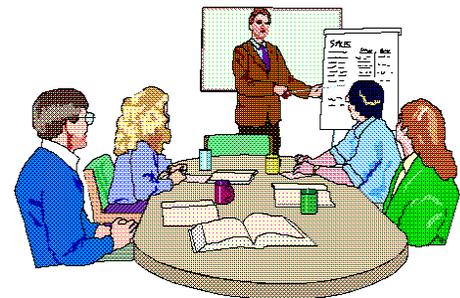
#### Reducing Your Exposure to Litigation

##### Overview

Zoning is only one of many responsibilities for a typical public entity. However, it is a very important and sensitive one. It requires the entity to balance the best interests of the community with the rights of the individual who submits a zoning request. Disputes concerning land usage can be very difficult to resolve and may result in litigation. Not surprisingly, claims arising from such disputes make up a significant portion of total claims against the Michigan Municipal Liability and Property Pool.

The following recommendations are NOT a replacement for obtaining appropriate legal advice. However, implementing these recommendations may reduce conflicts and potential litigation when you are making zoning decisions.

- ✓ **Develop and adopt a Zoning Ordinance and Master Plan that encompasses the State of Michigan's requirements for land usage. Update the plan periodically to reflect any changes in state law.**
- ✓ **Always follow the zoning ordinance or master plan.** Decision-makers should be familiar with the community's ordinances and planning guidelines. Newly elected or inexperienced members should review available educational material and/or attend seminars to become familiar with basic information. The Michigan Municipal League has an excellent training program on zoning and an extensive library of resources available to members.
- ✓ **Consider all information submitted with zoning requests.** Review traffic flow studies, the recommendations of planning consultants, and other information before making a decision. By considering all available information, the municipality can reduce the risk of someone charging being it with making uninformed decisions.
- ✓ **Make all decisions in an objective and consistent manner.** Do not allow irrelevant factors and opinions to influence the decision-making process.
- ✓ **Review all decisions with an attorney who is familiar with zoning issues, ordinances and public meeting requirements, and applicable state and federal law.**



- ✓ **Document the decision-making process accurately and completely.** Municipal records or minutes should always identify the reasons for denying or approving a request, such as inconsistencies, traffic problems, and/or consultant recommendations.
- ✓ **Follow other recommended procedures:**
  - Conduct hearings in a controlled, democratic manner.
  - Follow all requirements of the Open Meetings Act.
  - Select planning commissioners who have decision-making abilities.

Following commonly accepted principles for managing zoning decisions does not guarantee the elimination of land usage disputes. However, it may greatly reduce the entity's exposure.

For additional information concerning zoning issues, call:



**Important Telephone Numbers**

MML Risk Management Services	734/662-3246 or 800/653-2483
Loss Control Services	800/482-0626

We do not intend this document is to be legal advice. It does not identify all the issues surrounding the particular topic. We encourage public agencies to review their policies and procedures with an expert or an attorney who is knowledgeable about the topic.

## SELF ASSESSMENT

### Zoning Decisions

For the typical municipality, zoning is only one of many responsibilities, but it is a very important and sensitive one. Claims arising from zoning disputes occur quite frequently due to the various factors that can influence the decision-making process. It is a good idea to review your practices by asking yourself the following questions.

#### Does your organization:

1. Have a zoning ordinance and a master plan?

Yes  No  \_\_\_\_\_ →



#### *Develop an ordinance and master plan that:*

- Meets the State of Michigan land use requirements.
- Is updated periodically to reflect changes in the law.
- Is professionally developed.

2. Always follow the ordinance and plan?

Yes  No  \_\_\_\_\_ →



#### *Following the ordinance and plan includes:*

- Assuring that decision-makers are familiar with the plan.
- Training newly elected or inexperienced staff.

3. Make decisions in a consistent and objective manner?

Yes  No  \_\_\_\_\_ →



#### *Decision-making*

- Considers all available information.
- Includes a review of all impact studies.
- Is not influenced by irrelevant factors or opinions.
- Is consistently applied.

4. Review all decisions with an Attorney?

Yes  No  \_\_\_\_\_ →



#### *Your attorney should:*

- Be familiar with zoning and ordinance issues.
- Advise you on the Open Meetings Act.
- Assist you in reviewing state and federal laws.

5. Document all zoning decisions?

Yes       No  →

↓

**Documentation should:**

- State the reasons for approval/disapproval.
- State any inconsistencies that were determined.
- State any conclusions made by consultants or other professionals.

**Conclusions**



If you could answer “yes” to all five questions and your organization follows most or all of the suggested practices, your organization has reduced its exposure to future claims. You should congratulate yourself.



If you were unable to answer “yes” to one or more of the five critical questions, your organization may have a greater exposure to zoning claims. Missing components of one or more of the recommended practices may also indicate a deficiency in your current program. You should take one or more of the following actions:

- **Correct any deficiency that may exist;**
- **Contact your attorney for advice;**
- **Contact a professional in land use and zoning;**
- **Contact MML Risk Management Services at 800/653-2483; or**
- **Contact the League’s Loss Control Services at 800/482-0626.**

NOTE: This document is not intended to be legal advice or implied to identify all zoning or planning related exposures. Public agencies are encouraged to contact their attorney for assistance in implementing these or other changes.