

ZONING DECISIONS

OVERVIEW

Zoning is one of the most complex and essential responsibilities for a typical public entity. It requires the entity to balance the best interests of the community with the legal rights of the individual who submits a zoning request. Disputes concerning land usage can be challenging and may result in litigation. Not surprisingly, claims arising from such disputes make up a significant portion of total claims against the Michigan Municipal League Liability & 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 making zoning decisions.

- Develop and adopt a Zoning Ordinance and Master Plan encompassing the State of Michigan's statutory requirements for planning and land usage. Update the plan and zoning ordinance 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 a claim.
- Make all decisions objectively and consistently. Do not allow irrelevant factors and opinions to influence the decision-making process.
- Review all decisions with an attorney familiar with planning and zoning issues, ordinances and public meeting requirements, and other applicable state and federal laws.
- Document the decision-making process wholly and accurately. 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 significantly reduce the entity's exposure.

INFORMATION RESOURCES

Michigan Municipal League *Zoning Board of Appeals Handbook*

https://mml.org/pdf/ZBA_Handbook_2015.pdf

Michigan Municipal League Fact Sheet Plus: *Zoning, Basic Questions*

https://mml.org/resources/publications/one_pagers/FS%20Zoning%20-%20Basic%20Questions.pdf


Michigan Municipal League Fact Sheet Plus: *Zoning, Nonconforming Buildings and Uses*

https://mml.org/resources/publications/one_pagers/x%20FS%20Zoning%20-%20Nonconforming%20Buildings%20and%20Uses.pdf

Michigan Municipal League Resources and Research Main Page

<https://mml.org/resources-research/>

***Contact MML Risk Management Services Staff/
or your Loss Control Consultant for more information.***

	Important Phone Numbers
MML Risk Management Services	734.662.3246 or 800.653.2483
Loss Control Services	800.482.0626

Note:

This document is not intended to be legal advice.

It only identifies some of the issues surrounding this topic.

***Public agencies are encouraged to review their procedures with an expert
or a competent attorney who is knowledgeable about the subject.***

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 pretty 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.

Organization Name

Completed by

Date

Does Your Organization:

(A response of "No" may require further analysis and/or an action plan for correction.)

Yes	No		Zoning Decisions
		1.	Have a zoning ordinance and a master plan that:
<input type="checkbox"/>	<input type="checkbox"/>		Meets State of Michigan land use requirements?
<input type="checkbox"/>	<input type="checkbox"/>		Is updated periodically to reflect changes in the law?
<input type="checkbox"/>	<input type="checkbox"/>		Is professionally developed?
		2.	Always follow the ordinance and plan, including:
<input type="checkbox"/>	<input type="checkbox"/>		Assuring that decision-makers are familiar with the plan?
<input type="checkbox"/>	<input type="checkbox"/>		Training newly elected or inexperienced staff?
		3.	Make decisions in a consistent and objective manner that includes:
<input type="checkbox"/>	<input type="checkbox"/>		Considering all available information?
<input type="checkbox"/>	<input type="checkbox"/>		A review of all impact studies?
<input type="checkbox"/>	<input type="checkbox"/>		Is not influenced by irrelevant factors or opinions?
<input type="checkbox"/>	<input type="checkbox"/>		Is consistently applied?
		4.	Review all decisions with an attorney who:
<input type="checkbox"/>	<input type="checkbox"/>		Is familiar with zoning and ordinance issues?
<input type="checkbox"/>	<input type="checkbox"/>		Advises you on the Open Meetings Act?
<input type="checkbox"/>	<input type="checkbox"/>		Assists you in reviewing relevant state and federal laws?
		5.	Document all zoning decisions with documentation that:
<input type="checkbox"/>	<input type="checkbox"/>		States the reasons for approval/disapproval?
<input type="checkbox"/>	<input type="checkbox"/>		States any inconsistencies that were determined?
<input type="checkbox"/>	<input type="checkbox"/>		States any conclusions made by consultants or other professionals?

CONCLUSIONS




If you can honestly answer “yes” to all applicable questions, your risk management program for Zoning Decisions is on solid footing – congratulations! Following the recommended practices reduces your organization’s exposure to future claims in this area. Remain vigilant for new or changing risks and address them promptly.



If you answered “no” to one or more questions, your organization faces increased exposure to Zoning Decisions claims and the associated direct and indirect costs. Each “no” response indicates a possible deficiency in your risk management program. You should consider these carefully and take one or more of the actions below:

- 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 the numbers below;
- Contact MML Loss Control Services at the number below.

***Contact MML Risk Management Services Staff/
or your Loss Control Consultant for more information.***

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