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# Township Zoning Resources

*A collection of zoning handouts from various conferences and sources*

topics:

**Overview**

**Zoning Commission**

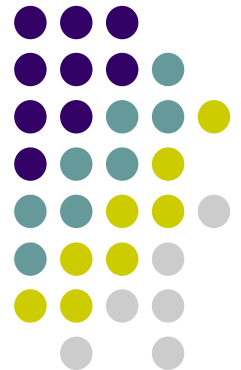
**Board of Zoning Appeals**

**Zoning Inspector**

**Comprehensive Plans**

**General Welfare Zoning**

**Case Law and Statutory Developments**



The following information has been compiled from various sources. Original information is from various handouts and materials provided during workshops and trainings. Material was provided by state and local sources, including **Brosius, Johnson & Griggs LLC and the Delaware County Prosecutor's office**. Every effort has been made to ensure the accuracy of the information at the time of this printing but regulations and practices change over time. Changes in the law or updated judgments can alter the interpretations provided.

**This handbook is not a replacement for independent legal advice.** Please send any comments to the Delaware County Regional Planning Commission at 740-833-2260 or e-mail [ssanders@co.delaware.oh.us](mailto:ssanders@co.delaware.oh.us).

The Ohio Revised Code as quoted is accurate as of the day of this document's creation. In some ORC quotes, paragraph formatting has been changed to improve readability. References to legal cases have been simplified as well. More information is available on these cases by request.

**Delaware County Regional Planning Commission**

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# Zoning Commissions and Boards of Zoning Appeals *an Overview*



*Since a township is a creature of statute, townships have only those powers expressly conferred upon them by statute or those necessarily implied therefrom.  
Trustees of New London Township v. Miner 26 Ohio St. 452 (1875).*

## Introduction

Participation and administration of a township **Zoning Commission, Board of Zoning Appeals** or **zoning staff** is an important public role. Citizens offer valuable time, often for little or no financial compensation. In return, each position is required to take on the responsibility of representing the local community. The structure that allows this civic involvement is a legal one with limitations and processes that must be followed.

**Due process** is the principle that the government must respect all of the legal rights that are owed to a person according to the law. Due process holds the government subservient to the law of the land, protecting individual persons from the state. In that light, it is of utmost importance that the processes defined in the Ohio Revised Code (ORC) are followed by any organization that receives its authority from the state code.

# Purpose of this document

The purpose of this manual is to make you a better representative for your community. Above all else, **Know Your Role and Rationalize Your Decision** (say “why” and have a reasonable basis)

**Notice:** Notice should be adequate and timely. It should be reasonably calculated to apprise interested parties of a proposed action and afford them an opportunity to present their objections. The average person must be able to understand the notice. It must allow sufficient time for interested parties to prepare. *See specific notice requirements within this document.*

**Opportunity To Be Heard:** All parties interested in a proposed action must have the opportunity to be heard and present evidence to support their position. Hearings must be open to the public.

**Full Disclosure:** All parties must have full access to information, statements and evidence relied upon by decision-makers to make their decision. “Ex parte” communications should be avoided. Avoid acting on information received at the last minute.

**Unbiased Decisions:** The decision maker should be clear of bias or prejudice. Conflicts of interest or apparent conflicts of interest must be identified, with abstentions from voting if appropriate.

**Timely Decisions:** Decisions should be made within a reasonable period of time. The decision-maker must avoid having the process used as a delaying tactic.

**Findings:** Findings are the legal “footprints” that should be left in administrative proceedings to explain how the decision-maker progressed from the facts through established policies to the decision. Written documentation should reflect:

List of all facts (documents, exhibits, testimony, etc.);

List of standards;

Weighing of evidence;

Determination of compliance; and

The decision with any conditions or reflections.

**Complete Records:** A full and clear record must be kept of the proceedings, including not just the deliberation of the decision-makers, but also all evidence which is offered and relied upon by the decision-makers.

**Clear Rules:** Rules for the proceedings should be set out clearly in advance and followed. Bylaws may be reviewed and updated when necessary.

## Township Authority to Zone

**This statute contains several basic concepts which underlie any township zoning resolution.** ORC 519 sets out the powers of townships in relation to zoning.

A township zoning resolution must be done in accordance with a “comprehensive plan.”

The statute specifically contains those matters which are subject to zoning regulation, namely the “...location, height, bulk, number of stories and size of buildings and other structures...percentages of lot areas which may be occupied, set back building lines, sizes of yards, courts and other open spaces, the density of population, the uses of buildings and other structures...and the uses of land for trade, industry, residence, recreation or other purposes.”

Finally, although township zoning regulations may differ from district to district, the regulations must be uniform for each particular class or kind of building or other structure or use throughout a particular district or zone.

Zoning has been defined as the division of a community into districts and the regulation of buildings and structures according to their construction and the nature and extent of their use, or the regulation of land according to its nature and uses. **In other words, zoning is concerned with “land use” as opposed to “land ownership.”**

Zoning is an exercise of the police power and must be justified on the basis of promoting the public **convenience, comfort, prosperity, or general welfare**. The Ohio Constitution vests the “police powers” of the State in the general assembly and **ORC Chapter 519** constitutes a delegation of a portion of those police powers to the township.

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*If you are making new law, it is a legislative act.  
If you are determining someone’s rights, it’s quasi-judicial and appealable*

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# Limitations of Power

Since the power to zone is a creature of statute, there are many limitations imposed on this power.

## Constitutional limitations

Zoning regulations must be reasonable. Regulations which are found to be unreasonable and arbitrary constitute an unconstitutional taking of property without due of process of law.

Since zoning is a legislative function, courts traditionally will not question the expediency, advisability, or wisdom of the legislation.

Courts can determine whether zoning regulations are so unreasonable and arbitrary as to be unconstitutional. **However, zoning regulations are presumed valid and any illegality must be plain, apparent, and beyond debate.** In other words, there is presumption of constitutionality attached to zoning regulations. Since zoning regulations are a weakening of property rights, they are strictly construed in favor of the property owner.

The constitutionality of a zoning provision may be **challenged** in one of two ways.

First, whether the zoning provision is clearly arbitrary and unreasonable and without substantial relation to the public health, safety, morals or general welfare of the community. (Must be shown “**beyond fair debate.**”)

Second, does the zoning provision deny the property owner of **all economically viable use** of the land (i.e. **taking**).

## Statutory limitations

Since the power of a township to adopt and administer a zoning resolution is a specific statutory grant of authority, a township cannot enact regulations which are in conflict with applicable statutes. ORC 519 limits the ability of a township to regulate certain types of uses:

1. Townships may not force discontinuance of a **lawful nonconforming use** (meaning a lawful use existing at the time of the enactment of the zoning resolution). In addition, the zoning resolution **must** provide for the completion, restoration, reconstruction, extension, or substitution of nonconforming uses upon reasonable terms. (ORC 519.19)



2. Zoning resolutions must classify **outdoor advertising** as a business use and must permit such advertising in all districts zoned for industry, business, or trade, or lands used for agricultural purposes. (ORC 519.20)
  3. Townships may not prohibit the use of land for **agricultural purposes** or the construction or use of buildings or structures **incidental** to the agricultural land use on which the buildings or structures are located. However, townships may regulate “agriculture” in any **platted subdivision** or in any area consisting of 15 or more lots approved under ORC 711.131 that are contiguous to one another, or some of which are contiguous to one another and adjacent to one side of a dedicated public road, and the balance of which are contiguous to one another and adjacent to the opposite side of the same dedicated public road. No authority to regulate agriculture on lots greater than 5 acres. (ORC 519.21)
  4. In districts zoned for agricultural, industrial, residential, or commercial uses, townships may not prohibit the use of any land for a **farm market** where 50% or more of the gross income received from the market is derived from produce raised on farms owned or operated by the market operator in a normal crop year. Townships **may** regulate factors such as the size of the structure, size of parking areas that may be required, setback building lines, and egress or ingress, where such regulation is necessary to protect the public health and safety. (ORC 519.21)
- Townships may also regulate factors pertaining to **agritourism**, such as size of the structure used primarily for agritourism, size of parking areas that may be required (but not requiring that they be improved in any manner), setback building lines for structures used primarily for agritourism, and egress or ingress where such regulation is necessary to protect health and safety. (ORC 519.21)
5. Except for **telecommunications towers** located in an area zoned for residential use, townships may not regulate the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any buildings or structures of any **public utility or railroad**. (ORC 519.211)
  6. Townships may not prohibit the sale or use of **alcoholic beverages** in areas where the establishment and operation of any retail business, hotel, lunchroom, and restaurant is permitted. (ORC 519.211)

7. Townships may not prohibit **permanently-sited manufactured homes**. (ORC 519.212)
8. Townships may regulate **small wind farms**. (ORC 519.213)

## Questions for defensible decision-making:

**Legitimate Public Interest:** Does the regulation advance a legitimate public interest? Many zoning regulations have the intent and effect of accomplishing results that are not legitimate public policy objectives.

**Is the regulation a reasonable way to accomplish that public interest?** There may be many ways to accomplish a certain objective, but one must balance public interest and private interest. The particular regulatory approach should be reasonable in light of this balancing.

**Can the relationship between the regulation and public interest be documented?** A regulatory body should be able to show how the particular zoning regulation advances the public interest. Typically, this is best accomplished by ensuring that zoning decisions are made in accordance with a land use plan. See discussion of findings below.

**Does the regulation allow a reasonable economic use of property?** Again, the public interest being served by the regulation must be balanced with the private interests such that there is some reasonable use of the property possible under the zoning regulation.

**Is the regulation fairly applied?** Generally speaking, similarly situated property should be regulated equally. If not, care should be taken to document legitimate reasons as to why this is not the case.

A court will be reluctant to overturn a decision that is **well reasoned, supported by valid planning analysis, allows some reasonable use of the property, and was fairly made**. Regardless of whether you are approving or denying a development request, the reasonableness and fairness of your decisions are what is critical.

# Zoning Commissions

## What is Rezoning?

Rezoning can be defined as a **legislative change of the existing zoning regulations**. The procedure for a rezoning is statutory and the procedure for townships is governed by ORC 519.12. Although the revised code sets forth the procedure, it does not establish the guidelines for determining the validity of a rezoning decision. Before discussing what factors a township zoning commission should consider and what challenges can be made to the rezoning decision, it is important to look at the purpose behind zoning.

The main purpose behind zoning is to protect the **general health, safety, and welfare of the community**. A governmental body is vested with these “police powers” in order to protect the community at large. Zoning is also used to facilitate the orderly development of a particular area. Although a property owner has a right to use his property, this right is subordinate to the police powers and general good of the community. There are, however, many challenges which a property owner can raise so as to protect his property.

Rezonings and amendments allow townships to change and grow with the times. This prevents the township and the residents from being forever limited in the use of property in the township. In addition, it allows the township to address the problems of particular property owners without being forced to draw a new comprehensive plan. The zoning entity is therefore vested with the authority to determine zoning questions.

Zoning decisions made by the board are presumed to be valid. *Brown v. Cleveland*.

In order to be found unconstitutional, it must “be beyond fair debate that the zoning classification **prohibits the economically viable use** of land, without substantially advancing legitimate interests in health, safety or welfare of the community.” *Columbia Oldsmobile, Inc. v. Montgomery*.



This is one of the tests that is applied by courts of Ohio. As a result, courts will look at the test as two parts. First, does the regulation **prohibit the reasonable economic use** of the property? Second, the court will ensure that the regulation **benefits the health, safety, and welfare** of the community. The court will then make certain that the decision was **not arbitrary, capricious or unreasonable**.

## The Zoning Commission

ORC 519.04 governs creation and composition of Zoning Commission, providing for **five members** and **two alternates**.

Establish rules for the seating of alternates. If a case is continued, the alternate should be seated with the case. If different members are available for a continued meeting, they should identify that they have read the minutes and understand the issues. The applicant may be asked if they agree to allow different members to attend.

If a meeting has only four members, applicants should be alerted that three votes are still needed (depending on the established rules).

Zoning Commission usually acts in a **legislative** capacity.

Rezoning context.

Administrative capacity.

### ORC 519.05 defines the rules for organization and meetings.

The Zoning Commission is required to **organize** and adopt **rules** in accordance with the zoning resolution.

Must keep **record of actions and determinations**.

The **Sunshine Law** (ORC 121.22) regulates actions of the Commission.

Cannot meet in executive session.

Must, by rule, establish a reasonable method whereby persons can determine the time and place of **Regular Meetings** and the time, place and purpose of a **Special Meeting**. This also includes rules governing **Emergency Meetings**.

## Zoning Amendment Process

Amendments to a Zoning Resolution, including Map Amendments, may be initiated in one of three ways:

By motion of the **Zoning Commission**.

By the passage of a resolution by the **Board of Trustees**. If the board of trustees initiates an amendment to the zoning resolution, it shall, upon passage of such a resolution, certify it to the township zoning commission.

By the filing of an application for an amendment by one or more **owners or lessees** of property within the area proposed to be changed or affected by the proposed amendment with the township zoning commission. In this case, the trustees may require the owner or lessee to pay a fee for applications to amend the zoning resolution in order to defray the cost of advertising, mailing, and other expenses. If a fee is required, it shall be required generally for each application.

**Setting the Public Hearing** Upon the adoption of a motion, or the certification of a resolution, or the filing of an application, the Zoning Commission sets a date for a public hearing.

The public hearing shall be **not less than 20 nor more than 40 days** from the date of the certification of the resolution, or the date of adoption of a motion, or the date that the application was filed.

Notice of the public hearing must be given by the commission by one publication in one or more newspapers of general circulation in the township at least **10 days before the date of the hearing**.

**Notice: 10 or fewer parcels** If the proposed amendment intends to rezone 10 or fewer parcels, **written notice of the hearing must be mailed** by the Zoning Commission, by first class mail, **at least 10 days before the date of the public hearing** to all owners of property **within and contiguous to and directly across the street from** the area proposed to be rezoned to the owners as appearing on the Auditor's current tax list. Failure of delivery does not invalidate any such amendment. In addition to the time, place and date of the hearing, the published and mailed notices must also contain the following information:

The name of the township zoning commission that will be conducting the hearing;

A statement indicating that the motion, resolution, or application is an amendment to the zoning resolution;

A list of the addresses of all properties to be rezoned by the proposed amendment and of the names of owners of those properties, as they appear on the Auditor's current tax list;

The present zoning classification of property named in the proposed amendment and the proposed zoning classification of that property;

The time and place where the motion, resolution, or application proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the hearing;

The name of the person responsible for giving notice of the hearing by publication, by mail, or by both publication and mail;

A statement that, after the conclusion of the hearing, the matter will be submitted to the board of township trustees for its action;

**Notice: more than 10 parcels** If the proposed amendment alters the **text of the zoning resolution** or rezones or redistricts more than ten parcels of land, then **only a published notice is required**. However, this notice, in addition to the time, place and date of the hearing, must contain the following information:

The name of the township zoning commission that will be conducting the hearing on the proposed amendment;

A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the hearing;

The name of the person responsible for giving notice of the hearing by publication;

A statement that, after the conclusion of the hearing, the matter will be submitted to the board of township trustees for its action;

Any other information requested by the commission.

**Notice to Regional Planning Commission** Within five days after the adoption of a motion, or the certification of a resolution, or the filing of an application for an amendment to the zoning resolution, the zoning commission must transmit a copy, together with the applicable text and map

pertaining to the amendment, to the regional planning commission.

The regional planning commission is required to recommend the approval or denial of the proposed amendment or the approval of some modification thereof and to submit its recommendation to the zoning commission. The commission shall, in turn, consider the recommendation at its public hearing.

**Zoning Commission Recommendation** Within 30 days after the public hearing, the zoning commission shall recommend the approval or denial of the proposed amendment or the approval of some modification thereof. It shall then submit its recommendation, together with the application, motion, or resolution, the text and map pertaining thereto, and the recommendation of the county or regional planning commission, to the board of trustees.

**Setting the Trustees' Hearing, 10 or fewer parcels** Upon receipt of the recommendation, the trustees set a time for a public hearing on the proposed amendment. The date for the public hearing shall be not more than 30 days from the date of the receipt of the recommendation from the zoning commission.

Notice of the public hearing shall be given by the trustees by one publication in one or more newspapers of general circulation in the township at least 10 days before the date of the hearing. (A mailed notice is not required.) If the proposed amendment intends to rezone or redistrict 10 or fewer parcels of land, the published notice must, in addition to the time, place and date of the hearing, contain the following information:

The name of the board of township trustees that will be conducting the hearing;

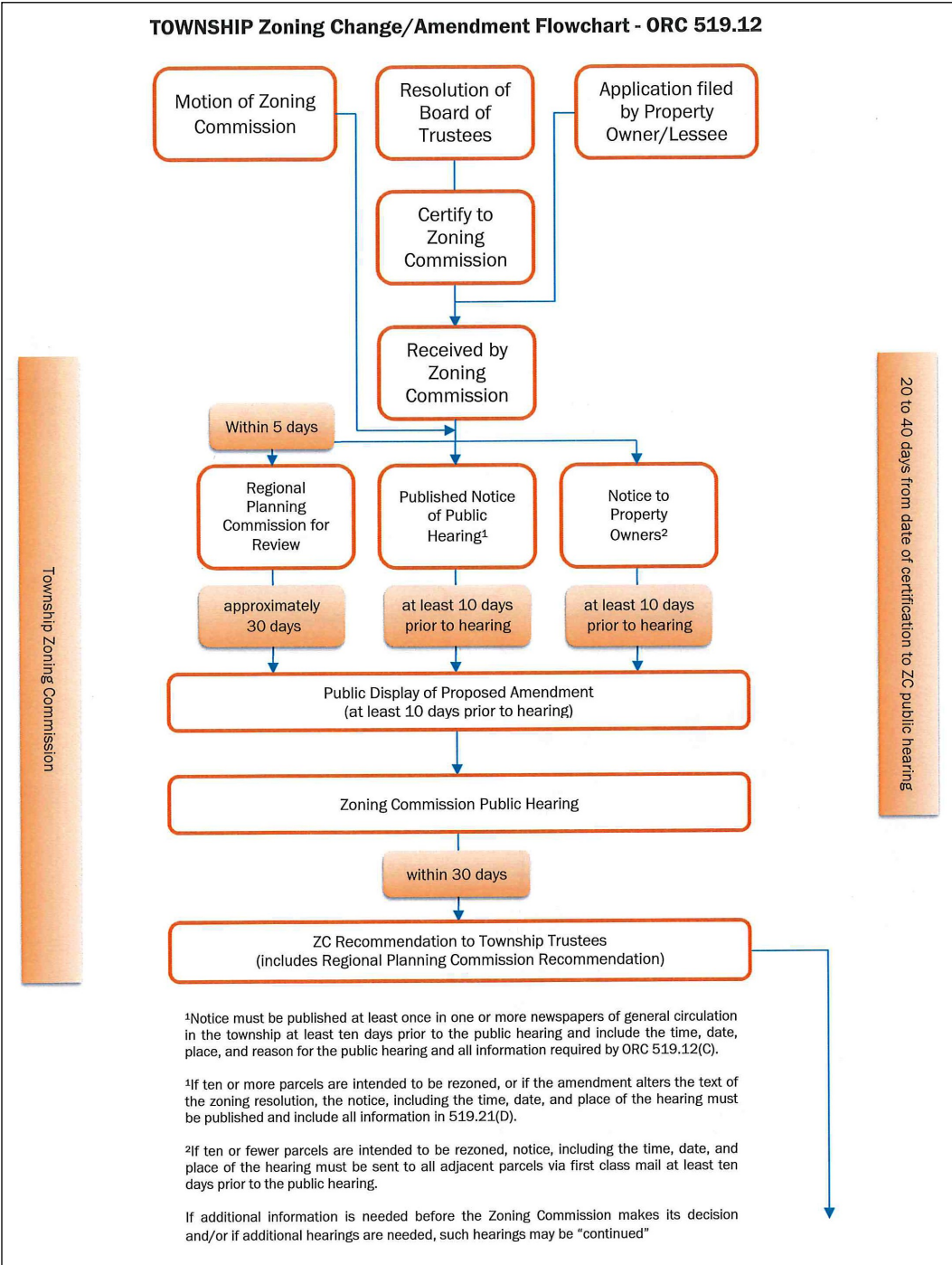
A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of owners of those properties, as they appear on the Auditor's current tax list;

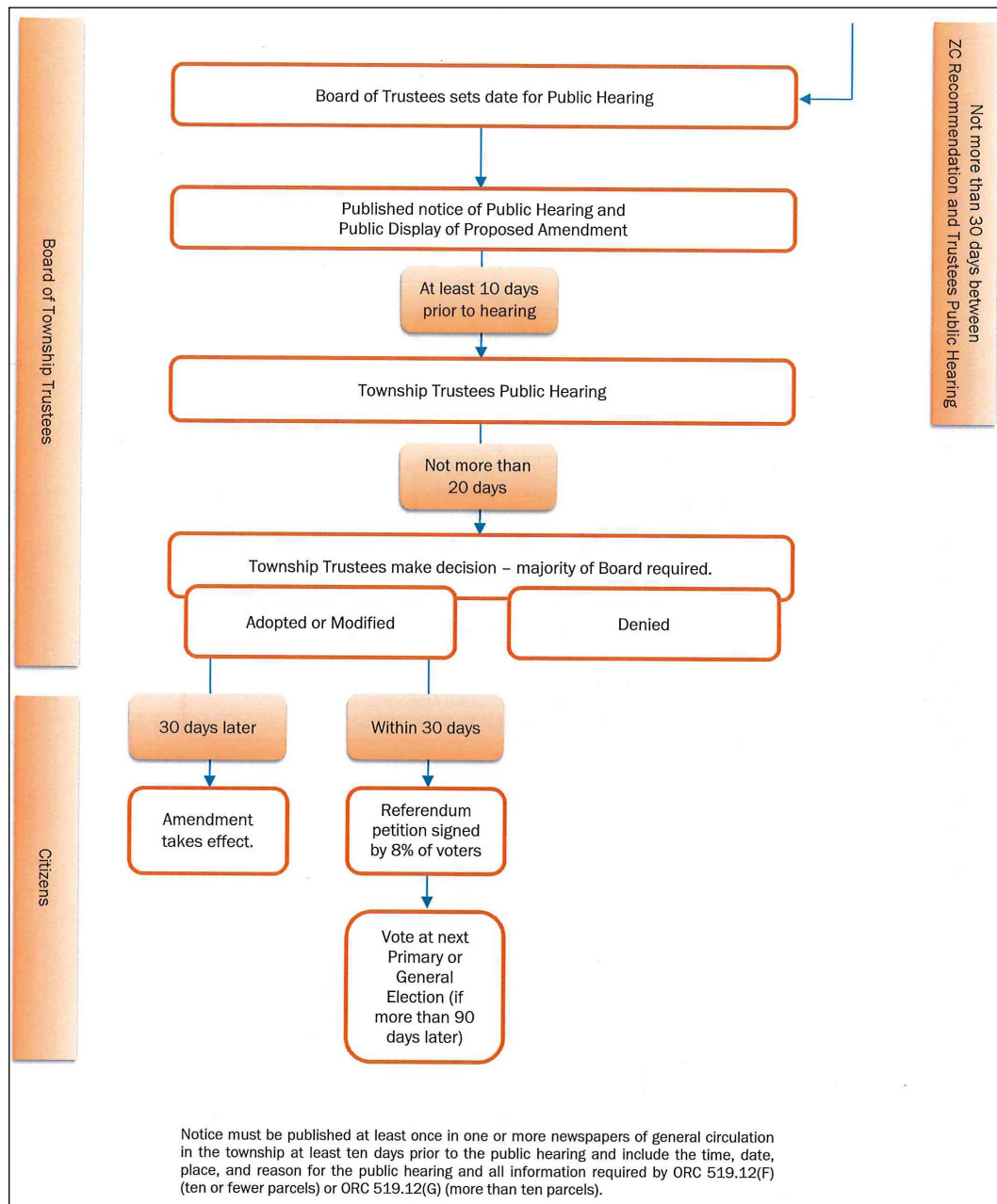
The present zoning classification of property named in the proposed amendment and the proposed zoning classification of that property;

The time and place where the motion, application, or resolution proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the hearing;

*The flowchart on the following pages summarizes the zoning amendment process.*







The name of the person responsible for giving notice of the hearing by publication, by mail, or by both publication and mail;

Any other information requested by the board.

**Setting the Trustees' Hearing, more than 10 parcels** If the proposed amendment alters the text of the zoning resolution, or rezones or redistricts more than ten parcels of land, the published notice must, in addition to the time, place and date of the hearing, contain the following information:

The name of the board of township trustees that will be conducting the hearing on the proposed amendment;

A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the hearing;

The name of the person responsible for giving notice of the hearing by publication;

Any other information requested by the board.

**Trustees adopt or deny** Within 20 days after the public hearing, the trustees shall either adopt or deny the recommendations of the zoning commission or adopt some modification thereof. If the trustees deny or modify the zoning commission's recommendation, the **majority vote** of the board shall be required. In the event the trustees fail to achieve a majority vote, then the decision of the Zoning Commission stands.

**Effective without referendum** An amendment adopted by the trustees becomes effective 30 days after the date of the adoption unless within 30 days after such adoption, a referendum petition is presented to the board.

An amendment is adopted by the trustees at the time the trustees vote to approve the amendment.

**Filing with Recorder and Planning Commission** Within five working days after an amendment's effective date, the board of township trustees shall file the text and maps of the amendment in the office of the county recorder and with the Regional Planning Commission.

# **Zoning Map Change Checklist**

## **Cover Letter & Checklist**

Date of Request or Initiation (stated in cover letter)

Date of Public Hearing (stated in cover letter)

Township point of contact and contact information for zoning amendment (stated in cover letter)

## **Description of Zoning Parcel Amendment Change(s)**

**Parcel Number(s)**

**Copy of Completed Zoning Amendment Application**

**Applicant's Name and contact information**

**Current Zoning Designation**

**Proposed Zoning Designation**

**Current Land Use**

**Proposed Land Use**

**Acreage**

**Copy of Zoning Text associated with proposed district(s)**

**Contiguous and adjoining Parcel Information, including Zoning District(s)**

**Any other supporting documentation submitted by applicant**

# **Conducting the Rezoning Hearing**

**Call hearing to order and establish ground rules which include the following:**

1. Order of presentation (staff presentation of facts, Planning Commission recommendations, applicant presentation, public comments, Zoning Commission questions, etc.).
2. Number of speakers and time limitations.
3. Formality (Recording, Podium, Sign-in sheet).
4. Multiple meetings (How will they be handled, time-frame, etc.).

## Consider Appropriate Issues

*(items covered further within this document)*

1. Comprehensive Plan.
2. Other plans and factors.
3. Testimony - real or speculative.
4. Schools and traffic.
5. The **need** for a use is not a reason to approve or deny. The effort to **increase** or **decrease** competition is not a valid reason.
6. Environmental protections.

## The Decision

- Majority typically rules, but it depends on rules of procedure.
- Rules must determine what happens in a tie vote.
- The motion — Engage in discussion, articulate a legitimate basis for the motion.
- Trustee modification is allowed, but totally new things should not be added to an amendment. It must be related to the thing that is being changed — beware of “Conditions.”

*See Model BZC Rules of Procedure in appendix*

## Factors to be Considered

The question as to what factors a township zoning body should consider is still not finalized. In most cases it will depend upon the particular facts and circumstances of the unique situation. It is extremely important that a board take great care not to be **arbitrary, capricious, or unreasonable** when making its decision. Some factors, however, should be considered in every zoning case. The Supreme Court of Kansas, in *Golden v. City of Overland Park* (1978), listed factors that should be considered when making a rezoning decision. These factors include:

- 1) The character of the neighborhood;
- 2) The zoning and uses of properties nearby;
- 3) The suitability of the subject property for the uses of which it has been restricted;
- 4) The extent to which removal of the restrictions will detrimentally affect nearby property;
- 5) The length of time the subject property has remained vacant as zoned; and
- 6) The relative gain to the public health, safety, and welfare by the destruction of the value of plaintiff's property as compared to the hardship imposed upon the individual landowner.

These factors are not delineated in any one Ohio case. However, the factors have been considered in Ohio cases. For instance, many Ohio cases look at the surrounding property. See *Gerijo, Inc. v. Fairfield*, (“use of the classification ... was specifically tailored to meet the needs of areas surrounding Gerijo’s property”). *Franchise Developers, Inc. v. Cincinnati*, (considering aesthetics of the community).

Courts have also considered the suitability of the property to the current restrictions. *Smythe v. Butler Township* (Property could be used for agriculture purposes under the current zoning and fact that property may be more valuable zoned for residential purposes is alone insufficient to justify a rezoning).

Finally as mentioned above, courts in Ohio look to see if the zoning regulations advance the health, safety, and welfare of the community. *Columbia Olds* at 243. The benefit of the health, safety, and welfare must outweigh the loss which the restrictions impose upon the landowner. *Curtis v.*

*Cleveland*. The factors listed in the Golden case above are a good indication of some of the general considerations in the rezoning process.

## Challenges to Zoning Decisions

In addition to the factors above, courts can also consider various minor issues. These considerations include traffic (see below), aesthetics (see below) and environmental and ecological concerns (*Smythe* at 621). Furthermore, courts may look at emergency access, road capacity, density, flooding, sewage system, ground water, municipal revenue, property values and the comprehensive plan. See *Smythe supra*, *Williott V. Village of Beachway*.

Once the rezoning decision has been made, there are many challenges which may be raised against the decision. Remember that a zoning ordinance may be valid on its face, but unconstitutional as applied to a particular property. The primary challenge is that the board's decision was **arbitrary, capricious** or **unreasonable**. This is the prevailing standard of review used by courts in determining the validity of a challenge to a rezoning request.

The second major challenge to a rezoning decision is that it does not **serve a proper purpose** under the police power or does not carry out the objectives of the zoning enabling act.

As illustrated above, the courts in Ohio specifically look at the police powers as part of the test to determine the validity of a zoning regulation. This is then coupled with the “**arbitrary and capricious**” test.

Finally, the court will look to see if there is a unconstitutional **taking** without just compensation. This challenge is normally raised in the context of a denial of a rezoning request. A property owner will argue that the denial deprived him or her of the use of the property. The property owner does have the right to use the property but not to its **highest and best use**. A township can impose limitations on the use of the property, so long as it does not render the property useless. The mere fact that the property owner will not be able to earn a higher return on the property is insufficient to result in an unconstitutional taking. See *Ketchel y. Bainbridge*.

The rezoning decision can also be challenged as being in violation of the **equal protection** clause. This argument is raised where a rezoning board allows or has allowed other property owners to utilize their property in a manner similar to the rezoning request. In addition, the argument can be raised to prevent a governmental body from practicing exclusionary zoning.

As mentioned, the procedure for enacting a zoning ordinance or rezoning

property is statutory in nature. A challenge may also be raised if the township **fails to follow these procedures.**

*\*\* See ORC 505.07, Townships to Settle Zoning Litigation as Part of Settlement*

## Traffic

Controlling traffic flow and street congestion are legitimate concerns to be considered in zoning decisions. *Roban, Zoning and Land Use Controls, Pearson y. City of Grand Blanc (1992)*. Under the police powers, safety hazards such as traffic congestion may be regulated. *Columbia Olds*. The Court of Appeals in the *Smythe* case also held that traffic considerations are related to the protection of the safety of the community. *Id.*

There is little debate that traffic is a valid consideration; however, the weight given to the consideration will vary. For instance, if the traffic will pose a safety hazard, then it is within the police power of the government to eliminate the traffic congestion. *Brown*. The use of zoning to control traffic congestion, however, is not favored by the courts. *10 0 Jur 3d 371, Buildings, Zoning and Land Control §168*. Furthermore, traffic considerations alone will not justify a particular zoning restriction. *Smythe, Columbia Olds*. If traffic regulation is part of a comprehensive plan then the consideration is more important.

Cases from other states also vary as to the amount of weight to be given to traffic considerations. Some agree that traffic alone is insufficient to deny a rezoning. *Marietta v. Tranton Corr. (1984) (Evidence that a rezoning decision would increase traffic and change property character was insufficient to set aside rezoning)*, *Lindsey v. Fayetteville (1974). (Excess traffic alone is not sufficient ground to justify a zoning change, traffic conditions are important factors)*.

In some cases, however, **the increase in traffic coupled with other factors has been found to be sufficient to deny a rezoning request.** *Pearson supra* (court considered traffic problems, over-commercialization and the relationship between traffic and neighborhood deterioration).

The township may require a statement by the **County Engineer**, identifying traffic impacts and mitigation as part of those impacts. The duly-adopted Thoroughfare Plan will identify improvements to existing roads and may indicate the need for new roads or rights-of-way to be dedicated as development occurs.

To summarize, traffic is a valid consideration when determining a rezoning. Traffic alone, however, is insufficient to deny a rezoning request. *Columbia*

*Olds.* A township should consider the **increase** in traffic that would be generated by the rezoning, but this consideration is only part of a thorough decision-making process. The board must look at the circumstances as a whole and how this decision will promote the **health, safety, and welfare** of the community. This is then balanced against the detriment incurred by the land owner.

*See Models for the Zoning Amendment Process in appendix*



# BOARD OF ZONING APPEALS

## Creation and composition of BZA

The statute defines the BZA as five members and two alternates, all residents of the unincorporated area of the township. (ORC 519.13).

Establish rules for the seating of alternates. If a case is continued, the alternate should be seated with the case. If different members are available for a continued meeting, they should identify that they have read the minutes and understand the issues. The applicant may be asked if they agree to allow different members to attend.

If a meeting has only four members, applicants should be alerted that three votes are still needed (depending on the established rules).

The BZA “usually” acts in a **quasi-judicial** capacity.

- BZA is acting like a **judge** — your decisions are appealable.
- **No outside conversations** or contact with applicants.
- Run the meeting like a **civil trial**, regardless of significance.
- BZA is a public body and its meetings are **open to the public**.
- **Private Deliberations:** The BZA may recess to discuss something in private, but it is **not** an executive session. (“Motion to recess into private deliberations for the purpose of considering the merits of the application.”)
- Private Deliberations of the BZA may include legal counsel but should not include the **Zoning Inspector** since their testimony in



a case needs to be part of the open session.

- All **decisions** should be made in an open session.

## **Rules Governing Organization and Meetings** (ORC 519.15)

- The BZA is required to organize and adopt **rules in accordance with zoning resolution**.
- Meetings shall be held at the call of the Chairperson and at such other times as the BZA shall determine.
- Chairperson (or, if absent, the acting chairperson) may administer oaths.
- BZA may compel the attendance of witnesses.
- BZA must keep record of actions and determinations and file with Board of Trustees.
- A public body must, by rule, establish a reasonable method whereby persons can determine the time and place of regular meetings and the time, place and purpose of a special meeting.
  - Special meetings.
  - Emergency meetings.

## **Jurisdiction of the BZA**

A BZA has jurisdiction over four (4) areas (ORC 519.14)

1. **Hear appeals;**
2. **Grant conditional zoning** certificates;
3. **Authorize variances;** and
4. **Revoke an authorized variance or conditional zoning certificate for the extraction of minerals**, if any condition of the variance or certificate is violated. (Surface Mining – ORC 519.141)

## Hearing Appeals

A BZA is authorized to hear and decide **Appeals** from the official in charge of the enforcement of the zoning resolution (Zoning Inspector).

Appeals to the BZA must be taken within 20 days after the administrative officer's decision by filing, with the officer and with the board of zoning appeals, a notice of appeal specifying the grounds. (ORC 519.14)

- Appeals may be taken by any person “aggrieved.” Not defined in the statute, but includes the applicant and anyone adjacent to and across the street. (“Special Harm” must be shown for anyone outside that group—Trustees and HOAs generally do not have standing.)
- The BZA is required to decide the appeal within a “reasonable period of time.” Not defined in the statute — check your resolution.
- The BZA is required to give at least ten days prior written notice of the hearing to the “...parties in interest.” (Code may include a distance.) Notice by publication is also required.

## Conditional Uses

Conditional zoning certificates (often known as conditional uses) are not “permitted” uses. Rather, conditional uses are uses which may be permitted, subject to the issuance of a special permit. A use is typically categorized as a conditional use in recognition of the impact that use may have upon the surrounding area.

A BZA's power to grant conditional zoning certificates is no greater than that vested in it by the township's zoning resolution. Stated differently, **if a zoning resolution does not provide for conditional uses**, then a board of zoning appeals is **without authority to grant them**.

The decision whether or not to grant an application for a conditional use permit is administrative in nature. Consequently, such a decision is made in an adjudicatory, as opposed to a legislative, setting.

If an applicant's request for a conditional use permit meets all technical requirements of the zoning resolution, the application may still be denied. *Laurie Sue Groff-Knight, et al. v. BZA of Liberty Township (2004)*.

Conditional use permits for surface mining (ORC 519.141)

## Variances

**Definition**—In *Nunamaker v. Board of Zoning Appeals* (1982), 2 Ohio St.3d 115, 118, the Supreme Court provided the following definition of a variance:

“A variance authorizes a landowner to establish or maintain a use, which is prohibited by the zoning regulations. Thus, a variance results in a **deviation** from the literal impact of the ordinance or resolution and may be granted upon the showing of **practical difficulties** or **unnecessary hardship**. Stated differently, a variance seeks permission (or, in some cases, forgiveness) to do something which is prohibited.”

There are two types of variances: a **use variance** and an **area variance**. In the case of either a use or area variance, the applicant bears the burden of proving that the variance should be permitted.

In 1984, the Ohio Supreme Court established two separate legal standards for variances. The Supreme Court noted that the standard for granting a variance which relates solely to **area requirements should be a lesser standard than the unnecessary hardship standard applied to use variances**. For area variances, it is sufficient to show “practical difficulties.” The court justified the distinction by noting that when “... the variance is one of area only, there is no change in the character of the zoned district and the neighborhood considerations are not as strong as in a use variance.” The court went on to note that the self-imposed hardship rule will not necessarily preclude the granting of an area variance under the practical difficulty standard *Kisil v. Sandusky* (1984).

## The Use Variance

A **use variance** permits property to be **used** in a way not expressly or implicitly allowed by the applicable zoning code. *Brown v. Painesville Twp. Bd. of Zoning Appeals* (2005).

When determining the merits of a request for a use variance, the test is whether the particular zoning code creates an “**unnecessary hardship**” with respect to the use of the property. An unnecessary hardship exists where the hardship is unique to a particular property, and where the uses permitted by the zoning ordinance are not economically feasible. A demonstration that the property could be put to a more profitable use, standing alone, is insufficient

to establish unnecessary hardship. When the variance is one of area only, **there is no change in the character of the zoned district** and the neighborhood considerations are not as strong as in a use variance.”

The factors to be considered in determining whether or not “unnecessary hardship” exists in the case of a use variance are varied. However and unlike the practical difficulty standard, failure to comport with any one standard established for a use variance will be fatal. When reviewing use variances, courts have utilized the following standards:

1. Is the property **unsuitable for any of the uses permitted** by the zoning resolution? Simply because property may be put to a more profitable use does not, in and of itself, establish an unnecessary hardship where less profitable alternatives are available within the zoning resolution. *Brown v. Painesville Twp. Bd. of Zoning Appeals* (2005).
2. Does the variance result from **conditions unique to the property** in question and not as a result of actions by the property owner? This is the so-called “self-imposed hardship rule.” Generally speaking, a person who purchases land with knowledge of the zoning restriction is said to have created his own hardship and is not entitled to a use variance to relieve such a condition. *Consolidated Mgmt., Inc. v. City of Cleveland* (1983).
3. Other factors include whether the variance is the **minimum necessary** to remove or prevent the offending condition; whether the variance would be **inconsistent with the spirit** and intent of the zoning resolution; and whether the variance is substantial. *Battaglia v. Newberry Twp. Bd. of Zoning Appeals* (2000).

Although there is little question as to the authority of municipalities to grant use variances, there is an issue as to whether or not counties and townships have this same authority. However, in *North Fork Properties v. Bath Township* (2004), the Bath Township Zoning Resolution **contained a provision prohibiting use variances**. Upon appeal, the court struck down the offending provision claiming that it was **inconsistent with the statutory scheme** set forth in ORC 519.14. In other words, the zoning resolution should not prohibit use variance requests.

A variance does not encompass the ability to change zoning schemes or correct errors of judgment in zoning laws. This action is within the purview of a rezoning. Despite this pronouncement, the distinction is sometimes blurred. In *Brady Area Residents Assn v. Franklin Township Zoning Board of Appeals* (1992), **the court determined that a request for 70 area variances affecting virtually every lot within a proposed subdivision was invalid**

because the variances effectively rezoned the property. Following this decision, the applicant filed suit against the township which resulted in a settlement agreement that conditioned the applicants' filing of a plat upon obtaining eight separate variances affecting 29 proposed lots, with these variances being approved by the board of zoning appeals. The homeowners' association again appealed.

In *Brady Area Residents Assn v. Franklin Township Zoning Board of Appeals* (2003), the court upheld the board of zoning appeals' decision granting the variances and rejected the argument that the variances were the functional equivalent of a rezoning. In distinguishing its previous decision, the court noted that the board of zoning appeals granted "... only eight separate variances to an allotment consisting of twenty-nine lots." (emphasis added.) In the court's opinion, the case did not resemble an across the board grant of variances which would result in a rezoning. Instead, the court stated its belief that the applicant was attempting to comply with already existing zoning resolutions through "... a minimal amount of variances."

## Area Variance

An **area variance** provides relief from the area requirements contained within a zoning code, such as setbacks, lot size, height, structure size, and the like. In theory, area variances do not involve uses, but rather structural or lot restrictions. *Stace Development, Inc. v. Wellington Township Board of Zoning Appeals* (2005).

In 1986, the Supreme Court outlined the factors to be considered in determining whether or not a property owner has encountered practical difficulty with respect to an area requirement.

While definitions of "practical difficulties" are often nebulous, it can safely be said that a property owner encounters practical difficulties **whenever an area zoning requirement (e.g., frontage, setback, height) unreasonably deprives him of a permitted use** of his property. The key to this standard is whether the area zoning requirement, as applied to the property owner in question, is reasonable.

The practical difficulties standard differs from the unnecessary hardship standard, because **no single factor** controls in a determination of practical difficulties. A property owner is not denied the opportunity to establish practical difficulties, for example, simply because he purchased the property with knowledge of the zoning restrictions.

The factors to be considered and weighed in determining whether a property

owner seeking an area variance has encountered **practical difficulties** in the use of his property [often referred to as the “**Duncan Factors**” based on the related Supreme Court case] include, but are not limited to:

1. Whether the property in question will yield a **reasonable return** or whether there can be any **beneficial use of the property** without the variance;
2. Whether the variance is **substantial**;
3. Whether the essential **character of the neighborhood** would be **substantially altered** or whether adjoining properties would suffer a **substantial detriment** as a result of the variance;
4. Whether the variance would adversely affect the **delivery of governmental services** (e.g., water, sewer, garbage);
5. Whether the property owner purchased the property **with knowledge of the zoning restriction**;
6. Whether the property owner’s predicament feasibly can be **obviated through some method other** than a variance;
7. Whether the **spirit and intent** behind the zoning requirement would be observed and **substantial justice done** by granting the variance.” *Duncan V. Middlefield (1986)*.

The factors listed by the Supreme Court are **non-exclusive**. The BZA must balance the significance of each factor. Generally speaking, at least four factors are recommended, though some courts may allow only three. A deviation of 25% or more is accepted as substantial.

**Minority View**—A majority of the appellate courts have held that the practical difficulties test for an area variance applies to townships. There are, however, two districts which have rejected the practical difficulty standard for townships.

In the court in the **Twelfth Appellate District** held that the practical difficulty standard does not apply to variance requests at the township level. Instead, townships have the authority to grant variances only in those instances in which the zoning resolution causes **unnecessary hardship** to the land owner *Dsuban v. Union Twp. BZA (2000)*.

Similarly the court in the **Third Appellate District** rejected the practical difficulty standard as applied to townships (and, again,

presumably counties). The court reasoned that unlike municipalities, townships have no inherent police powers. Consequently, townships have only those powers delegated to them by statute or those which can necessarily be applied therefrom. Accordingly, since Ohio Revised Code Section 519.14(B) only authorizes the granting of variances from a township zoning resolution where "...a literal enforcement of the resolution will result in an unnecessary hardship," then the practical difficulty standard is never applicable to townships *Briggs v. Dinsmore Township BZA (2005)*.

## Conducting the Hearing

### Call hearing to order and establish ground rules which include the following

Order of presentation.

Formality (Recording, Podium, Sign-in sheet, Court Reporter).

Multiple meetings (How will they be handled, time-frame, etc.).

## Administering Oath

Individuals providing testimony should be sworn in individually rather than a mass swearing in of all those present. If a mass swearing is necessary, then each witness should be asked if they participated in the swearing in.

## Limiting Testimony

Allow all persons to testify.

Do not establish time limits for testimony. You may request audience not to be repetitive, and physically separate witness from audience by the use of a podium.

Allow for cross-examination.

## Sample hearing format

**Chair announces application**—number, applicant, location, and request.

**Swearing in of witnesses** “all people wishing to testify please stand and be sworn in.” “Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?”



*(Have all speakers confirm that they were sworn in, announce their name and address)*

**Zoning officer provides report.** (In an appeal, skip this portion.) Distribute photographs and/or show slides of subject. Describe existing use and give existing zoning classifications. The Zoning Office (also sworn in) presents information to the Board. Any exhibits should be marked for identification purposes. Review past actions to date, as applicable (Zoning Officer, Zoning Commission, Township Trustees, BZA)

**Applicant presents case.**

Chairperson asks if anyone in the **audience** would like to speak **in favor of the Application**.

Afterwards, ask if there is anyone in the **audience** who would like to **speak in opposition**.

In any testimony, the chair and board should be cautious of personal comments and information that is irrelevant to the issue, as well as any speculation on the part of the witness.

Applicant presents **rebuttal**, or **conclusion**.

**Board deliberates**, chair may ask for a **motion and second**.

When **preparing the decision**, understand the importance of “findings of fact and conclusions of law.”

**Chair asks for roll call, Secretary calls the roll call.**

## Reconsideration

A BZA has the inherent authority to reconsider its own decision. This ability only exists until the actual institution of a court appeal or until the expiration of the time for appeal.

## Judicial Review

Appeal to common pleas court (ORC 2506).

Standard of Review (ORC 2506.04). The court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of

substantial, reliable, and probative evidence on the whole record.

Importance of a complete and accurate record (ORC 2506.03). The court is confined to the record unless:

The transcript is incomplete;

The appealing party was not permitted to testify, offer evidence, examine, and cross-examine witnesses or offer a rebuttal;

Testimony was not given under oath;

The appealing party was refused the opportunity to use a subpoena; or

Conclusion of fact supporting the decision were not filed with the transcript.

Limitation on scope of review.

Standard of review and weighing the evidence.

(a) Establish a record.

(b) Findings of fact and conclusions of law.

## Res Judicata

The doctrine of res judicata (*an issue already decided by a court*) applies to decisions of a township board of zoning appeals. *Set Products, Inc. v. Bainbridge Township Board of Zoning Appeals* (1987).

Under the doctrine of res judicata, once an application for a variance has been denied, res judicata will bar subsequent variance applications unless the applicant can show a “change in circumstances.” *Set Products* at 263. A change in building size may amount to a “change in circumstance.” *Duncan v. Ravenna Township* (1996).

A property owner who fails to appeal a decision of a township board of zoning appeals to the Common Pleas Court is barred from raising arguments with respect to a complaint filed against the property owner based upon that zoning violation over one year following the owner’s failure to file such an appeal. *Rodney Ross v. Township Board of Trustees, et al.* (2004).

When a township filed a complaint against a property owner to enjoin a zoning violation, it was held that the property owner's arguments with respect to the zoning violation were barred by the doctrine of res judicata, in that the property owner failed to appeal the zoning officer's decision to the board of zoning appeals. *Prairie Township Board of Trustees v. Hay* (2002).

As a form of protection, **any official notice of zoning violation should include a statement at the bottom of the notice, that within 20 days the violation may be appealed to the BZA. If no such appeal is made, the violator will have no defense in future action.**

***See Appendix for Legislation Regarding the Creation and Function of a Board of Zoning Appeals  
And Model BZA Rules of Procedure***



# THE ZONING INSPECTOR

*“For the purpose of enforcing the zoning regulations, the board of township trustees may provide for a system of zoning certificates, may establish and fill the position of **township zoning inspector**, together with assistants as the board deems necessary, may fix the compensation for those positions, and may make disbursements for them. The township fiscal officer may be appointed secretary of the township zoning commission, secretary of the township board of zoning appeals, and zoning inspector, and the fiscal officer may receive compensation for the fiscal officers services in addition to other compensation allowed by law.” ORC 519.16*

## Zoning certificate required

“No person shall locate, erect, construct, reconstruct, enlarge, or structurally alter any building or structure within the territory included in a zoning resolution without obtaining a zoning certificate, if required under section 519.16 of the Revised Code, and no such zoning certificate shall be issued unless the plans for the proposed building or structure fully comply with the zoning regulations then in effect.” ORC 519.17

## Court Interpretations

The role of a township zoning inspector in the issuance of zoning permits is ministerial in nature, and actions that exceed zoning authority are deemed invalid and unenforceable. ORC 519.17 imposes a statutory duty not to issue or to revoke a zoning permit that does not fully comply with the zoning resolution. A zoning inspector acts beyond his/her authority in permitting a



known violation of a zoning resolution to continue. *Jeffrey Mann Fine Jewelers v. Sylvania Twp. Bd. of Zoning Appeals*, (2008).

ORC 519.24 does not explicitly or implicitly authorize a board of township trustees or a township zoning inspector to appeal a decision of the board of zoning appeals. A board of township trustees or a township zoning inspector may have standing to defend a decision of the board of zoning appeals; however, neither township trustees nor zoning inspectors may attack a decision of the board of zoning appeals. *Kasper v. Coury* (1990).

## **Actions instituted to prevent violations of zoning regulations**

The zoning inspector **enforces the township zoning resolution**. If a project meets all the requirements of the zoning resolution, it should be approved.

“In case any building is or is proposed to be located, erected, constructed, reconstructed, enlarged, changed, maintained, or used or any land is or is proposed to be used in violation of sections 519.01 to 519.99, inclusive, of the Revised Code, or of any regulation or provision adopted by any board of township trustees under such sections, such board, the prosecuting attorney of the county, the township zoning inspector, or any adjacent or neighboring property owner who would be especially damaged by such violation, in addition to other remedies provided by law, may institute injunction, mandamus, abatement, or any other appropriate action or proceeding to prevent enjoin, abate, or remove such unlawful location, erection, construction, reconstruction, enlargement, change, maintenance, or use. The board of township trustees may employ special counsel to represent it in any proceeding or to prosecute any actions brought under this section.” (ORC 519.24)

## **Practical Authority of Township Zoning Inspectors**

**Relationship with the Board of Trustees** — The zoning inspector is an employee hired by the trustees, which creates the need for a positive relationship. While the inspector is merely enforcing the zoning resolution, it is important to gauge the tone of enforcement. Townships will take a variety

of approaches, from those that look for violations to those that respond only to complaints. Ultimately, the trustees are looking for an inspector who follows the proper procedure in all aspects of the job.

**Relationship with the BZA —**

**Relationship with the Zoning Commission —**

## **Rights of Entry and Access for Zoning Inspectors**

### **Authority to inspect**

ORC 519.16 authorizes a township zoning inspector to conduct inspections on private property. 1973 OAG No. 73-116 based upon the decision of the United States Supreme Court in *Stare ex rel. Eaton v. Price*, (1960). The Eaton Court affirmed the constitutionality of a Dayton ordinance authorizing a housing inspector to enter, examine, and survey any property at any reasonable hour. The Eaton Court reasoned that the rights of a homeowner should be subordinate to the general health and safety of the community.

### **Limitations on authority**

The Ohio Attorney General has clarified that the right to enter property is limited by the fourth amendment of the United States Constitution in stating that: "...a township zoning inspector may not enter and inspect private property without a search warrant where the owner or occupant of the property does not give consent, unless there is an emergency, the property is open to the public, or the industry conducted on the property has a history of government oversight such that no reasonable expectation of privacy exists." OAG 1998-018,

Thus, a township zoning inspector may not enter upon private property for inspection of the property unless:

1. The owner of such property consents to the entry, or
2. The inspector has received an administrative search warrant,  
or
3. An exception applies:

- a. In cases of an emergency.
- b. If the property is open to the public.
- c. If no reasonable expectation of privacy exists because activity conducted on the property has a history of government oversight.

## **Court interpretations**

The township zoning inspector has a statutory privilege to go upon property in order to inspect it for zoning violations, “so long as the entry is not done for personal reasons or in bad faith.” A zoning inspectors presence on the property in order to abate a nuisance under ORC 505.86 is privileged where the township trustees declare by resolution that an emergency exists on the property. *Chalker v. Howland Twp, Bd. of Trustees (1995)*.

## **Zoning Office Procedures**

### **Value of an office procedures manual**

Leads to better consistency and fairness.

### **Handling legal advice**

Keep legal advice separate from other records.

### **Consequences of issuing a notice of zoning violation**

The 20-day appeal period begins when the actual zoning violation letter is sent. That doesn’t mean notification and warning letters cannot be sent first, but be consistent with all violations.

## **Keeping Records**

The following items are important to have access to:

- Every Zoning Resolution and Amendment with effective dates;
- Copies of approved Planned Districts (PUD) Development Plans;
- Records of property discussions, sorted by address;
- BZA Decisions, sorted by address and/or PUD Development Plan;
- Forms and Fee Structures;



Flowcharts and “How To” instructions for the public;  
Record of all Conditional Uses and Non-Conforming Lots/Uses;  
Visual record of all non-residential signs.

## Alternatives to Zoning Enforcement

**Unsafe Structures:** ORC 505.86; 505.73, property maintenance codes; 3707.01, board of health; 3781.11, building code; 3737.41, township fire code; 3767.13 and 3767.41, nuisance; 3929.86, fire loss.

**Junk Vehicles:** ORC 505.73, property maintenance codes; 3707.01, board of health; 505.87, nuisance weeds, vegetation and other debris; 4513.63-65, state motor vehicle storage; 505.173, regulation of junk motor vehicle storage; 505.871, removal of junk motor vehicle.

**Noise:** ORC 505.17 and 4513.221, regulation of motor vehicle noise; 955.221, dog control barking; 505.172, noise control at premises with D Permit or in areas zoned for residential use.

**Noxious Weeds:** ORC 505.73, property maintenance codes; 505.87; 5579.05; 5579.04; 5571.14, road right of way; 5543.14; 971.33; 3707.01, board of health.

**Other vegetation:** ORC 505.73, property maintenance code; 505.87; 3707.01, board of health; 5571.14, road right of way; 5543.14.

**Appointment of Township Administrator**—except as otherwise provided...the board of township trustees may appoint a township administrator, who shall be the administrative head of the township under the direction and supervision of the board and who shall hold office at the pleasure of the board...(ORC 505.031(A)(1))

**Powers and duties of Township Administrator (505.032)** - The township administrator shall, under the direction of the board of Township Trustees:

Assist in the administration, enforcement and execution of the policies and resolutions of the board;

Supervise and direct the activities of the affairs of the divisions of township government under the control or jurisdiction of the board;

Attend all meetings of the board where attendance is required by that body;

Recommend measures for adoption to the board;

Prepare and submit to the board such reports as are required by that body, or when advisable;

Keep the board fully advised on the financial conditions of the township, preparing and submitting a budget for the next fiscal year;

Perform such additional duties as the board may determine by resolution.

The board of township trustees may assign to such township administrator any office, position, or duties under its control; such office, position, and duties to be performed under the direction and supervision of the board and to be in addition to those set forth in this section.

# COMPREHENSIVE PLANS

*...in the interest of the public convenience, comfort, prosperity, or general welfare, the board by resolution, in accordance with a comprehensive plan, may regulate...*  
ORC 519.02

## The Comprehensive Plan is a guide

The zoning resolution is the law. The process of considering a rezoning application should put the appropriate weight on the recommendations of the Comprehensive Plan. Straying from the adopted plan should be justified by the applicant during a rezoning, or by the township during a zoning overlay. The plan should be updated when warranted and when conditions change.

## The Legal Perspective of the Plan

The relationship between zoning and comprehensive planning in Ohio is the result of several legal cases, based on the minimal language in the Ohio Revised Code. The following are excerpts from legal cases that have shaped the way townships work with their plans.

Under Revised Code Section 519.02, township zoning classifications must be “**based upon a comprehensive plan.**” This limitation requires, at the very least, a general plan to control and direct the use and development of property within the township by dividing the township into districts according to its present and potential use. *Cassely. Lexington Township Bd. of Zoning Appeals (1955).*

The **purpose** of requiring a comprehensive plan is to prevent “piecemeal” or “spot zoning.” The case referenced below found that Ridgefield Township was entirely zoned “Agriculture.” Although the zoning text established five districts, only one was shown on the zoning map. Court held there was no comprehensive plan, since any change in zoning would have resulted in spot zoning. *Board of Township*



*Trustees Ridgefield Township v. Ott (1994).*

A township zoning resolution (i.e. text and map) **can** constitute a “comprehensive plan” within the meaning of statute. *Cent. Motors Corp. v. Pepper Pike (1979)*; *Ryan v. Plain Township Board of Trustees (1990)*.

Stated differently, a township is not required to have a comprehensive plan which is separate and distinct from its zoning resolution. *Reese y. Copley Twp. Bd. of Trustees (1998)*.

Unlike townships, municipalities are not required to enact zoning regulations in accordance with a comprehensive plan *Columbia Oldsmobile, Inc. v. City of Montgomery (1990)*.

**Congress Township** adopted a zoning resolution in 1994 which contained two (2) zoning districts, specifically “Agricultural District” and “Business/Industry District.” However, no property within the Township was designated to be within the Business/Industry District. Phantom Fireworks sought a **use variance** to sell fireworks which was denied by the Board of Zoning Appeals. Upon appeal to the Common Pleas Court, the trial court overruled Phantom’s appeal and affirmed the decision of the BZA. Upon appeal to the Court of Appeals, the appellate court found the **Township’s zoning resolution to be invalid**, in that it did not **regulate uses in accordance with a comprehensive plan**. Although the Township admittedly did not have its own stand-alone comprehensive plan, the testimony indicated that it relied on the Wayne County comprehensive plan when drafting its zoning resolution. The Supreme Court reversed the decision and held that a county-wide comprehensive plan can (but does not automatically) qualify as a comprehensive plan under ORC 519.02 and that the Wayne County plan does qualify plan encompassing Congress Township. The Supreme Court did not, however, determine whether or not the township’s zoning resolution was “in accordance” with the Wayne County Comprehensive Plan and directed the Court of Appeals to consider that issue. The Supreme Court noted that ORC 519.02 does not require townships to create their own comprehensive plans. Instead, this statute only requires that a township’s zoning resolution be in accordance with “a” comprehensive plan—in this case, the county’s. *B.J. Alan Company, et al. v. Congress Township Board of Zoning Appeals, et al., Supreme Court of Ohio (2007)*

**The primary points of the case are:**

- (a) ORC 519.02 requires that a township zoning resolution must be in accordance with “a” comprehensive plan.
- (b) The township need not be the author of the plan. However, the plan must apply to, encompass, and demonstrate an intent to include the township within its purview.
- (c) The township zoning must be “in accordance with” the relied-upon comprehensive plan.

Additionally, the case quoted a section of what is essentially “Ohio’s Planning Bible.”

*“The essential characteristics of a plan are that it is **comprehensive, general and long range.** **Comprehensive** means that the plan encompasses all geographical parts of the community and integrates all functional elements. **General** means that the plan summarizes policies and proposals and does not, in contrast with a zoning ordinance, provide detailed regulations for building and development. **Long range** means the plan looks beyond the foreground of pressing current issues to the perspective of problems and possibilities ten to twenty years into the future.”* Stuart Meck and Kenneth Pearlman, *Ohio Planning & Zoning Law* (2007).

A condominium developer sued **Washington Township** claiming that its zoning resolution and the accompanying zoning map were invalid under 519.02. The common pleas court found in favor of the Township, and the Developer appealed. Upon appeal, the Developer claimed that the zoning resolution was unenforceable because it did not zone in accordance with a comprehensive plan. The appellate court found in favor of the Township and held that the zoning resolution and map constituted a comprehensive plan. The zoning resolution and map not only set forth a comprehensive zoning plan, but the Township also applied the plan in a manner consistent with its goals. The resolution reflected the current, primarily agricultural, use of the land, it allowed for change, and was neither rigid nor unchangeable. Further, the zoning plan contained clearly defined districts and promoted public health and safety. Also, the map did not leave the “vast majority” of the Township “unzoned.” The map identified district boundaries and promoted the uniform classification of land so as to preserve its principle use, agriculture. Accordingly, the map, when read in conjunction with the resolution, zoned in accordance with the overall plan. *White Oak Prop. Dev., LLC v. Washington Twp.*, (2012).

A property developer sought to develop a 44-home subdivision on

property zoned for 2-acre lots, which resulted in the developer seeking 176 variances, 4 for each of the proposed 1-acre lots. The application was denied by the BZA, and that decision was upheld by the common pleas court and the appellate court. On appeal to the Ohio Supreme Court, the question was whether the Township's zoning resolution and map were sufficient to meet the requirement of having a comprehensive plan, or whether a separate, standalone comprehensive plan was required under ORC 519.02. The Ohio Supreme Court determined that a comprehensive plan may be included within a township's zoning resolution and need not be separate and distinct, if the zoning resolution "(1) reflects current land uses, (2) allows for change, (3) promotes public health and safety, (4) uniformly classifies similar areas, (5) clearly defines district locations and boundaries, and (6) identifies the use or uses to which each property may be put." *Apple Group, Ltd. v. Granger Twp. Board of Zoning Appeals*, (2015).

## Creating and Amending a Plan

The rezoning "timeline" as described in ORC 519.12 suggests that townships should follow the same procedure as any other zoning resolution amendment with regard to initiating the adoption, time frame, public meeting and adoption, forward to trustees, trustees adoption.

Townships may apply for planning services via contract and hold a number of working meetings which are open to the public. No decisions are made at these workshops and they are not called "hearings" until the adoption phase.

Trustees may modify and adopt by majority.

## GENERAL WELFARE ZONING

### What is General Welfare zoning?

The ability to zone for General Welfare gives a township authority closer to that of a municipality in some ways. Rather than the limitations of only zoning for health and safety, general welfare allows certain areas of quality of life to be considered in zoning regulations.

"**Health and Safety**" typically has included location, height, bulk, number of stories, building size, lot percentage, yards and open spaces, density, use, and setbacks.

"**General Welfare**" adds landscape standards, architectural standards, aesthetics, hours of operation, issues affecting neighborhood stability, buffers

between conflicting uses, etc.

### **House Bill 148 - Effective 11/5/04**

Revised the county and township zoning enabling legislation found in Ohio Revised Code Sections 303.02 and 519.02 as follows: Allowed counties and townships to zone "...in the interest of the public health, safety, convenience, comfort, prosperity or **general welfare.**" Removed "**morality**" from enabling legislation. It also provided authority to adopt reasonable residential landscaping and architectural standards, excluding exterior building materials.

### **Senate Bill 18 - Effective 5/27/05**

It was attached to a metropolitan housing bill at the end of the 125<sup>th</sup> General Assembly in December, 2004 and revised Ohio Revised Code Sections 303.02 and 519.02 in the following ways:

For residential zoning, SB 18 removes general welfare zoning authority for all regulations except location, setback lines, use of a building or structure, and the use of land.

Authorizes the adoption of reasonable landscaping and architectural standards for residential and nonresidential development, excluding exterior building materials.

Revises Ohio Revised Code Sections 303.161 and 519.171 to authorize counties and townships to adopt nonresidential (as well as residential) landscaping and architectural compliance standards.

The comparison chart attached and labeled as "Comparison Attachment" shows the differences in regulatory areas under HB 148 and SB 18.

*The Board of Trustees of The Akron Metropolitan Housing Authority, et al. v. State of Ohio, et al., Franklin County Common Pleas Court Case Number 05CV-5857*

Filed May 26, 2005 seeking a declaration that SB 18 is unconstitutional. Trial court held that SB 18 violated the single subject rule and was unconstitutional. Upon appeal, the Court of Appeals affirmed the decision of the trial court declaring SB 18 unconstitutional, and consequently null and void, in its entirety. (*Franklin County Court of Appeals, Tenth Appellate District, No. 07AP-73 8*)





# CASE LAW DEVELOPMENTS

## Conditional Uses

Ohio Revised Code Section 519.14 authorizes township boards of zoning appeals to grant conditional use permits. However and as noted in the case of *Gerzeny v. Richfield Township* (1980), 62 Ohio St.2d 339, a township board of zoning appeals' power to grant conditional zoning certificates is no greater than that vested in it by the township's zoning resolution. Stated differently, if a zoning resolution does not provide for conditional uses, then a board of zoning appeals is without authority to grant them.

The decision whether or not to grant an application for a conditional use permit is administrative in nature. *Community Concerned Citizens, Inc. v. Union Township Board of Zoning Appeals* (1993). Consequently, such a decision is made in an adjudicatory, as opposed to a legislative, setting.

If an applicant's request for a conditional use permit meets all requirements of the zoning resolution, the application may still be denied. See *Community Concerned Citizens, Inc., supra; Laurie Sue Groff-Knight, et al. v. Board of Zoning Appeals of Liberty Township* (2004).

## Other Developments

### Private Deliberations:

In the context of a variance, appeal or conditional use proceeding, a Board of Zoning Appeals acts in a quasi-judicial capacity. A Board of Zoning Appeals may deliberate privately, in that ORC 121.22 does not apply to such proceedings. Ohio Att'y Gen. Op. No. 00-035; *Castle Manufactured Homes, Inc. v. Harold Tegtmeir* (1999), unreported; *TBC Westlake, Inc. v. Hamilton County Board of Revision* (1998); *Angerman v. State Med. Bd.* (1990), 70 Ohio



App.3d 346; *Laurie Sue Groff-Knight, et al. v. Board of Zoning Appeals of Liberty Township*, (2004).

**Preemption:**

*Osnaburg Township Zoning Inspector v. Eslich Environmental, Inc.*, Supreme Court of Ohio Case No. 08-0306 (On Appeal from the Stark County Court of Appeals, Fifth Appellate District, Case No. 2008CA00026): The Osnaburg Township zoning resolution was adopted in 1961. At that time, approximately two acres of a 175 acre tract was being used as a construction and demolition debris (“C&DD”) disposal facility. The entire 175 acre tract was designated as an R-1 Single Family Residential District under the Township’s zoning resolution. In 1990, the Township issued a Certificate of Non-Conforming Use for the two acre portion of the tract. In 1996, the Stark County Health Department issued a license to the property owner in connection with its operation of the C&DD disposal facility for 20.2 acres of “active licensed disposal area” and 8.5 acres of “inactive licensed disposal area.”

In 2006, the facility made application to the Health Department to increase the inactive area from 8.5 acres to 95.5 acres, which was denied. In 2007, the Township sued to enjoin the expansion of the nonconforming use from its original two acres. The trial court found that R.C. Chapter 3714 preempted the Township’s zoning regulations, thereby allowing for the expansion. Upon appeal, the Court of Appeals found that R.C. 3714 preempts the Township’s zoning regulations only as applied to that portion of the 175 acre tract that is, in fact, licensed for active or inactive disposal by the Stark County Health Department pursuant to R.C. Chapter 3714. In other words, the R-1 zoning regulations are not preempted for those portions of the tract which are not subject to the license. This case is currently on appeal before the Ohio Supreme Court.

*Meerland Dairy L.L. C. v. Ross Township* (2008), Ohio App.2 Dist., 05-09-2008: Township zoning regulation providing that agribusinesses were conditional uses under its zoning resolution violates Section 519.21, in that the statutory definition of agriculture includes farming and dairy production.

# STATUTORY DEVELOPMENTS

## Aggregate Mining

HB 443 (amending Ohio Revised Code Section 519.14 and enacting Section 519.141) applies to townships that choose to treat aggregate mining as a conditional use under their zoning schemes.

Section 519.141 gives a board of zoning appeals the authority to grant conditional use permits for aggregate mining on the basis of general standards contained in the zoning resolution, provided that these general standards apply to all conditional uses. This statute also allows a township to include within its zoning resolution a grant of authority to the board of zoning appeals to require that an applicant meet any combination of seven specific conditions before granting a conditional use permit for aggregate mining, as well as the broad authority to consider “any other measure reasonably related to public health and safety.” Specific measures that townships may, if included within the zoning resolution, require as a condition of the approval of a conditional zoning certificate for aggregate mining under Section 519.141 are as follows:

Inspections of nearby structures and water wells to determine structural integrity and water levels;

Compliance with applicable federal, state, and local laws and regulations;

Identification of specific roads in accordance with division (B) of section 303.141 of the Revised Code to be used as the primary means of ingress to and egress from the proposed activity;

Compliance with reasonable noise abatement measures;

Compliance with reasonable dust abatement measures;

Establishment of setbacks, berms, and buffers for the proposed activity;

Establishment of a complaint procedure;

Any other measure reasonably related to public health and safety.

Townships that choose to treat aggregate mining as a conditional use trigger the ability of the county engineer and county commissioners to require the identification of specific haul routes to be used as the primary means of ingress and egress from the aggregate mining operation. The process to be followed by the county in designating haul routes under the new law is found in Ohio Revised Code Section 303.141. The procedure for designating haul routes may be summarized as follows:

Prior to the submission of an application for a conditional zoning certificate for aggregate mining, an applicant is required to send written notice to the county engineer of the applicant's intent to apply for such zoning certificate.

Not later than 14 days after receipt of the written notice, the county engineer must establish the time, date and location of a meeting with the applicant, and give notice of such meeting to both the applicant and township fiscal officer.

At the meeting, the applicant must explain the proposed location of the activity or expansion of an existing activity, the anticipated amount of aggregate material to be shipped from the activity, and the anticipated primary market areas for the finished aggregate products leaving the activity.

Not later than 30 days after the meeting, the county engineer must submit a written recommendation of specific roads to be used as the primary means of ingress to and egress from the proposed activity, based upon factors listed in the statute, to the board of county commissioners.

At the next regularly scheduled meeting of the board of county commissioners after receipt of the written recommendation, the board must adopt the recommendation, or adopt it with modifications, as provided in the statute. The board then sends written notice of the adoption of the recommendation or recommendation with modification to the county board of zoning appeals.

There is an appeals process provided for in the statute, as well as certain limited exceptions where identification of specific roads is not required.

## Wind Turbines

HB 562 (enacting Ohio Revised Code Section 519.213) allows townships to regulate “small wind farms.”

Section 519.213 defines “small wind farm” as meaning wind turbines and associated facilities with a single interconnection to the electrical grid and designed for, or capable of, operation at an aggregate capacity of less than five megawatts.

Statute allows townships (and, under Section 303.213, counties) to enact regulations dealing with the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use or enlargement of any small wind farm.

Similar to telecommunications towers, if you seek to regulate, you should adopt specific provisions addressing wind farms.

## Annexation

SB 5 (effective 3-27-2002) rewrote an annexation scheme that had been in place for over 30 years.

1. There are 5 annexation methods. These include:

Three expedited procedures (ORC Sections 709.022, 709.023 and 709.024).

Regular procedure (Ohio Revised Code Sections 709.03, 709.031, 709.032 and 709.033). A required finding for approval includes that “on balance, the general good of the territory proposed to be annexed will be served, and the benefits to the territory proposed to be annexed and the surrounding area will outweigh the detriments to the territory proposed to be annexed and the surrounding area, if the annexation petition is granted.”

Municipal procedure (Ohio Revised Code Section 709.16).

2. *State ex rel Butler Township Board of Trustees, et al v Montgomery County*

*Board of County Commissioners, et al.* (2006) 112 Ohio St. 3d 262: Owners abutting a road who own to the centerline are “owners” for purpose of annexation.

3. *State ex rel Butler Township Board of Trustees v Montgomery County Board of County Commissioners* (2009), Supreme Court of Ohio Case No. 2009-0186, on appeal from the Montgomery County Court of Appeals Second Appellate District Case No. CA 022664: Commissioners approved an expedited type 2 annexation petition over Township’s objection. Township filed suit seeking a writ of mandamus to compel the Commissioners to deny the petition. Court of Appeals held that a township has no standing to seek a writ of mandamus under Section 709.023(G), in that Section 709.021 classifies townships as a party only for purposes of 709.022 and 709.024.

# CONFLICTS OF INTEREST AND ETHICAL CONSIDERATIONS

## Chapter 102 - Ohio Ethics Laws.

1. Personal Interests.
2. Family and business associates.
3. Advisory opinions.
4. “Hot Line:” 614-466-7090
5. Ohio Ethics Law Manual:  
[www.ethics.ohio.gov/education/factsheets/EthicsLawOverview.pdf](http://www.ethics.ohio.gov/education/factsheets/EthicsLawOverview.pdf)

### Primary prohibitions:

1. Use of authority or influence to secure a thing of value if the thing of value has a substantial and improper influence upon the public official.
  - (a) Prohibits actions, discussions, lobbying, etc.
  - (b) Thing of value includes a “detriment.”
2. Cannot solicit or accept anything of value if the thing of value has a substantial and improper influence upon the public official.
3. Individual meetings with applicants or opponents.
  - (a) Legislative vs. administrative
4. Trustees attendance at BZA hearings (and vice versa).



5. Section 511.13 - Interest in a township contract is prohibited. (Absolute prohibition.)
6. Section 2921.42 - Unlawful interest in a public contract is prohibited. (Exceptions.)
7. Section 102.09 - Copies of Chapter 102 and Section 2921.42.

## **Ethical issues for Zoning Inspectors**

ORC Chapter 102

Ohio Ethics Commission Hotline - 614.466.7090

### **Interests in township contracts**

Interest in township contracts is prohibited. No member of the board of township trustees or any officer or employee thereof shall be interested in any contract entered into by the board. No such person can be individually liable to any contractor upon any contract made under sections 511.08 to 511.17 of the Revised Code. This section does not apply where a person is a shareholder of a corporation, but not an officer or director of such an organization and owns not more than five percent of the stock of such corporation, if the value does not exceed five hundred dollars. More details are provided in ORC 511.13.







# REFERENCE

Due to the changing nature of regulations in the Ohio Revised Code, the following reference are provided without reprinting the regulations. It is recommended that the township be familiar with this authorizing and process language.

Ohio Revised Code Section 519.02 represents an express delegation to townships of the zoning police power by providing as follows:

**§ 519.02. Township regulation of land use in unincorporated territory; landscaping and architectural standards; modifications to ensure constitutionality of adult entertainment establishment regulations.**

- (A) Except as otherwise provided in this section, in the interest of the **public health and safety**, the board of township trustees may regulate by resolution, in accordance with a comprehensive plan, the **location, height, bulk, number of stories, and size** of buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas that may be occupied, **set back building lines**, sizes of **yards, courts**, and other **open spaces**, the **density** of population, the **uses** of buildings and other structures, including tents, cabins, and trailer coaches, and the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of the township.

Except as otherwise provided in this section, in the interest of the **public convenience, comfort, prosperity, or general welfare**, the board by resolution, in accordance with a comprehensive plan, may regulate the **location** of, **set back lines** for, and the **uses** of buildings and other structures, including tents, cabins, and trailer coaches, and the uses of land for trade, industry, residence, recreation, or other purposes in the unincorporated territory of the township, and may establish reasonable landscaping standards and architectural standards excluding exterior building materials in the unincorporated territory of the township.

Except as otherwise provided in this section, in the interest of the **public convenience, comfort, prosperity, or general welfare**, the board may regulate by resolution, in accordance with a comprehensive plan, for **nonresidential** property only, the **height, bulk, number of stories, and size** of buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas that may be occupied, sizes of yards, courts, and other open spaces, and the **density** of population in the unincorporated territory of the township. For all these purposes, the board may divide all or any part of the unincorporated territory of the township into districts or zones of such number, shape, and area as the board determines. All such regulations shall be uniform for each class or kind of building or other structure or use throughout any district or zone, but the regulations in one district or zone may differ from those in other districts or zones.

For any activities permitted and regulated under Chapter 1513 or 1514 of the Revised Code and any related processing activities, the board of township trustees may regulate under the authority conferred by this section only in the interest of public health or safety.



- (B) A board of township trustees that pursuant to this chapter regulates adult entertainment establishments, as defined in section 2907.39 of the Revised Code, may modify its administrative zoning procedures with regard to adult entertainment establishments as the board determines necessary to ensure that the procedures comply with all applicable constitutional requirements.

HISTORY: GC § 3180-26; 122 v 597, § 26; Bureau of Code Revision, 10-1-53; 127 v 363. Eff 9-17- 57; 150 v H 148, § 1, eff. 11-5-04; 150 v H 411, § 1, eff. 5-6-05; 150 v S 18, § 1, eff. 5-27-05; 151 v H 23, § 1, eff. 8-17-06.

## Section 4 of 151 v H 23 reads as follows:

SECTION 4. Section 303.02 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 411 and Am. Sub. SB. 18 of the 125th General Assembly. Section 519.02 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 411 and Am. Sub. S.B. 18 of the 125th General Assembly. Section 2151.022 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 179 and Sub. S.B. 218 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

## Sections 3 and 4 of H.B. 148 read as follows:

SECTION 3. It is not the intent of the General Assembly in amending sections 303.02 and 519.02 of the Revised Code in this act to confer any authority on a county or township to preempt state law, including any statute requiring a person to obtain a permit, by including the “general welfare” of the public as a purpose for which a board of county commissioners or board of township trustees may adopt zoning regulations.

SECTION 4. Nothing in this act allows or shall be construed to allow any county or township authority to establish a minimum price for a house or lot.

Effect of Amendments: 151 v H 23, effective August 17, 2006, added (B). 150 v S 18, effective May 27, 2005, rewrote the first paragraph. 150 v H 411, effective May 6, 2005, deleted “1509” following “Chapter” in the second paragraph. 150 v H 148, effective November 5, 2004, rewrote the section.

## Legislation Regarding the Creation and Function of a Zoning Commission and Zoning Amendments

519.04. Township zoning commission.

519.05. Recommendations of township zoning commission; organization, powers and compensation of commission.

121.22. Meetings of public bodies to be public; exceptions.

## Legislation Regarding the Zoning Amendment Process

519.12 Amendments to zoning resolution; procedure; referendum.

## Legislation Regarding the Creation and Function of a Board of Zoning Appeals

519.13 Township board of zoning appeals; compensation and expenses

519.14. Powers of township board of zoning appeals.

519.15. Rules, organization and meetings of zoning appeals board.

121.22. Meetings of public bodies to be public; exceptions.

## Model BZC Rules of Procedure

\_\_\_\_\_ TOWNSHIP ZONING COMMISSION (the Commission)

### RULES OF PROCEDURE

Adopted \_\_\_\_\_, 20\_\_

#### ARTICLE I — Meetings of Commission

##### Section 1. Organization of Meetings.

At each meeting of the Commission, the chairperson, or in the absence of the chairperson, the vice chairperson, shall act as chairperson. The person designated by the Commission as its secretary shall act as, and perform the duties of, secretary of the meeting. If no such person is present at a meeting, any person who the chairperson of the meeting appoints shall act as secretary of the meeting.

##### Section 2. Place of Meetings.

All regular and special meetings of the Commission shall be held at the \_\_\_\_\_ Township Hall commencing at 7:30 p.m. or at such other time and place, as may from time to time be fixed by the Commission, or as shall be specified or fixed in the notice of the particular meeting.

##### Section 3. Regular Meetings.

Unless otherwise postponed or cancelled, regular meetings of the Commission shall be held on the fourth \_\_\_\_\_ of every month, if not a legal holiday, but if that day is a legal holiday under Ohio law, the regular meeting for that month shall be held on the next succeeding weekday which is not a legal holiday or a Saturday or Sunday, or on such other day as the Commission may determine. Regular meetings may be postponed or cancelled in advance by or at the direction of the chairperson, vice chairperson or any two Commission members for reasons of either an anticipated lack of a quorum or a lack of business.

##### Section 4. Special Meetings.

Special meetings of the Commission shall be held whenever called by the chairperson, vice chairperson or any two Commission members. Every Commission member shall furnish the secretary of the Commission with a telephone number and an address (and, if available, a facsimile number and e-mail address) at which notice of meetings and all other Commission notices may be served on or mailed to such member. Unless waived before, at, or after the meeting as hereinafter provided, notice of each such meeting shall be given by the chairperson, the vice chairperson, the persons calling such meeting, or the secretary to each member in any of the following ways:

(a) By orally informing the member of the meeting in person or by telephone at least twenty-four (24) hours before the date of the meeting. By personal delivery of written notice to the member at least twenty-four (24) hours before the date of the meeting. By mailing written notice to the member, or by sending notice to the member by facsimile transmission, e-mail, telegram or cablegram, postage or other costs prepaid, addressed to the member at the address furnished by such member to the secretary of the Commission, or to such other address as the person sending the notice shall know to be correct.

Such notice shall be posted or dispatched a sufficient length of time before the meeting so that in the ordinary course of the mail or the transmission of facsimiles, e-mails, telegrams or cablegrams, delivery

thereof would normally be made to a member not later than twenty-four (24) hours before the date of the meeting.

The notice to Commission members for a special meeting shall specify the date, time, location and purpose(s) of the meeting. Unless otherwise specified in the notice, special meetings shall be held at the same location as regular meetings. Unless otherwise required by the laws of the State of Ohio, notice of any meeting of the Commission may be waived by any member, either before, at, or after the meeting, in writing, or by facsimile, e-mail, telegram or cablegram.

#### **Section 5. Quorum.**

Three (3) members of the Commission shall constitute a quorum. In the absence of a quorum at any meeting or any adjournment thereof, any member may adjourn the meeting from time to time. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

#### **Section 6. Order of Business.**

The order of business at meetings of the Commission shall be such as the chairperson may prescribe or follow; subject, however, to the chairperson being overruled with respect thereto by a majority of the members of the Commission present.

#### **Section 7. Voting.**

Each member present at a meeting shall be entitled to one vote. Votes shall be made orally. The concurring vote of a majority of those members present at a meeting at which a quorum is present shall be necessary to pass any motion recommending either an approval or an approval of some modification of any proposed amendment to the Zoning Resolution, or to otherwise decide in favor of an applicant on any matter which the Commission is required to hear under the \_\_\_\_\_ Township Zoning Resolution. The failure to secure the concurring votes of such a majority shall constitute and result in a recommendation for denial of the proposed amendment and a decision for disapproval of the application.

#### **Section 8. Public Notice of Regular and Special Meetings.**

The Commission hereby establishes the following methods whereby any person may determine the date, time and place of regular meetings of the Commission, and the date, time, place and purpose(s) of special and emergency meetings of the Commission: Regular Meetings - The secretary shall give notice of the Commission's regular meeting schedule by posting either a copy of this Section 8 or a notice on the \_\_\_\_\_ Township Division of Communications bulletin board located at the Township Hall which states, in effect, that unless otherwise changed or cancelled, all regular meetings of the \_\_\_\_\_ Township Zoning Commission will be held on the fourth Wednesday of each month at 7:30 p.m. at the \_\_\_\_\_ Township Hall located at \_\_\_\_\_, OH \_\_\_\_\_ unless that day is a legal holiday under Ohio Law, in which case, the regular meeting for that month shall be held on the next succeeding weekday which is not a legal holiday or a Saturday or Sunday, or on such other day as the Commission may determine. If the date, time or location of a regular meeting is changed or cancelled, notice of the change or cancellation shall be posted on the \_\_\_\_\_ Township Division of Communications bulletin board at least twenty-four (24) hours prior to the meeting.

Special and Emergency Meetings - The secretary shall give notice of the date, time, location and purpose(s) of a special meeting (other than an emergency meeting) by posting a notice in the same location as provided for posting notice of the Commission's regular meeting schedule. The notice shall be posted at least twenty-four (24) hours prior to the meeting.

In the case of an emergency meeting, the secretary shall, if sufficient time allows, give notice of an emergency meeting in the same manner as provided for non-emergency special meetings. Otherwise, notice of an emergency meeting is not required, except as provided below.

Notice to News Media of Special and Emergency Meetings - News media who have requested notice of special meetings shall be notified by the secretary of the date, time, location and purpose(s) of any such meeting at least twenty-four (24) hours in advance of the meeting. If the meeting is an emergency meeting, the secretary or the Commission member or members calling it shall immediately notify the

media who have requested such notification. News media wishing to receive such advance notification shall provide the secretary, in writing, with a mailing address, telephone number and facsimile number (and, if available, an e-mail address) for purposes of giving such notification.

Notice of Meetings to Discuss Particular Business - The secretary shall give reasonable advance notice of any regular or special meeting at which a particular type of public business is to be discussed to any person who has requested such notice. Persons wishing to receive such advance notification shall make such request in writing to the Commission at \_\_\_\_\_, Ohio \_\_\_\_\_ and shall list the requestor's name, mailing address, telephone number and facsimile number (and, if available, an e-mail address), and the specific type of public business in which the requestor has a particular interest and desires notice. In addition, the requestor shall furnish the secretary of the Commission with a sufficient number of stamped, self-addressed envelopes for mailing such notice. If time permits, the requestor will be notified of such meetings by mail. Otherwise, notice shall be by telephone, facsimile or email. Any such request shall remain in force for twelve (12) months.

(e) Special Notice Required by Law - When a particular form or method of notice is required by statute for a public hearing or meeting of the Commission, notice of the hearing or meeting shall be given in the form or manner prescribe by statute, in addition to notice otherwise required under this Section.

#### **Section 9. Attendance of the Applicant.**

The applicant or an authorized representative shall attend the hearing scheduled by the Commission on such application. The failure of the applicant or the authorized representative to attend the hearing shall result in the Commission proceeding to conduct the hearing in his or her absence. If extraordinary circumstances beyond such person's control would prevent the applicant from attending the scheduled hearing, the applicant may submit, in writing, a request to table the application and reschedule the hearing. This request shall be accompanied by any required tabling fee and shall be filed with the Zoning Inspector or secretary prior to the hearing, and such request shall constitute a waiver of the time period within which such hearing would otherwise be required to be held. The Commission may, in its discretion, grant such request and reschedule the hearing for such time or times as determined by the Commission. Once a hearing is commenced, nothing herein shall prevent the Commission from conducting the hearing on multiple days until its conclusion.

### **ARTICLE II — Members of the Commission**

#### **Section 1. Purpose and Composition of the Commission.**

The purpose of the Commission is to propose, initiate, review and make recommendation on proposed amendments to the Zoning Resolution; to employ or contract with such planning consultants, executives and other assistants as deemed necessary, within the limits of the funds appropriated by the Board of Trustees for such purpose; and to otherwise exercise those powers and duties conferred by law and the \_\_\_\_\_ Township Zoning Resolution, all of which shall be performed in compliance with Ohio Revised Code Chapter 519. The members of the Commission shall consist of those five (5) individuals who are, from time to time, duly appointed and serving as the members of the \_\_\_\_\_ Township Zoning Commission.

The \_\_\_\_\_ Township Board of Trustees may appoint an alternate(s) to the Commission who, if so appointed, may take the place of an absent member at a Commission meeting in accordance with the procedures prescribed by the Trustees. Unless a member (or alternate, if so appointed) earlier resigns, dies, is removed from the Commission by the \_\_\_\_\_ Township Board of Trustees, or ceases to reside outside of the unincorporated area of \_\_\_\_\_ Township, then each member shall serve on the Commission until the member's successor is appointed and qualified.

#### **Section 2. Commission Officers.**

The officers of the Commission to be elected from among its members shall be a chairperson and one vice chairperson.

#### **Section 3. Election of Officers.**

At the regular meeting held during the month of January in each calendar year at which a quorum is

present, officers shall be nominated for election, with the person(s) receiving the greatest number of votes being deemed so elected. Each shall hold the status of such an officer at the pleasure of the Commission.

**Section 4. Term of Office.**

Unless a member earlier resigns, is removed as hereinafter provided, or ceases to be a member of the Commission, each officer shall hold office until January 31 of the next succeeding calendar year following such officer's election, or if the election is not held at the next succeeding January meeting following such officer's election or any adjournment thereof, until such time as an election of officers is held, and until a successor is duly elected and qualified.

**Section 5. Removal.**

Any officer may be removed, without cause and at any time, by the Commission at any regular meeting or special meeting; provided, however, that in the case of a special meeting, the notices (or waivers of notices) of the special meeting shall specify that such removal action was to be considered. In any case in which an officer is removed, such officer shall still remain and be a member of the Commission unless removed as a member of the \_\_\_\_\_ Township Zoning Commission.

**Section 6. Resignations.**

Any officer may resign such office at any time by giving written notice to the chairperson, vice chairperson, or secretary of the Commission. Any such resignation shall take effect at the time specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Notwithstanding the previous, no such resignation shall be construed as resigning one's status as a member of the Commission unless such resignation so specifies therein and is delivered to the \_\_\_\_\_ Township Board of Trustees by or on behalf of such member.

**Section 7. Powers, Authority, and Duties of the Commission.**

The Commission shall have the powers and authority conferred and the duties prescribed by law, in addition to those specified or provided in the \_\_\_\_\_ Township Zoning Resolution and these Rules, unless otherwise conflicting with applicable law, in which case, applicable law shall prevail.

**Section 8. The Chairperson of the Commission.**

The chairperson of the Commission, if and while there be an incumbent of the office, shall preside at all meetings of the Commission at which the chairperson is present. The chairperson shall have and exercise general supervision over the conduct of the Commission's affairs, its order of business and over its other officers and appointees; subject, however, to any contrary law. The chairperson shall see that all orders and directives of the Commission are carried into effect. The chairperson or the chairperson's designee may administer oaths.

**Section 9. The Vice Chairperson.**

If and while there is no incumbent of the office of the chairperson of the Commission, and during the absence of the chairperson of the Commission, the vice chairperson shall have the duties and authority specified for the office of chairperson, and shall perform such other duties as may be assigned by the Commission or by the chairperson. In the absence of the chairperson and vice chairperson, the Commission may designate an interim chairperson to carry out all or any portion of such duties.

**ARTICLE III — The Secretary**

The Commission shall designate an individual to serve as secretary of the Commission.

The person designated as secretary is not required to be a Commission member; provided, however, that only those individuals duly appointed and serving as members of the Commission shall be entitled to vote on matters coming before the Commission. The person designated as secretary shall serve in this position at the pleasure of the Commission. The duties of the secretary shall include the following:

Keep the minutes of all meetings of the Commission in a written or taped form, and be custodian of the Commission's records;

See that all notices are duly given in accordance with these Rules or as required by law;



Exhibit at all reasonable times the aforesaid records of the Commission;

See that all documents, reports, and records required by law are properly kept and filed; and

In general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned by the Commission or the chairperson.

In the absence of the secretary, the chairperson may designate an interim secretary to carry out all or any portion of such duties.

#### **ARTICLE IV — Amendment of Rules of Procedure**

At any meeting of the Commission, these Rules may be amended or repealed in whole or in part, or new Rules added thereto and adopted, by the affirmative vote of a majority of all of the members of the Commission.

#### **ARTICLE V — Repeal of Previous Rules**

All Rules of Procedure previously adopted by the Commission are hereby repealed and declared to be void and of no further force or effect from and after the date these Rules are adopted by the Commission.

(End of Rules of Procedure)

## **Models for the Zoning Amendment Process**

### **MOTION BY THE \_\_\_\_\_ TOWNSHIP ZONING COMMISSION TO INITIATE A PROPOSED AMENDMENT TO THE \_\_\_\_\_ TOWNSHIP ZONING RESOLUTION**

Motion by \_\_\_\_\_ seconded by \_\_\_\_\_ to initiate for consideration, pursuant to Ohio Revised Code Section 519.12, a proposed amendment to the \_\_\_\_\_ Township Zoning Resolution which would, if adopted, revise the following textual provisions of the Zoning Resolution: [insert here a description of amendments, with specific references to the resolution, i.e. "Definitions: Amend Section 115.50 to revise the definition of 'Structure' so as to include fences, and add the term and definition for 'Portable Storage Unit;' Accessory Structures: Amend Section 205.03 in order to revise the size, height and setback requirements for accessory structures;" etc.],

with all such proposed textual revisions being reflected in the Zoning Amendment Text having a cover page entitled "\_\_\_\_\_ Township Zoning Amendment Number 139-RZ-10" dated September 20, 2010 (a copy of which Text shall be appended to the minutes of this meeting).

Furthermore and as part of this motion, the Zoning Commission hereby directs that a public hearing on this proposed amendment be held on October 18, 2010 at 7:00 p.m. at the \_\_\_\_\_ Township Hall located at \_\_\_\_\_, Ohio \_\_\_\_\_, and further authorizes and directs the Zoning Inspector to transmit this proposed amendment to the \_\_\_\_\_ County (Regional) Planning Commission for its recommendation, to make the amendment available for public examination and to give notice of this public hearing by publication, all in accordance with applicable law.

### **\_\_\_\_\_ TOWNSHIP ZONING COMMISSION NOTICE OF PUBLIC HEARING [sent to local media]**

The \_\_\_\_\_ Township Zoning Commission will hold a public hearing on October 18, 2022 at 7:00 p.m. at the \_\_\_\_\_ Township Hall located at \_\_\_\_\_, Ohio \_\_\_\_\_ in order to consider a Motion adopted by the \_\_\_\_\_ Township Zoning Commission which is proposed as an amendment to the \_\_\_\_\_ Township Zoning Resolution. This proposed amendment is designated as \_\_\_\_\_ Township Zoning Amendment

Number 139-RZ-10 and would, if adopted, revise the following textual provisions of the \_\_\_\_\_ Township Zoning Resolution [insert here a description of amendments, with specific references to the resolution, i.e. "Definitions: Amend Section 115.50 to revise the definition of 'Structure' so as to include fences, and add the term and definition for 'Portable Storage Unit;' Accessory Structures: Amend Section 205.03 in order to revise the size, height and setback requirements for accessory structures;" etc.]

The text of this proposed amendment to the Zoning Resolution will be available for public examination from September 25, 2010 through October 18, 2010, inclusive, Monday through Thursday, excluding legal holidays, during the hours of 8:30 a.m. to 4:00 p.m. at the \_\_\_\_\_ Township Hall located at \_\_\_\_\_, Ohio \_\_\_\_\_. The person responsible for giving notice of the public hearing by publication is \_\_\_\_\_. After the conclusion of the public hearing, the matter will be submitted to the \_\_\_\_\_ Township Board of Trustees for its action.

\_\_\_\_\_ Township Zoning Commission  
\_\_\_\_\_, Chairman

Run one (1) time on September 25, 2010. Please send bill and proof of publication to:  
[Insert name and address of Fiscal Officer or other representative]

**\_\_\_\_\_ TOWNSHIP BOARD OF TRUSTEES**  
**NOTICE OF PUBLIC HEARING** [sent to local media]

The \_\_\_\_\_ Township Board of Trustees will hold a public hearing on December 4, 2010 at 7:30 p.m. at the \_\_\_\_\_ Township Hall located at Address, City, Ohio \_\_\_\_\_ in order to consider a Motion adopted by the \_\_\_\_\_ Township Zoning Commission which is proposed as an amendment to the \_\_\_\_\_ Township Zoning Resolution. This proposed amendment is designated as \_\_\_\_\_ Township Zoning Amendment Number 139-RZ-10 and would, if adopted, revise the following textual provisions of the \_\_\_\_\_ Township Zoning Resolution: [insert here a description of amendments, with specific references to the resolution, i.e. "Definitions: Amend Section 115.50 to revise the definition of 'Structure' so as to include fences, and add the term and definition for 'Portable Storage Unit;' Accessory Structures: Amend Section 205.03 in order to revise the size, height and setback requirements for accessory structures;" etc.],

The text of this proposed amendment to the Zoning Resolution will be available for public examination from November 15, 2010 through December 4, 2010, inclusive, Monday through Friday, excluding legal holidays, during the hours of 8:30 a.m. to 4:00 p.m. at the \_\_\_\_\_ Township Hall located at Address, City, Ohio ZIP. The person responsible for giving notice of the public hearing by publication is \_\_\_\_\_.

\_\_\_\_\_ Township Board of Trustees  
\_\_\_\_\_, Chairman

Run one (1) time on November 25, 2022. Please send bill and proof of publication to:  
[Insert name and address of Fiscal Officer or other representative]

**RESOLUTION NUMBER \_\_\_\_\_**  
**RESOLUTION TO AMEND THE ZONING RESOLUTION TEXT OF**  
**\_\_\_\_\_ TOWNSHIP, \_\_\_\_\_ COUNTY, OHIO**

**CASE NO. \_\_\_\_\_**

**WHEREAS**, Case No. \_\_\_\_\_, as described below, came on for hearing before the \_\_\_\_\_ Township Board of Trustees the 4th day of December, 2022, which case is described as follows:

**Case No. 139-RZ-10:** By motion adopted by the \_\_\_\_\_ Township Zoning Commission, an amendment is proposed to revise the text of the \_\_\_\_\_ Township Zoning Resolution. This proposed amendment would, if adopted, revise the following textual provisions of the \_\_\_\_\_ Township Zoning Resolution: [insert here a description of amendments, with specific references to the resolution, i.e. *"Definitions: Amend Section 115.50 to revise the definition of 'Structure' so as to include fences, and add the term and definition for 'Portable Storage Unit'; Accessory Structures: Amend Section 205.03 in order to revise the size, height and setback requirements for accessory structures;"* etc.], and

**WHEREAS**, on October 11, 2022, the \_\_\_\_\_ Regional Planning Commission recommended approval of the proposed amendment; and

**WHEREAS**, on October 18, 2022, the \_\_\_\_\_ Township Zoning Commission recommended approval of this proposed amendment; and

**WHEREAS**, following a public hearing before the Board of Trustees which was duly noticed and conducted in Case No. \_\_\_\_\_ pursuant to Ohio Revised Code Section 519.12, the Board resolved to take the action hereinafter set forth.

NOW THEREFORE, upon motion of [Trustee] seconded by [Trustee], BE IT RESOLVED BY THE BOARD OF TRUSTEES OF \_\_\_\_\_ TOWNSHIP, \_\_\_\_\_ COUNTY, OHIO, THAT:

Section 1. The recommendation of the \_\_\_\_\_ Township Zoning Commission in Case No. 139-RZ-10 is hereby modified as follows: [insert specific verbiage of modifications if the Trustees are modifying the amendments.]

Section 2. The recommendation of the \_\_\_\_\_ Township Zoning Commission, f the Resolution, is hereby adopted, and the proposed text amendment in Case No. \_\_\_\_\_, as amended and modified, is hereby approved.

Voting Aye thereon: \_\_\_\_\_, Trustee \_\_\_\_\_, Trustee \_\_\_\_\_, Trustee

Voting Nay thereon: \_\_\_\_\_, Trustee \_\_\_\_\_, Trustee \_\_\_\_\_, Trustee

ATTEST AND CERTIFY: \_\_\_\_\_ Fiscal Officer

\_\_\_\_\_ TOWNSHIP ZONING OFFICE  
Address, City, Ohio ZIP, Phone

Date: \_\_\_\_\_  
To: [Local Media]

Please publish the following notice one (1) time only in the Monday, April 4, 2022 edition of the \_\_\_\_\_.  
Please send bill and proof of publication to: \_\_\_\_\_, Clerk, \_\_\_\_\_ Township Board of Trustees

\_\_\_\_\_ TOWNSHIP ZONING COMMISSION  
**NOTICE OF PUBLIC HEARING**

The \_\_\_\_\_ Township Zoning Commission will hold a public hearing on April 19, 2010 at 7:30 p.m. at the \_\_\_\_\_ Township Administrative Offices, Address, City, Ohio, ZIP, to consider an application, designated as Case Number \_\_\_\_\_, filed by \_\_\_\_\_, Address, City, Ohio, ZIP which is proposed as an amendment to the \_\_\_\_\_ Township Zoning Resolution. This application proposes to rezone *from the FR-1 Farm Residential District to the PRD Planned Residential District* 77.57± acres located at Address, City, Ohio, ZIP and owned by \_\_\_\_\_, Trustee; 28.25± acres designated as Tax Parcel Number \_\_\_\_\_ and located on

the north side of \_\_\_\_\_ Road east of \_\_\_\_\_ Drive and West of \_\_\_\_\_ Road and owned by \_\_\_\_\_; and 3.14± acres being a portion of property located at Address, City, Ohio, ZIP and owned by \_\_\_\_\_. The applicant is seeking approval of the application in order to accommodate a *167-lot single family subdivision*.

This application is available for examination from April 4, 2022 through April 19, 2022, inclusive, Mondays through Fridays, excluding legal holidays, during the hours of 8:00 a.m. to 5:00 p.m. at the \_\_\_\_\_ Township Administrative Offices, Address, City, Ohio, ZIP. The person responsible for giving notice of this public hearing by both publication and mail is \_\_\_\_\_, \_\_\_\_\_ Township Zoning Inspector. After the conclusion of the public hearing, the matter will be submitted to the \_\_\_\_\_ Township Board of Trustees for its action.

\_\_\_\_\_, Township Zoning Commission  
\_\_\_\_\_, Chairman  
\_\_\_\_\_, Zoning Inspector

\_\_\_\_\_, TOWNSHIP BOARD OF TRUSTEES  
\_\_\_\_\_, COUNTY, OHIO

RESOLUTION NO. \_\_\_\_\_

TO SET DATE FOR PUBLIC HEARING FOR CASE NUMBER \_\_\_\_\_

Whereas, the Board is in receipt of the recommendation of the Zoning Commission on Case Number \_\_\_\_\_ 2010 a proposed amendment to the \_\_\_\_\_ Township Zoning Resolution and which would, if adopted, revise various textual provisions of the \_\_\_\_\_ Township Zoning Resolution; and

**Now, therefore, be it resolved by the Board of Trustees of \_\_\_\_\_ Township, \_\_\_\_\_ County, Ohio, that:**

The Board authorizes the Zoning Inspector to advertise in the Lancaster Eagle Gazette on Thursday, November 4, 2022 and the Southeast Messenger on Monday, November 8, 2022 for a Public Hearing to be held on Wednesday, December 1, 2022 at 8:00 p.m. at the \_\_\_\_\_ Township Administrative Offices, Address, Ohio and to make the proposed amendment available for public examination in accordance with applicable law.

Motion for adoption made by \_\_\_\_\_. Seconded by \_\_\_\_\_ this 3rd day of November, 2022.

Voting Aye Thereon: \_\_\_\_\_ Nay: \_\_\_\_\_ Abstentions: \_\_\_\_\_

\_\_\_\_\_, Chairman \_\_\_\_\_, Vice-Chairman \_\_\_\_\_, Trustee Attest: \_\_\_\_\_, Fiscal Officer

RESOLUTION NUMBER \_\_\_\_\_  
RESOLUTION TO AMEND THE ZONING RESOLUTION OF \_\_\_\_\_ TOWNSHIP,  
\_\_\_\_\_, COUNTY, OHIO  
ZONING AMENDMENT CASE NUMBER \_\_\_\_\_

WHEREAS, \_\_\_\_\_ Township Zoning Amendment Case Number \_\_\_\_\_, is before this Board of Trustees upon the application of \_\_\_\_\_, the owners of the subject tracts, to rezone a *109± acre tract of land from the FR-1 District to the Planned Residential Zoning District in order to accommodate a proposed detached, single-family residential development comprising 145 dwelling units; and*

WHEREAS, the Delaware County Regional Planning Commission has recommended approval of the zoning amendment proposed in Case Number \_\_\_\_\_; and

WHEREAS, following a public hearing duly noticed and conducted, the \_\_\_\_\_ Township Zoning Commission recommended approval of the amendment proposed in Case Number \_\_\_\_\_; and

WHEREAS, a public hearing before the Board of Trustees has been duly noticed and conducted in Case Number \_\_\_\_\_ pursuant to Ohio Revised Code Section 519.12; and

WHEREAS, at the public hearing held before this Board on November 3, 2010, the applicant submitted an amended application dated October 29, 2022 which sought to revise the Development Plan and the draft deed restrictions in order to address concerns regarding, in part, the viability and continuity of the homeowners association and the ability of the homeowners association to maintain the open space portion of the proposed development; and

WHEREAS, based upon the application, as amended, and the testimony and information presented in connection with this application, it appears to this Board that:

(a) The subject property is located within the FR-1 Zoning District and the maximum number of dwelling units permitted under this current zoning, including land located within the right-of-way, would be approximately *144.71 dwelling units*. *The applicant has proposed 145 dwelling units.*

(b) The Comprehensive Plan of \_\_\_\_\_ Township recommends that this land be zoned and developed for single-family residential uses, only. The Board believes that the applicant's proposed use of this property comports with the Comprehensive Plan of \_\_\_\_\_ Township and would be compatible with the existing and proposed uses of surrounding properties.

(c) At the hearings that have been conducted upon this rezoning request, favorable testimony and information has been received on this application.

WHEREAS, it is the opinion and belief of this Board that the development as proposed by the applicant in the application, as amended, advances the general health, safety and welfare of the Township in that the benefits, improved arrangement and the design of the proposed development justify the deviation from Standard Residential Development requirements included in the \_\_\_\_\_ Township Zoning Code.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF \_\_\_\_\_ TOWNSHIP, \_\_\_\_\_ COUNTY, OHIO, THAT:

Section 1. The recommendation of the \_\_\_\_\_ Township Zoning Commission in Case Number \_\_\_\_\_ is hereby modified as follows: The Application and Development Plan submitted by the Applicant shall be amended in accordance with the Amended Application dated October 29, 2022 as presented to the Board of Trustees by the Applicant during the public hearing held before this Board on November 3, 2022.

Section 2. The recommendation of the \_\_\_\_\_ Township Zoning Commission, as modified pursuant to the terms of Section 1 of the Resolution, is hereby adopted, and the rezoning request in Case Number \_\_\_\_\_, as amended and modified, is hereby approved.

Motion for approval made by \_\_\_\_\_, Seconded by \_\_\_\_\_, this 17th day of November, 2022.

Voting Aye thereon: \_\_\_\_\_, Voting Nay thereon: \_\_\_\_\_, Abstentions: \_\_\_\_\_.

\_\_\_\_\_, Chairman \_\_\_\_\_, Vice Chairman \_\_\_\_\_, Trustee \_\_\_\_\_ Attest: \_\_\_\_\_, Township Clerk

# Model BZA Rules of Procedure

\_\_\_\_\_ TOWNSHIP BOARD OF ZONING APPEALS (the "Board")

## RULES OF PROCEDURE

Adopted \_\_\_\_\_, 20\_\_

### ARTICLE I — Meetings of Board

#### **Section 1. Organization of Meetings.**

At each meeting of the Board, the chairperson, or in the absence of the chairperson, the vice chairperson, shall act as chairperson. The person designated by the Board as its secretary shall act as, and perform the duties of, secretary of the meeting. If no such person is present at a meeting, any person who the chairperson of the meeting appoints shall act as secretary of the meeting.

#### **Section 2. Place of Meetings.**

All regular and special meetings of the Board shall be held at the \_\_\_\_\_ Township Hall commencing at 7:00 p.m. or at such other time and place, as may from time to time be fixed by the Board, or as shall be specified or fixed in the notice of the particular meeting.

#### **Section 3. Regular Meetings.**

Unless otherwise postponed or cancelled, regular meetings of the Board shall be held on the second Tuesday of every month, if not a legal holiday, but if that day is a legal holiday under Ohio law, the regular meeting for that month shall be held on the next succeeding weekday which is not a legal holiday or a Saturday or Sunday, or on such other day as the Board may determine. Regular meetings may be postponed or cancelled in advance by or at the direction of the chairperson, vice chairperson or any two Board members for reasons of either an anticipated lack of a quorum or a lack of business.

#### **Section 4. Special Meetings.**

Special meetings of the Board shall be held whenever called by the chairperson, vice chairperson or any two Board members. Every Board member shall furnish the secretary of the Board with a telephone number and an address (and, if available, a facsimile number and e-mail address) at which notice of meetings and all other Board notices may be served on or mailed to such member. Unless waived before, at, or after the meeting as hereinafter provided, notice of each such meeting shall be given by the chairperson, the vice chairperson, the persons calling such meeting, or the secretary to each member in any of the following ways:

- (a) By orally informing the member of the meeting in person or by telephone at least twenty-four (24) hours before the date of the meeting. By personal delivery of written notice to the member at least twenty-four (24) hours before the date of the meeting.
- (b) By mailing written notice to the member, or by sending notice to the member by facsimile transmission, e-mail, telegram or cablegram, postage or other costs prepaid, addressed to the member at the address furnished by such member to the secretary of the Board, or to such other address as the person sending the notice shall know to be correct. Such notice shall be posted or dispatched a sufficient length of time before the meeting so that in the ordinary course of the mail or the transmission of facsimiles, e-mails, telegrams or cablegrams, delivery thereof would normally be made to a member not later than twenty-four (24) hours before the date of the meeting.

The notice to Board members for a special meeting shall specify the date, time, location and purpose(s) of the meeting. Unless otherwise specified in the notice, special meetings shall be held at the same location as regular meetings. Unless otherwise required by the laws of the State of Ohio, notice of any meeting of the Board may be waived by any member, either before, at, or after the meeting, in writing, or by facsimile, e-mail, telegram or cablegram.

#### **Section 5. Quorum.**

Three (3) members of the Board shall constitute a quorum. In the absence of a quorum at any meeting or any adjournment thereof, any member may adjourn the meeting from time to time. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

#### **Section 6. Order of Business.**

The order of business at meetings of the Board shall be such as the chairperson may prescribe or follow; subject, however, to the chairperson being overruled with respect thereto by a majority of the members of the Board present.

#### **Section 7. Voting.**

Each member present at a meeting shall be entitled to one vote. Votes shall be made orally. The concurring vote of three (3) members of the Board shall be necessary to reverse or modify any order, requirement, decision or determination of the Zoning Inspector or assistant; to approve any variance or conditional use permit; or to decide in favor of an applicant on any matter which the Board is required to hear under the \_\_\_\_\_ Township Zoning Resolution. The failure of an applicant to secure at least three (3) such concurring votes shall constitute a decision for disapproval of the application and, in the case of an appeal, shall be deemed a confirmation and an affirmance of the decision of the zoning officer.

#### **Section 8. Public Notice of Regular and Special Meetings.**

The Board hereby establishes the following methods whereby any person may determine the date, time and place of regular meetings of the Board, and the date, time, place and purpose(s) of special and emergency meetings of the Board:

(a) Regular Meetings - The secretary shall give notice of the Board's regular meeting schedule by posting either a copy of this Section 8 or a notice on the \_\_\_\_\_ Township Division of Communications bulletin board located at the Township Hall which states, in effect, that unless otherwise changed or cancelled, all regular meetings of the \_\_\_\_\_ Township Board of Zoning Appeals will be held on the second Tuesday of each month at 7:00 p.m. at the \_\_\_\_\_ Township Hall located at \_\_\_\_\_, City, Ohio \_\_\_\_\_, unless that day is a legal holiday under Ohio Law, in which case, the regular meeting for that month shall be held on the next succeeding weekday which is not a legal holiday or a Saturday or Sunday, or on such other day as the Board may determine. If the date, time or location of a regular meeting is changed or cancelled, notice of the change or cancellation shall be posted on the \_\_\_\_\_ Township Division of Communications bulletin board at least twenty-four (24) hours prior to the meeting.

(b) Special and Emergency Meetings - The secretary shall give notice of the date, time, location and purpose(s) of a special meeting (other than an emergency meeting) by posting a notice in the same location as provided for posting notice of the Board's regular meeting schedule. The notice shall be posted at least twenty-four (24) hours prior to the meeting. In the case of an emergency meeting, the secretary shall, if sufficient time allows, give notice of an emergency meeting in the same manner as provided for non-emergency special meetings. Otherwise, notice of an emergency meeting is not required, except as provided below.

(c) Notice to News Media of Special and Emergency Meetings - News media who have requested notice of special meetings shall be notified by the secretary of the date, time, location and purpose(s) of any such meeting at least twenty-four (24) hours in advance of the meeting. If the meeting is an emergency meeting, the secretary or the Board member or members calling it shall immediately notify the media who have requested such notification. News media wishing to receive such advance notification shall provide the secretary, in writing, with a mailing address, telephone number and facsimile number (and, if available, an e-mail address) for purposes of giving such notification.

(d) Notice of Meetings to Discuss Particular Business - The secretary shall give reasonable advance notice of any regular or special meeting at which a particular type of public business is to be discussed to any person who has requested such notice. Persons wishing to receive such advance notification shall make such request in writing to the Board at \_\_\_\_\_, City, Ohio \_\_\_\_\_ and shall list the requestor's name, mailing address, telephone number and facsimile number (and, if available, an e-mail address), and the specific type of public business in which the requestor has a particular interest and desires notice. In addition, the requestor shall furnish the secretary of the Board with a sufficient number of stamped, self-addressed envelopes for mailing such notice. If time permits, the requestor will be notified of such meetings by mail. Otherwise, notice shall be by telephone, facsimile or e-mail. Any such request shall remain in force for twelve (12) months.

(e) Special Notice Required by Law - When a particular form or method of notice is required by statute for a public hearing or meeting of the Board, notice of the hearing or meeting shall be given in the form or manner prescribe by statute, in addition to notice otherwise required under this Section.

#### **Section 9. Attendance of the Applicant.**

The applicant or an authorized representative shall attend the hearing scheduled by the Board on such application. The failure of the applicant or the authorized representative to attend the hearing shall result in the Board proceeding to conduct the hearing in his or her absence. If extraordinary circumstances beyond such person's control would prevent the applicant from attending the scheduled hearing, the applicant may submit, in writing, a request to table the application and reschedule the hearing. This request shall be accompanied by any required tabling fee and shall be filed with the Zoning Inspector or secretary prior to the hearing, and such request shall constitute a waiver of the time period within which such hearing would otherwise be required to be held. The Board may, in its discretion, grant such request and reschedule the hearing for such time or times as determined by the Board. Once a hearing is commenced, nothing herein shall prevent the Board from conducting the hearing on multiple days until its conclusion.

## **ARTICLE II — Members of the Board**

### **Section 1. Purpose and Composition of the Board.**

The purpose of the Board is to hear and decide appeals, variances, conditional uses and other matters, and to otherwise exercise those powers and duties conferred by law and the \_\_\_\_\_ Township Zoning Resolution, all of which shall be performed in compliance with Ohio Revised Code Chapter 519. The members of the Board shall consist of those five (5) individuals who are, from time to time, duly appointed and serving as the members of the \_\_\_\_\_ Township Board of Zoning Appeals. The \_\_\_\_\_ Township Board of Trustees may appoint an alternate(s) to the Board who, if so appointed, may take the place of an absent member at a Board meeting in accordance with the procedures prescribed by the Trustees. Unless a member (or alternate, if so appointed) either resigns, dies, is removed from the Board by the \_\_\_\_\_ Township Board of Trustees, or ceases to reside outside of the unincorporated area of \_\_\_\_\_ Township, then each member shall serve on the Board until the member's successor is appointed and qualified.

### **Section 2. Board Officers.**

The officers of the Board to be elected from among its members shall be a chairperson and one vice chairperson.

### **Section 3. Election of Officers.**

At the regular meeting held during the month of January in each calendar year at which a quorum is present, officers shall be nominated for election, with the person(s) receiving the greatest number of votes being deemed so elected. Each shall hold the status of such an officer at the pleasure of the Board.

### **Section 4. Term of Office.**

Unless a member either resigns, is removed as hereinafter provided, or ceases to be a member of the Board, each officer shall hold office until January 31 of the next succeeding calendar year following such officer's election, or if the election is not held at the next succeeding January meeting following such officer's election or any adjournment thereof, until such time as an election of officers is held, and until a successor is duly elected and qualified.

### **Section 5. Removal.**

Any officer may be removed, without cause and at any time, by the Board at any regular meeting or special meeting; provided, however, that in the case of a special meeting, the notices (or waivers of notices) of the special meeting shall specify that such removal action was to be considered. In any case in which an officer is removed, such officer shall still remain and be a member of the Board unless removed as a member of the Board pursuant to Ohio Revised Code Chapter 519.

### **Section 6. Resignations.**

Any officer may resign such office at any time by giving written notice to the chairperson, vice chairperson, or secretary of the Board. Any such resignation shall take effect at the time specified therein. Unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective. Notwithstanding the previous, no such resignation shall be construed as resigning one's status as a member of the Board unless such resignation so specifies therein and is delivered to the \_\_\_\_\_ Township Board of Trustees by or on behalf of such member.

### **Section 7. Powers, Authority, and Duties of the Board.**

The Board shall have the powers and authority conferred and the duties prescribed by law, in addition to those specified or provided in the \_\_\_\_\_ Township Zoning Resolution and these Rules, unless otherwise conflicting with applicable law, in which case, applicable law shall prevail.

### **Section 8. The Chairperson of the Board.**

The chairperson of the Board, if and while there be an incumbent of the office, shall preside at all meetings



of the Board at which the chairperson is present. The chairperson shall have and exercise general supervision over the conduct of the Board's affairs, its order of business and over its other officers and appointees; subject, however, to any contrary law. The chairperson shall see that all orders and directives of the Board are carried into effect. The chairperson or the chairperson's designee may administer oaths. Upon authorization of the Board and subject to applicable law, the chairperson or designee may compel the attendance of witnesses.

#### **Section 9. The Vice Chairperson.**

If and, while there is no incumbent of the office of the chairperson of the Board, and during the absence of the chairperson of the Board, the vice chairperson shall have the duties and authority specified for the office of chairperson, and shall perform such other duties as may be assigned by the Board or by the chairperson. In the absence of the chairperson and vice chairperson, the Board may designate an interim chairperson to carry out all or any portion of such duties.

### **ARTICLE III — The Secretary**

The Board shall designate an individual to serve as secretary of the Board. The person designated as secretary is not required to be a Board member; provided, however, that only those individuals duly appointed and serving as members of the Board shall be entitled to vote on matters coming before the Board. The person designated as secretary shall serve in this position at the pleasure of the Board. The duties of the secretary shall include the following:

- Keep the minutes of all meetings of the Board in a written or taped form, and be custodian of the Board's records;
- See that all notices are duly given in accordance with these Rules or as required by law;
- Exhibit at all reasonable times the aforesaid records of the Board;
- See that all documents, reports, and records required by law are properly kept and filed; and
- In general, perform all duties incident to the office of secretary and such other duties as from time to time may be assigned by the Board or the chairperson.

In the absence of the secretary, the chairperson may designate an interim secretary to carry out all or any portion of such duties.

### **ARTICLE IV — Amendment of Rules of Procedure**

At any meeting of the Board, these Rules may be amended or repealed in whole or in part, or new Rules added thereto and adopted, by the affirmative vote of a majority of all of the members of the Board.

### **ARTICLE V — Repeal of Previous Rules**

All Rules of Procedure previously adopted by the Board are hereby repealed and declared to be void and of no further force or effect from and after the date these Rules are adopted by the Board.

(End of Rules of Procedure)



