

# HOUSE BILL No. 6185

June 13, 2002, Introduced by Reps. Pappageorge, Gosselin and George and referred to the Committee on Local Government and Urban Policy.

A bill to amend 1943 PA 183, entitled  
"County zoning act,"  
by amending sections 16b, 16c, 23, and 40 (MCL 125.216b,  
125.216c, 125.223, and 125.240), section 16b as amended by 1989  
PA 246 and section 40 as amended by 2001 PA 178, and by adding  
section 24b.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 16b. (1) A county may provide in a zoning ordinance  
2   for special land uses which shall be permitted in a zoning dis-  
3   trict only after review and approval by either the zoning commis-  
4   sion, an official charged with administering the ordinance, or  
5   the county board of commissioners, AS SPECIFIED IN THE  
6   ORDINANCE. The ordinance shall specify all of the following:

1 (a) The special land uses and activities eligible for  
2 approval consideration and the body or official charged with  
3 reviewing special land uses and granting approval.

4 (b) The requirements and standards upon which decisions on  
5 requests for special land use approval shall be based.

6 (c) The procedures and supporting materials required for  
7 application, review, and approval.

8 (2) Upon receipt of an application for a special land use  
9 that requires a decision on discretionary grounds, 1 notice that  
10 a request for special land use approval has been received shall  
11 be published in a newspaper that circulates in the county and  
12 sent by mail or personal delivery to ~~the~~ ALL OF THE FOLLOWING:

13 (A) THE owners of property for which approval is being  
14 considered. ~~-, to all persons~~

15 (B) EACH PERSON to whom IS ASSESSED real property ~~is~~  
16 ~~assessed~~ within 300 feet of the boundary of the property ~~in~~  
17 ~~question, and to the~~ THAT IS THE SUBJECT OF THE REQUEST.

18 (C) THE occupants of all structures within 300 feet OF THE  
19 BOUNDARY OF THE PROPERTY THAT IS THE SUBJECT OF THE REQUEST.

20 (D) IF THE REQUEST CONCERNS A SIGN OR SIGN STRUCTURE, ALL OF  
21 THE FOLLOWING:

22 (i) THE LEGISLATIVE BODY OF THE CITY, VILLAGE, OR TOWNSHIP  
23 WHERE THE PROPERTY THAT IS THE SUBJECT OF THE REQUEST IS  
24 LOCATED.

25 (ii) THE LEGISLATIVE BODY OF ANY OTHER CITY, VILLAGE, OR  
26 TOWNSHIP WITH A BOUNDARY WITHIN 1,500 FEET OF THE BOUNDARY OF THE  
27 PROPERTY THAT IS THE SUBJECT OF THE REQUEST.

(iii) THE COUNTY BOARD OF COMMISSIONERS OF EACH OTHER COUNTY WHERE A CITY, VILLAGE, OR TOWNSHIP DESCRIBED IN SUBPARAGRAPH (ii) IS LOCATED.

(3) The notice PROVIDED FOR IN SUBSECTION (2) shall be given not less than 5 and not more than 45 days before the date the application will be considered. If the name of the occupant is not known, the term "occupant" may be used in making notification. Notification need not be given to more than 1 occupant of a structure, except that if a structure contains more than 1 dwelling unit or spatial area owned or leased by different individuals, partnerships, businesses, or organizations, 1 occupant of each unit or spatial area shall receive notice. In the case of a single structure containing more than 4 dwelling units or other spatial areas owned or leased by different individuals, partnerships, businesses, or organizations, notice may be given to the manager or owner of the structure, who shall be requested to post the notice at the primary entrance to the structure. The notice shall do all of the following:

(a) Describe the nature of the special land use request.

(b) Indicate the ~~geographic areas that are included in~~ PROPERTY THAT IS THE SUBJECT OF the special land use request.

(c) State when and where the special land use request will be considered.

(d) Indicate when and where written comments will be received concerning the request.

(e) Indicate that a public hearing on the special land use request may be requested by ~~a property owner~~ EITHER OR BOTH OF THE FOLLOWING, AS APPLICABLE:

(i) AN OWNER OF PROPERTY or the occupant of a structure located within 300 feet of the boundary of the property ~~being considered for a special use~~ THAT IS THE SUBJECT OF THE REQUEST.

(ii) IF THE REQUEST CONCERNS A SIGN OR SIGN STRUCTURE, THE ENTITIES LISTED IN SUBSECTION (2)(D).

(4) ~~(3)~~ At the initiative of the body or official responsible for approving special land uses, upon the request of the applicant for special land use authorization ~~, or upon the request of a property owner or the occupant of a structure located within 300 feet of the boundary of the property being considered for a special land use~~ OR A PERSON DESCRIBED IN SUBSECTION (3)(E), a public hearing ~~with notification as required for a notice of a request for special land use approval as provided in subsection (2)~~ shall be held before a decision is made on a special land use request that is based on discretionary grounds. NOTICE OF THE PUBLIC HEARING SHALL BE GIVEN IN THE SAME MANNER AS REQUIRED FOR NOTICE OF A REQUEST FOR SPECIAL LAND USE APPROVAL UNDER SUBSECTIONS (2) AND (3). If the applicant or the body or official responsible for approving special land uses requests a public hearing, only notification of the public hearing need be made.

(5) A decision on a special land use that is based on discretionary grounds shall not be made unless notification of

1 the request for special land use approval, or notification of a  
2 public hearing on a special land use request, has been made as  
3 required by this section.

4 (6) ~~-(4)-~~ The body or official designated in the zoning  
5 ordinance to review and approve special land uses may deny or  
6 approve, or approve with conditions, a request for special land  
7 use approval. The decision on a special land use shall be incor-  
8 porated in a statement of conclusions relative to the special  
9 land use under consideration. ~~that specifies~~ THE STATEMENT  
10 SHALL SPECIFY the basis for the decision and any conditions  
11 imposed.

12 Sec. 16c. (1) ~~As used in this section, "planned unit~~  
13 ~~development" includes cluster zoning, planned development, commu-~~  
14 ~~nity unit plan, planned residential development, and other zoning~~  
15 ~~requirements which are designed to accomplish the objectives of a~~  
16 ~~zoning ordinance through a land development project review pro-~~  
17 ~~cess based on the application of site planning criteria to~~  
18 ~~achieve integration of the proposed land development project with~~  
19 ~~the characteristics of the project area. (2) A county may~~  
20 ~~establish~~ A COUNTY ZONING ORDINANCE MAY INCLUDE planned unit  
21 development requirements ~~in a zoning ordinance which~~ THAT  
22 permit flexibility in the regulation of land development; encour-  
23 age innovation in land use and variety in design, layout, and  
24 type of structures constructed; achieve economy and efficiency in  
25 the use of land, natural resources, energy, and the providing of  
26 public services and utilities; encourage useful open space; and  
27 provide better housing, employment, and shopping opportunities

1 particularly suited to the needs of the residents of the state.  
2 The review and approval of a planned unit development shall be  
3 made by either the zoning commission, an official charged with  
4 administration of the ordinance, or the county board of  
5 commissioners, AS SPECIFIED IN THE ZONING ORDINANCE.

6 (2) ~~-(3)-~~ Within a land development project designated as a  
7 planned unit development, regulations relating to the use of  
8 land, including, BUT NOT LIMITED TO, permitted uses, lot sizes,  
9 setbacks, height limits, required facilities, buffers, open space  
10 areas, and land use density shall be determined ~~in accordance~~  
11 ~~with~~ UNDER the planned unit development regulations specified in  
12 the zoning ordinance. The planned unit development regulations  
13 need not be uniform with regard to each type of land use if equi-  
14 table procedures recognizing due process principles and avoiding  
15 arbitrary decisions ~~have been~~ ARE followed in making regulatory  
16 decisions.

17 (3) ~~-(4)-~~ The planned unit development regulations  
18 ~~established~~ ADOPTED by a county shall specify ALL OF the  
19 following:

20 (a) The body or official ~~which~~ WHO shall review and  
21 approve planned unit development requests.

22 (b) The conditions ~~which~~ THAT create planned unit develop-  
23 ment eligibility, the persons and agencies involved in the review  
24 process, and the requirements and standards upon which applica-  
25 tions ~~will~~ SHALL be judged and approval granted.

26 (c) The procedures required for application, review, and  
27 approval.

1           (4) ~~-(5)-~~ Following receipt of a request to approve a  
2 planned unit development, the body or official charged in the  
3 ordinance with the review and approval of planned unit develop-  
4 ments shall hold at least 1 public hearing on the request. An  
5 ordinance may provide for 1 or more preapplication conferences  
6 before submission of a planned unit development request, and FOR  
7 the submission of preliminary site plans before the public  
8 hearing. Notification of the public hearing shall be given in  
9 the same manner as required by section ~~16b(3) for public hear-~~  
10 ~~ings on~~ 16B(2) AND (3) FOR REQUESTS FOR special land uses.  
11 Within a reasonable time following the public hearing, the body  
12 or official responsible for approving planned unit developments  
13 shall meet for final consideration of the request, and deny,  
14 approve, or approve with conditions the request. The body or  
15 official shall prepare a report stating its conclusions on the  
16 request for a planned unit development, the basis for its deci-  
17 sion, the decision, and conditions relating to an affirmative  
18 decision. ~~Should the ordinance require~~ THE DECISION OF THAT  
19 BODY OR OFFICIAL IS FINAL UNLESS THE ZONING ORDINANCE REQUIRES  
20 THAT THE COUNTY BOARD OF COMMISSIONERS AMEND THE ZONING ORDINANCE  
21 TO APPROVE OR APPROVE WITH CONDITIONS THE PLANNED UNIT DEVELOP-  
22 MENT REQUEST. IF THE ORDINANCE REQUIRES that the county board of  
23 commissioners amend the ordinance to ~~act on~~ APPROVE OR APPROVE  
24 WITH CONDITIONS the planned unit development request, ~~the~~ BOTH  
25 OF THE FOLLOWING APPLY:  
26           (A) THE zoning commission shall conduct the hearing as  
27 required by section 9, and the report and documents related to

1 the planned unit development request shall be transmitted to the  
2 county board of commissioners for consideration in making a final  
3 decision. ~~If an amendment of a zoning ordinance is required by~~  
4 ~~the planned unit development regulations of a county zoning ordi-~~  
5 ~~nance, the~~

6 (B) THE requirements of this act for amendment of a zoning  
7 ordinance shall be followed ~~— However, EXCEPT THAT~~ the hearing  
8 and notice required by this subsection ~~shall be regarded as~~  
9 ~~fulfilling~~ FULFILLS the public hearing and notice requirements  
10 of section 9.

11 ~~—(6) If the planned unit development regulations of a county~~  
12 ~~zoning ordinance do not require amendment of the ordinance to~~  
13 ~~authorize a planned unit development, the body or official~~  
14 ~~charged in the zoning ordinance with review and approval of~~  
15 ~~planned unit developments may approve, approve with conditions,~~  
16 ~~or deny a request.~~

17 (5) ~~—(7)~~ Final approvals may be granted on each phase of  
18 multiphased planned unit development if each phase contains the  
19 necessary components to ~~insure~~ ENSURE protection of natural  
20 resources and the health, safety, and welfare of the users of the  
21 planned unit development and the residents of the surrounding  
22 area.

23 (6) ~~—(8)~~ In establishing planned unit development regula-  
24 tions, a county may incorporate by reference other ~~available~~  
25 ~~and~~ applicable ordinances or statutes ~~which~~ THAT regulate land  
26 development. The planned unit development regulations contained  
27 in zoning ordinances shall encourage complementary relationships



1 between zoning regulations and other requirements affecting the  
2 development of land.

3 Sec. 23. (1) The county board of zoning appeals shall fix a  
4 reasonable time for the hearing of ~~the appeal and give due~~  
5 ~~notice of the appeal to the parties,~~ AN APPEAL UNDER SECTION 20  
6 and decide the appeal within a reasonable time. THE BOARD OF  
7 ZONING APPEALS SHALL GIVE NOTICE OF THE APPEAL TO ALL OF THE FOL-  
8 LOWING, AS APPLICABLE:

9 (A) THE PARTIES.

10 (B) IF THE APPEAL IS FROM A DECISION ON A SPECIAL LAND USE  
11 REQUEST CONCERNING A SIGN OR SIGN STRUCTURE, ALL OF THE  
12 FOLLOWING:

13 (i) THE LEGISLATIVE BODY OF THE CITY, VILLAGE, OR TOWNSHIP  
14 WHERE THE PROPERTY THAT IS THE SUBJECT OF THE REQUEST IS  
15 LOCATED.

16 (ii) THE LEGISLATIVE BODY OF ANY OTHER CITY, VILLAGE, OR  
17 TOWNSHIP WITH A BOUNDARY WITHIN 1,500 FEET OF THE BOUNDARY OF THE  
18 PROPERTY THAT IS THE SUBJECT OF THE REQUEST.

19 (iii) THE COUNTY BOARD OF COMMISSIONERS OF EACH OTHER COUNTY  
20 WHERE A CITY, VILLAGE, OR TOWNSHIP DESCRIBED IN SUBPARAGRAPH (ii)  
21 IS LOCATED.

22 (2) At the hearing, a party may appear in person or by the  
23 agent or by attorney.

24 (3) The county board of zoning appeals may reverse or  
25 affirm, wholly or partly, or may modify the order, requirement,  
26 decision, or determination ~~as in its opinion ought to be made in~~  
27 ~~the premises, and to that end shall have~~ APPEALED FROM. FOR

1 THAT PURPOSE, THE BOARD HAS all the powers of the officer or body  
2 from whom the appeal was taken and may issue or direct the issu-  
3 ance of a permit.

4 (4) If there are practical difficulties or unnecessary hard-  
5 ship in the way of carrying out the strict letter of the zoning  
6 ordinance, the county board of zoning appeals, in passing upon  
7 appeals, may vary or modify any of its rules or provisions so  
8 that the spirit of the ordinance shall be observed, public safety  
9 secured, and substantial justice done.

10 (5) ~~-(2)-~~ The county board of zoning appeals may impose con-  
11 ditions with an affirmative decision, pursuant to section  
12 16d(2). The decision of the county board of zoning appeals  
13 ~~shall be~~ IS final. However, a person having an interest  
14 affected by the zoning ordinance has the right to appeal to the  
15 circuit court. Upon appeal, the circuit court shall review the  
16 record and decision of the county board of zoning appeals to  
17 insure that the decision meets the following requirements:

18 (a) Complies with the state constitution of 1963 and the  
19 laws of this state.

20 (b) Is based upon proper procedure.

21 (c) Is supported by competent, material, and substantial  
22 evidence on the record.

23 (d) Represents the reasonable exercise of discretion granted  
24 by law to the county board of zoning appeals.

25 (6) ~~-(3)-~~ If the court finds the record of the county board  
26 of zoning appeals inadequate to make the review required by this  
27 section, or that there is additional evidence ~~which~~ THAT is

1 material and with good reason was not presented to the county  
2 board of zoning appeals, the court shall order further proceed-  
3 ings before the county board of zoning appeals on conditions  
4 ~~which~~ THAT the court considers proper. The county board of  
5 zoning appeals may modify its findings and decision as a result  
6 of the new proceedings, or may affirm its original decision. The  
7 supplementary record and decision shall be filed with the court.

8 (7) ~~(4)~~ As a result of the review required by this sec-  
9 tion, the court may affirm, reverse, or modify the decision of  
10 the county board of zoning appeals.

11 SEC. 24B. IF A COUNTY IS A PARTY IN A JUDICIAL ACTION ARIS-  
12 ING FROM ITS DECISION ON A SPECIAL LAND USE REQUEST CONCERNING A  
13 SIGN OR SIGN STRUCTURE, ANY OF THE FOLLOWING MAY INTERVENE IN THE  
14 ACTION WITH THE APPROVAL OF THE COUNTY BOARD OF COMMISSIONERS OF  
15 THAT COUNTY OR UNDER ANY OTHER CIRCUMSTANCES PROVIDED BY LAW OR  
16 THE MICHIGAN COURT RULES:

17 (A) THE CITY, VILLAGE, OR TOWNSHIP WHERE THE PROPERTY THAT  
18 IS THE SUBJECT OF THE ACTION IS LOCATED.

19 (B) ANY OTHER CITY, VILLAGE, OR TOWNSHIP WITH A BOUNDARY  
20 WITHIN 1,500 FEET OF THE BOUNDARY OF THE PROPERTY THAT IS THE  
21 SUBJECT OF THE ACTION.

22 (C) EACH OTHER COUNTY WHERE A CITY, VILLAGE, OR TOWNSHIP  
23 DESCRIBED IN SUBDIVISION (B) IS LOCATED.

24 Sec. 40. (1) As used in this act:

25 (a) "Agricultural land" means substantially undeveloped land  
26 devoted to the production of plants and animals useful to humans,  
27 including forage and sod crops; grains, feed crops, and field

1 crops; dairy products; poultry and poultry products; livestock,  
2 including breeding and grazing of cattle, swine, and similar ani-  
3 mals; berries; herbs; flowers; seeds; grasses; nursery stock;  
4 fruits; vegetables; Christmas trees; and other similar uses and  
5 activities.

6 (b) "Airport" means an airport licensed by the Michigan  
7 department of transportation, bureau of aeronautics under section  
8 86 of the aeronautics code of the state of Michigan, 1945 PA 327,  
9 MCL 259.86.

10 (c) "Airport approach plan" means a plan, or an amendment to  
11 a plan, adopted under section 12 of the airport zoning act, 1950  
12 (Ex Sess) PA 23, MCL 259.442, and filed with the county zoning  
13 commission under section 151 of the aeronautics code of the state  
14 of Michigan, 1945 PA 327, MCL 259.151.

15 (d) "Airport layout plan" means a plan, or an amendment to a  
16 plan, that shows current or proposed layout of an airport, that  
17 is approved by the Michigan aeronautics commission, and that is  
18 filed with the county zoning commission under section 151 of the  
19 aeronautics code of the state of Michigan, 1945 PA 327,  
20 MCL 259.151.

21 (e) "Airport manager" means that term as defined in section  
22 ~~10~~ 2 of the aeronautics code of the state of Michigan, 1945  
23 PA 327, MCL ~~259.10~~ 259.2.

24 (f) "Airport zoning regulations" means airport zoning regu-  
25 lations under the airport zoning act, 1950 (Ex Sess) PA 23,  
26 MCL 259.431 to 259.465, for an airport hazard area that lies in

1 whole or part in the area affected by a zoning ordinance under  
2 this act.

3 (g) "Conservation easement" means that term as defined in  
4 section 2140 of the natural resources and environmental protec-  
5 tion act, 1994 PA 451, MCL 324.2140.

6 (h) "Development rights" means the rights to develop land to  
7 the maximum intensity of development authorized by law.

8 (i) "Development rights ordinance" means an ordinance, which  
9 may comprise part of a zoning ordinance, adopted under  
10 section 31.

11 (j) "Greenway" means a contiguous or linear open space,  
12 including habitats, wildlife corridors, and trails, that link  
13 parks, nature reserves, cultural features, or historic sites with  
14 each other, for recreation and conservation purposes.

15 (k) "Intensity of development" means the height, bulk, area,  
16 density, setback, use, and other similar characteristics of  
17 development.

18 (l) "Other eligible land" means land that has a common prop-  
19 erty line with agricultural land from which development rights  
20 have been purchased and that is not divided from that agricul-  
21 tural land by a state or federal limited access highway.

22 (m) "PDR program" means a program under section 32 for the  
23 purchase of development rights by a county.

24 (N) "PLANNED UNIT DEVELOPMENT" INCLUDES CLUSTER ZONING,  
25 PLANNED DEVELOPMENT, COMMUNITY UNIT PLAN, PLANNED RESIDENTIAL  
26 DEVELOPMENT, AND OTHER TERMINOLOGY DENOTING ZONING REQUIREMENTS  
27 DESIGNED TO ACCOMPLISH THE OBJECTIVES OF THE ZONING ORDINANCE

1 THROUGH A LAND DEVELOPMENT PROJECT REVIEW PROCESS BASED ON THE  
2 APPLICATION OF SITE PLANNING CRITERIA TO ACHIEVE INTEGRATION OF A  
3 PROPOSED LAND DEVELOPMENT PROJECT WITH THE CHARACTERISTICS OF THE  
4 PROJECT AREA.

5 (O) "SIGN" AND "SIGN STRUCTURE" MEAN THOSE TERMS AS DEFINED  
6 IN SECTION 2 OF THE HIGHWAY ADVERTISING ACT OF 1972, 1972 PA 106,  
7 MCL 252.302.

8 (P) ~~(n)~~ "Undeveloped state" means a natural state preserv-  
9 ing natural resources, natural features, or scenic or wooded con-  
10 ditions; agricultural use; open space; or a similar use or  
11 condition. Land in an undeveloped state does not include a golf  
12 course but may include a recreational trail, picnic area,  
13 children's play area, greenway, or linear park. Land in an unde-  
14 veloped state may be, but is not required to be, dedicated to the  
15 use of the public.

16 (2) This act shall be known and may be cited as the "county  
17 zoning act".