

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5032

(As amended, February 19, 2008)

<<A bill to amend 2006 PA 110, entitled
"Michigan zoning enabling act,"
by amending sections 102, 103, 202, 208, 301, 401, 407, 501, 601, 604,
606, and 702 (MCL 125.3102, 125.3103, 125.3202, 125.3208, 125.3301,
125.3401, 125.3407, 125.3501, 125.3601, 125.3604, 125.3606, and
125.3702), section 102 as amended by 2007 PA 219.>>

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 102. As used in this act:

2 (a) "Agricultural land" means substantially undeveloped land
3 devoted to the production of plants and animals useful to humans,
4 including, but not limited to, forage and sod crops, grains, feed
5 crops, field crops, dairy products, poultry and poultry products,
6 livestock, herbs, flowers, seeds, grasses, nursery stock, fruits,
7 vegetables, Christmas trees, and other similar uses and activities.

8 (b) "Airport" means an airport licensed by the Michigan

1 department of transportation, bureau of aeronautics under section
2 86 of the aeronautics code of the state of Michigan, 1945 PA 327,
3 MCL 259.86.

4 (c) "Airport approach plan" and "airport layout plan" mean a
5 plan, or an amendment to a plan, filed with the zoning commission
6 under section 151 of the aeronautics code of the state of Michigan,
7 1945 PA 327, MCL 259.151.

8 (d) "Airport manager" means that term as defined in section 2
9 of the aeronautics code of the state of Michigan, 1945 PA 327, MCL
10 259.2.

11 (e) "Airport zoning regulations" means airport zoning
12 regulations under the airport zoning act, 1950 (Ex Sess) PA 23, MCL
13 259.431 to 259.465, for an airport hazard area that lies in whole
14 or part in the area affected by a zoning ordinance under this act.

15 (f) "Conservation easement" means that term as defined in
16 section 2140 of the natural resources and environmental protection
17 act, 1994 PA 451, MCL 324.2140.

18 (g) "Coordinating zoning committee" means a coordinating
19 zoning committee as described under section 307.

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

22 (i) "Development rights ordinance" means an ordinance, which
23 may comprise part of a zoning ordinance, adopted under section ~~308~~
24 507.

25 (j) "Family child care home" and "group child care home" mean
26 those terms as defined in section 1 of 1973 PA 116, MCL 722.111,
27 and only apply to the bona fide private residence of the operator

1 of the family or group child care home.

2 (k) "Greenway" means a contiguous or linear open space,
3 including habitats, wildlife corridors, and trails, that links
4 parks, nature reserves, cultural features, or historic sites with
5 each other, for recreation and conservation purposes.

6 (l) "Improvements" means those features and actions associated
7 with a project that are considered necessary by the body or
8 official granting zoning approval to protect natural resources or
9 the health, safety, and welfare of the residents of a local unit of
10 government and future users or inhabitants of the proposed project
11 or project area, including roadways, lighting, utilities,
12 sidewalks, screening, and drainage. Improvements do not include the
13 entire project that is the subject of zoning approval.

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

17 (n) "Legislative body" ~~refers to~~ **MEANS** the county board of
18 commissioners of a county, the board of trustees of a township, **OR**
19 ~~the council of a city or village, or other similar duly-elected~~
20 ~~representative~~ **GOVERNING** body of a ~~county, township, city, or~~
21 village.

22 (o) "Local unit of government" means a county, township, city,
23 or village.

24 (p) "Other eligible land" means land that has a common
25 property line with agricultural land from which development rights
26 have been purchased and is not divided from that agricultural land
27 by a state or federal limited access highway.

(Q) "PERSON" MEANS AN INDIVIDUAL, PARTNERSHIP, CORPORATION, ASSOCIATION, GOVERNMENTAL ENTITY, OR OTHER LEGAL ENTITY.

(R) ~~(q)~~—"Population" means the population according to the most recent federal decennial census or according to a special census conducted under section 7 of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.907, whichever is the more recent.

(S) ~~(r)~~—"Site plan" includes the documents and drawings required by the zoning ordinance to ~~insure~~ **ENSURE** that a proposed land use or activity is in compliance with local ordinances and state and federal statutes.

(T) ~~(s)~~—"State licensed residential facility" means a structure constructed for residential purposes that is licensed by the state under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737, or 1973 PA 116, MCL 722.111 to 722.128, and provides residential services for 6 or fewer ~~persons~~ **INDIVIDUALS** under 24-hour supervision or care.

(U) ~~(t)~~—"Undeveloped state" means a natural state preserving natural resources, natural features, scenic or wooded conditions, agricultural use, open space, or a similar use or condition. Land in an undeveloped state does not include a golf course but may include a recreational trail, picnic area, children's play area, greenway, or linear park. Land in an undeveloped state may be, but is not required to be, dedicated to the use of the public.

~~(u) "Zoning board" means a county zoning commission created under the former county zoning act, 1943 PA 183, or a township zoning board created under the former township zoning act, 1943 PA~~

~~184, that existed on the effective date of this act.~~

(v) "Zoning commission" means a zoning commission as described under section 301.

(w) "Zoning jurisdiction" ~~refers to~~ **MEANS** the area encompassed by the legal boundaries of a city or village or ~~to the area~~ encompassed by the legal boundaries of a county or township outside the limits of incorporated cities and villages. The zoning jurisdiction of a county does not include the areas subject to ~~township zoning by a township that has adopted a~~ **TOWNSHIP** zoning ordinance. ~~under this act.~~

Sec. 103. (1) Except as otherwise provided under this act, if a local unit of government ~~is required to provide notice and~~ **CONDUCTS A PUBLIC hearing REQUIRED** under this act, the local unit of government shall publish notice of the ~~request~~ **HEARING** in a newspaper of general circulation in the local unit of government **NOT LESS THAN 15 DAYS BEFORE THE DATE OF THE HEARING.**

(2) Notice ~~shall also be sent by mail or personal delivery~~ **REQUIRED UNDER THIS ACT SHALL BE GIVEN AS PROVIDED UNDER SUBSECTION** (3) to the owners of property ~~for which approval is being~~ **considered THAT IS THE SUBJECT OF THE REQUEST.** Notice shall also be ~~sent~~ **GIVEN AS PROVIDED UNDER SUBSECTION (3)** to all persons to whom real property is assessed within 300 feet of the property **THAT IS THE SUBJECT OF THE REQUEST** and to the occupants of all structures within 300 feet of the **SUBJECT** property regardless of whether the property or ~~occupant~~ **STRUCTURE** is located in the zoning jurisdiction. **NOTIFICATION NEED NOT BE GIVEN TO MORE THAN 1 OCCUPANT OF A STRUCTURE, EXCEPT THAT IF A STRUCTURE CONTAINS MORE**

1 THAN 1 DWELLING UNIT OR SPATIAL AREA OWNED OR LEASED BY DIFFERENT
 2 PERSONS, 1 OCCUPANT OF EACH UNIT OR SPATIAL AREA SHALL BE GIVEN
 3 NOTICE. IF A SINGLE STRUCTURE CONTAINS MORE THAN 4 DWELLING UNITS
 4 OR OTHER DISTINCT SPATIAL AREAS OWNED OR LEASED BY DIFFERENT
 5 PERSONS, NOTICE MAY BE GIVEN TO THE MANAGER OR OWNER OF THE
 6 STRUCTURE, WHO SHALL BE REQUESTED TO POST THE NOTICE AT THE PRIMARY
 7 ENTRANCE TO THE STRUCTURE.

8 (3) The notice ~~shall~~ UNDER SUBSECTION (2) IS CONSIDERED TO be
 9 given WHEN PERSONALLY DELIVERED OR WHEN DEPOSITED DURING NORMAL
 10 BUSINESS HOURS FOR DELIVERY WITH THE UNITED STATES POSTAL SERVICE
 11 OR OTHER PUBLIC OR PRIVATE DELIVERY SERVICE. THE NOTICE SHALL BE
 12 GIVEN not less than 15 days before the date the ~~application~~ REQUEST
 13 will be considered. ~~for approval.~~ If the name of the occupant is
 14 not known, the term "occupant" may be used ~~in making notification~~
 15 ~~under this subsection~~ FOR THE INTENDED RECIPIENT OF THE NOTICE. The

16 (4) A notice UNDER THIS SECTION shall do all of the following:

17 (a) Describe the nature of the request.

18 (b) Indicate the property that is the subject of the request.

19 The notice shall include a listing of all existing street addresses
 20 within the property. Street addresses do not need to be created and
 21 listed if no such addresses currently exist within the property. If
 22 there are no street addresses, other means of identification may be
 23 used.

24 (c) State when and where the request will be considered.

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

27 Sec. 202. (1) The legislative body of a local UNIT OF

1 government may provide by ordinance for the manner in which the
2 regulations and boundaries of districts or zones shall be
3 determined and enforced or amended ~~, OR supplemented. , or changed.~~
4 Amendments or supplements to the zoning ordinance shall be ~~made~~
5 **ADOPTED** in the same manner as provided under this act for the
6 ~~enactment~~ **ADOPTION** of the original ordinance.

7 (2) ~~If an individual property or 10 or fewer adjacent~~
8 ~~properties are proposed for rezoning~~ **EXCEPT AS PROVIDED IN**
9 **SUBSECTION (3)**, the zoning commission shall give a notice of ~~the~~ **A**
10 proposed rezoning in the same manner as required under section 103.

11 (3) ~~If 11 or more~~ **FOR ANY GROUP OF** adjacent properties are
12 **NUMBERING 11 OR MORE THAT IS** proposed for rezoning, ~~the zoning~~
13 ~~commission shall give a notice of the proposed rezoning in the same~~
14 ~~manner as required under section 103, except for the requirement of~~
15 ~~section 103(2) and except that no individual addresses of~~
16 ~~properties are required to be listed under section 103(3)(b)~~ **THE**
17 **REQUIREMENTS OF SECTION 103(2) AND THE REQUIREMENT OF SECTION**
18 **103(4)(B) THAT STREET ADDRESSES BE LISTED DO NOT APPLY TO THAT**
19 **GROUP OF ADJACENT PROPERTIES.**

20 (4) An amendment to a zoning ordinance by a city or village is
21 subject to a protest petition under section 403.

22 (5) An amendment ~~for the purpose of conforming~~ **TO CONFORM** a
23 provision of the zoning ordinance to the decree of a court of
24 competent jurisdiction as to any specific lands may be adopted by
25 the legislative body and the notice of the adopted amendment
26 published without referring the amendment to any other board or
27 agency provided for under this act.

1 Sec. 208. (1) If the use of a dwelling, building, or structure
2 or of the land is lawful at the time of enactment of a zoning
3 ordinance or an amendment to a zoning ordinance, then that use may
4 be continued although the use does not conform to ~~the provisions of~~
5 the zoning ordinance or amendment. **THIS SUBSECTION IS INTENDED TO**
6 **CODIFY THE LAW AS IT EXISTED BEFORE JULY 1, 2006 IN SECTION 216(1)**
7 **OF THE FORMER COUNTY ZONING ACT, 1943 PA 183, SECTION 286(1) OF THE**
8 **FORMER TOWNSHIP ZONING ACT, 1943 PA 184, AND SECTION 583A(1) OF THE**
9 **FORMER CITY AND VILLAGE ZONING ACT, 1921 PA 207, AS THEY APPLIED TO**
10 **COUNTIES, TOWNSHIPS, AND CITIES AND VILLAGES, RESPECTIVELY, AND**
11 **SHALL BE CONSTRUED AS A CONTINUATION OF THOSE LAWS AND NOT AS NEW**
12 **ENACTMENTS.**

13 (2) The legislative body may provide in a zoning ordinance for
14 the completion, resumption, restoration, reconstruction, extension,
15 or substitution of nonconforming uses or structures upon terms and
16 conditions provided in the zoning ordinance. In establishing terms
17 for the completion, resumption, restoration, reconstruction,
18 extension, or substitution of nonconforming uses or structures,
19 different classes of nonconforming uses may be established in the
20 zoning ordinance with different requirements applicable to each
21 class.

22 (3) The legislative body may acquire, by purchase,
23 condemnation, or otherwise, private property or an interest in
24 private property for the removal of nonconforming uses and
25 structures. The legislative body may provide that the cost and
26 expense of acquiring private property may be paid from general
27 funds or assessed to a special district in accordance with the

1 applicable statutory provisions relating to the creation and
2 operation of special assessment districts for public improvements
3 in local units of government. Property acquired under this
4 subsection by a city or village shall not be used for public
5 housing.

6 (4) The elimination of the nonconforming uses and structures
7 in a zoning district is declared to be for a public purpose and for
8 a public use. The legislative body may institute proceedings for
9 condemnation of nonconforming uses and structures under 1911 PA
10 149, MCL 213.21 to 213.25.

11 Sec. 301. (1) Each local unit of government in which the
12 legislative body exercises authority under this act shall create a
13 zoning commission ~~—UNLESS 1 OF THE FOLLOWING APPLIES:~~

14 ~~(A) A zoning board in existence on the effective date of this~~
15 ~~act may~~ COUNTY ZONING COMMISSION CREATED UNDER FORMER 1943 PA 183,
16 A TOWNSHIP ZONING BOARD CREATED UNDER FORMER 1943 PA 184, OR A CITY
17 OR VILLAGE ZONING COMMISSION CREATED UNDER FORMER 1921 PA 207 WAS
18 IN EXISTENCE IN THE LOCAL UNIT OF GOVERNMENT AS OF JUNE 30, 2006.
19 UNLESS ABOLISHED BY THE LEGISLATIVE BODY, THAT EXISTING BOARD OR
20 COMMISSION SHALL continue as AND EXERCISE THE POWERS AND PERFORM
21 THE DUTIES OF a zoning commission UNDER THIS ACT, subject to a
22 transfer of power under subsection (2). ~~or until 5 years from the~~
23 ~~effective date of this act, whichever is earlier.~~

24 (B) A planning commission ~~exercising the authority of a zoning~~
25 ~~board before the effective date of this act may~~ WAS, AS OF JUNE 30,
26 2006, IN EXISTENCE IN THE LOCAL UNIT OF GOVERNMENT AND PURSUANT TO
27 THE APPLICABLE PLANNING ENABLING ACT EXERCISING THE POWERS AND

1 PERFORMING THE DUTIES OF A COUNTY ZONING COMMISSION CREATED UNDER
2 FORMER 1943 PA 185, OF A TOWNSHIP ZONING BOARD CREATED UNDER FORMER
3 1943 PA 184, OR OF A CITY OR VILLAGE ZONING COMMISSION CREATED
4 UNDER FORMER 1921 PA 207. UNLESS ABOLISHED BY THE LEGISLATIVE BODY,
5 THAT EXISTING PLANNING COMMISSION SHALL ~~continue to~~ AND exercise
6 ~~that authority subject to~~ THE POWERS AND PERFORM THE DUTIES OF A
7 ZONING COMMISSION UNDER this act.

8 (C) THE LOCAL UNIT OF GOVERNMENT HAS CREATED A PLANNING
9 COMMISSION ON OR AFTER JULY 1, 2006 AND TRANSFERRED THE POWERS AND
10 DUTIES OF A ZONING COMMISSION TO THE PLANNING COMMISSION PURSUANT
11 TO THE APPLICABLE PLANNING ENABLING ACT.

12 (2) Except as otherwise provided under this subsection, if the
13 ~~legislative body has transferred the powers~~ AND DUTIES of the
14 zoning commission HAVE BEEN TRANSFERRED to the planning commission
15 as provided by law, the ~~zoning~~ PLANNING commission shall ~~be the~~
16 ~~planning~~ FUNCTION AS THE ZONING commission of the local unit of
17 government. ~~The~~ BY JULY 1, 2011, THE legislative body shall ~~have 5~~
18 ~~years from the effective date of this act to transfer the powers~~
19 AND DUTIES of the zoning commission to the planning commission.
20 Except as provided under this subsection, ~~5 years after the~~
21 ~~effective date of this act~~ BEGINNING JULY 1, 2011, the ~~A~~ zoning
22 ~~commission shall not have any authority~~ COMMISSION'S POWERS OR
23 DUTIES under this act or an ordinance adopted under this act SHALL
24 ONLY BE EXERCISED OR PERFORMED BY A PLANNING COMMISSION.

25 (3) If a zoning commission is created ON OR after ~~the~~
26 ~~effective date of this act~~ JULY 1, 2006, the zoning commission
27 shall be created by resolution and be composed of not fewer than 5

1 or more than 11 members appointed by the legislative body. Not less
2 **FEWER** than 2 of the members of a county zoning commission shall be
3 recommended for membership by the legislative bodies of townships
4 that are, or ~~shall~~ **WILL** be, subject to the county zoning ordinance.
5 This requirement may be met as vacancies occur on a county zoning
6 commission that existed on ~~the effective date of this act~~ **JUNE 30,**
7 **2006.**

8 (4) The members of ~~the~~ **A** zoning commission shall be selected
9 upon the basis of the members' qualifications and fitness to serve
10 as members of a zoning commission.

11 (5) The first zoning commission appointed **UNDER SUBSECTION (3)**
12 shall be divided as nearly as possible into 3 equal groups, with
13 terms of each group as follows:

14 (a) One group for 1 year.

15 (b) One group for 2 years.

16 (c) One group for 3 years.

17 (6) Upon the expiration of the terms of the members first
18 appointed, successors shall be appointed in ~~like~~ **THE SAME** manner
19 for terms of 3 years each. A member of the zoning commission shall
20 serve until a successor is appointed and has been qualified.

21 (7) A vacancy **ON A ZONING COMMISSION** shall be filled ~~in the~~
22 ~~same manner as is provided under this section~~ for the remainder of
23 the unexpired term **IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT.**

24 (8) An elected officer of ~~the~~ **A** local unit of government ~~or an~~
25 ~~employee of the legislative body~~ shall not serve simultaneously as
26 a member or an employee of the zoning commission **OF THAT LOCAL UNIT**
27 **OF GOVERNMENT**, except that 1 ~~member of the zoning commission may be~~

1 a-member of the legislative body **MAY BE A MEMBER OF THE ZONING**
2 **COMMISSION.**

3 (9) The legislative body shall provide for the removal of a
4 member of ~~the~~**A** zoning commission for misfeasance, malfeasance, or
5 nonfeasance in office upon written charges and after public
6 hearing.

7 (10) ~~The~~**A** zoning commission shall elect from its members a
8 chairperson, a secretary, and other officers ~~or~~**AND** establish such
9 committees it considers necessary and may engage any employees,
10 including for technical assistance, it requires. The election of
11 officers shall be held not less than once in every 2-year period.

12 Sec. 401. (1) After receiving a zoning ordinance under section
13 308(1) or an amendment under ~~section~~**SECTIONS 202 AND 308(1)**, the
14 legislative body may hold a public hearing if it considers it
15 necessary or ~~as may~~**IF** otherwise ~~be~~ required.

16 (2) Notice of ~~the~~**A PUBLIC** hearing to be held by the
17 legislative body shall be given in the same manner as required
18 under section 103(1) for the initial adoption of a zoning ordinance
19 or section 202 for any ~~other~~-zoning text or map amendments.

20 (3) The legislative body may refer any proposed amendments to
21 the zoning commission for consideration and comment within a time
22 specified by the legislative body.

23 (4) The legislative body shall grant a hearing on a proposed
24 ordinance provision to a ~~a~~**AN INTERESTED** property owner who requests
25 a hearing by certified mail, addressed to the clerk of the
26 legislative body. **A HEARING UNDER THIS SUBSECTION IS NOT SUBJECT TO**
27 **THE REQUIREMENTS OF SECTION 103, EXCEPT THAT NOTICE OF THE HEARING**

1 SHALL BE GIVEN TO THE INTERESTED PROPERTY OWNER IN THE MANNER
2 REQUIRED IN SECTION 103(3) AND (4).

3 (5) After ~~the public hearing held as allowed under this~~
4 ~~section~~ **ANY PROCEEDINGS UNDER SUBSECTIONS (1) TO (4)**, the
5 legislative body shall consider and vote upon the adoption of a
6 zoning ordinance, with or without amendments. A zoning ordinance
7 and any amendments shall be approved by a majority vote of the
8 members of the legislative body.

9 (6) Except as otherwise provided under section 402, a zoning
10 ordinance shall take effect upon the expiration of 7 days after
11 publication as required by ~~this section~~ **SUBSECTION (7)** or at such
12 later date after publication as may be specified by the legislative
13 body **OR CHARTER**.

14 (7) Following adoption of a zoning ordinance ~~and~~ **OR** any
15 subsequent amendments by the legislative body, the zoning ordinance
16 or subsequent amendments shall be filed with the clerk of the
17 legislative body, and a notice of ordinance adoption shall be
18 published in a newspaper of general circulation in the local unit
19 of government within 15 days after adoption.

20 (8) A copy of the notice required under subsection (7) shall
21 be mailed to the airport manager of an airport entitled to notice
22 under section 306.

23 (9) The notice required under this section shall include all
24 of the following information:

25 (a) In the case of a newly adopted zoning ordinance, the
26 following statement: "A zoning ordinance regulating the development
27 and use of land has been adopted by the legislative body of the

1 [county, township, city, or village] of _____.".

2 (b) In the case of an amendment to an existing zoning
3 ordinance, either a summary of the regulatory effect of the
4 amendment, including the geographic area affected, or the text of
5 the amendment.

6 (c) The effective date of the ordinance or amendment.

7 (d) The place where and time when a copy of the ordinance or
8 amendment may be purchased or inspected.

9 (10) The filing and publication requirements under this
10 section supersede any other statutory **OR CHARTER** requirements
11 relating to the filing and publication of county, township, city,
12 or village ordinances.

13 Sec. 407. Except as otherwise provided by law, a use of land
14 or a dwelling, building, or structure, including a tent or
15 recreational vehicle, used, erected, altered, razed, or converted
16 in violation of a zoning ordinance or regulation adopted under this
17 act is a nuisance per se. The court shall order the nuisance
18 abated, and the owner or agent in charge of the dwelling, building,
19 structure, tent, recreational vehicle, or land is liable for
20 maintaining a nuisance per se. The legislative body shall in the
21 zoning ordinance enacted under this act designate the proper
22 official or officials who shall administer and enforce the zoning
23 ordinance and do ~~either~~¹ of the following for each violation of
24 the zoning ordinance:

25 (a) Impose a penalty for the violation.

26 (b) Designate the violation as a municipal civil infraction
27 and impose a civil fine for the violation.

1 (C) DESIGNATE THE VIOLATION AS A BLIGHT VIOLATION AND IMPOSE A
 2 CIVIL FINE OR OTHER SANCTION AUTHORIZED BY LAW. THIS SUBDIVISION
 3 APPLIES ONLY TO A CITY THAT ESTABLISHES AN ADMINISTRATIVE HEARINGS
 4 BUREAU PURSUANT TO SECTION 4Q OF THE HOME RULE CITY ACT, 1909 PA
 5 279, MCL 117.4Q.

<<Sec. 501. (1) The local unit of government may require the submission and approval of a site plan before authorization of a land use or activity regulated by a zoning ordinance. The zoning ordinance shall specify the body or official responsible for reviewing site plans and granting approval.

(2) If a zoning ordinance requires site plan approval, the site plan, as approved, shall become part of the record of approval, and subsequent actions relating to the activity authorized shall be consistent with the approved site plan, unless a change conforming to the zoning ordinance ~~receives the mutual agreement of~~ **IS AGREED TO BY** the landowner and the body or official that initially approved the site plan.

(3) The procedures and requirements for the submission and approval of site plans shall be specified in the zoning ordinance. Site plan submission, review, and approval shall be required for special land uses and planned unit developments. ~~Decisions~~

(4) **A DECISION** rejecting, approving, or conditionally approving a site plan shall be based upon requirements and standards contained in the zoning ordinance, other **STATUTORILY AUTHORIZED AND PROPERLY ADOPTED** local unit of government planning documents, other applicable ordinances, and state and federal statutes.

(5) ~~(4)~~—A site plan shall be approved if it contains the information required by the zoning ordinance and is in compliance with the conditions imposed under the zoning ordinance, other **STATUTORILY AUTHORIZED AND PROPERLY ADOPTED** local unit of government planning documents, other applicable ordinances, and state and federal statutes.>>

6 Sec. 601. (1) ~~In each local unit of government in which the~~
 7 ~~legislative body exercises the authority conferred by this act, the~~
 8 ~~legislative body shall appoint~~ **A ZONING ORDINANCE SHALL CREATE** a
 9 zoning board of appeals. A zoning board of appeals in existence on
 10 ~~the effective date of this act~~ **JUNE 30, 2006** may continue to act as
 11 the zoning board of appeals subject to this act. **SUBJECT TO**
 12 **SUBSECTION (2), MEMBERS OF A ZONING BOARD OF APPEALS SHALL BE**
 13 **APPOINTED BY MAJORITY VOTE OF THE MEMBERS OF THE LEGISLATIVE BODY**
 14 **SERVING.**

15 (2) The legislative body of a city or village may act as a

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16 zoning board of appeals and may establish rules to govern its
17 procedure as a zoning board of appeals.

18 (3) ~~In appointing a~~ **A** zoning board of appeals ~~, membership of~~
19 ~~that board~~ shall be composed of not fewer than 5 members if the
20 local unit of government has a population of 5,000 or more ~~and~~ **OR**
21 not fewer than 3 members if the local unit of government has a
22 population of less than 5,000. The number of members of the zoning
23 board of appeals shall be specified in the zoning ordinance.

24 (4) ~~One~~ **IN A COUNTY OR TOWNSHIP**, 1 of the regular members of
25 the zoning board of appeals shall be a member of the zoning
26 commission, or of the planning commission if ~~the duties and~~
27 ~~responsibilities of the zoning commission have been transferred to~~

1 the planning commission IS FUNCTIONING AS THE ZONING COMMISSION. IN
2 A CITY OR VILLAGE, 1 OF THE REGULAR MEMBERS OF THE ZONING BOARD OF
3 APPEALS MAY BE A MEMBER OF THE ZONING COMMISSION, OR OF THE
4 PLANNING COMMISSION IF THE PLANNING COMMISSION IS FUNCTIONING AS
5 THE ZONING COMMISSION, UNLESS THE LEGISLATIVE BODY ACTS AS THE
6 ZONING BOARD OF APPEALS UNDER SUBSECTION (2). A DECISION MADE BY A
7 CITY OR VILLAGE ZONING BOARD OF APPEALS BEFORE THE EFFECTIVE DATE
8 OF THE 2007 AMENDATORY ACT THAT AMENDED THIS SECTION IS NOT
9 INVALIDATED BY THE FAILURE OF THE ZONING BOARD OF APPEALS TO
10 INCLUDE A MEMBER OF THE CITY OR VILLAGE ZONING COMMISSION OR
11 PLANNING COMMISSION, AS WAS REQUIRED BY THIS SUBSECTION BEFORE THAT
12 AMENDATORY ACT TOOK EFFECT.

13 (5) ~~(4)~~—The remaining regular members OF A ZONING BOARD OF
14 APPEALS, and any alternate members UNDER SUBSECTION (7), shall be
15 selected from the electors of the local unit of government residing
16 within the zoning jurisdiction of that local unit of government OR,
17 IN THE CASE OF A COUNTY, RESIDING WITHIN THE COUNTY BUT OUTSIDE OF
18 ANY CITY OR VILLAGE. The members selected shall be representative
19 of the population distribution and of the various interests present
20 in the local unit of government.

21 (6) ~~(5)~~—One—SUBJECT TO SUBSECTION (2), 1 regular OR ALTERNATE
22 member OF A ZONING BOARD OF APPEALS may be a member of the
23 legislative body. ~~but~~—SUCH A MEMBER shall not serve as chairperson
24 of the zoning board of appeals. An employee or contractor of the
25 legislative body may not serve as a member of the zoning board of
26 appeals.

27 (7) ~~(6)~~—The legislative body may appoint TO THE ZONING BOARD

1 **OF APPEALS** not more than 2 alternate members for the same term as
 2 regular members. ~~to the zoning board of appeals.~~ An alternate
 3 member may be called as specified **IN THE ZONING ORDINANCE** to serve
 4 as a member of the zoning board of appeals in the absence of a
 5 regular member if the regular member will be unable to attend 1 or
 6 more meetings. An alternate member may also be called to serve as a
 7 member for the purpose of reaching a decision on a case in which
 8 the member has abstained for reasons of conflict of interest. The
 9 alternate member appointed shall serve in the case until a final
 10 decision is made. ~~The~~ **AN** alternate member **SERVING ON THE ZONING**
 11 **BOARD OF APPEALS** has the same voting rights as a regular member. ~~of~~
 12 ~~the zoning board of appeals.~~

13 (8) ~~(7)~~ A member of the zoning board of appeals may be paid a
 14 reasonable per diem and reimbursed for expenses actually incurred
 15 in the discharge of his or her duties.

16 (9) ~~(8)~~ A member of the zoning board of appeals may be removed
 17 by the legislative body for misfeasance, malfeasance, or
 18 nonfeasance in office upon written charges and after **A** public
 19 hearing. A member shall disqualify himself or herself from a vote
 20 in which the member has a conflict of interest. Failure of a member
 21 to disqualify himself or herself from a vote in which the member
 22 has a conflict of interest constitutes malfeasance in office.

23 (10) ~~(9)~~ The terms of office for members appointed to the
 24 zoning board of appeals shall be for 3 years, except for members
 25 serving because of their membership on the zoning commission or
 26 legislative body, whose terms shall be limited to the time they are
 27 members of those bodies. When members are first appointed, the

1 appointments may be for less than 3 years to provide for staggered
 2 terms. A successor shall be appointed not more than 1 month after
 3 the term of the preceding member has expired.

4 (11) ~~Vacancies for unexpired terms~~ **A VACANCY ON THE ZONING**
 5 **BOARD OF APPEALS** shall be filled for the remainder of the **UNEXPIRED**
 6 term **IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT.**

7 (12) ~~(10)~~ A zoning board of appeals shall not conduct business
 8 unless a majority of the regular members of the zoning board of
 9 appeals are present.

10 (13) **A MEMBER OF THE ZONING BOARD OF APPEALS WHO IS ALSO A**
 11 **MEMBER OF THE ZONING COMMISSION, THE PLANNING COMMISSION, OR THE**
 12 **LEGISLATIVE BODY SHALL NOT PARTICIPATE IN A PUBLIC HEARING ON OR**
 13 **VOTE ON THE SAME MATTER THAT THE MEMBER VOTED ON AS A MEMBER OF THE**
 14 **ZONING COMMISSION, THE PLANNING COMMISSION, OR THE LEGISLATIVE**
 15 **BODY. HOWEVER, THE MEMBER MAY CONSIDER AND VOTE ON OTHER UNRELATED**
 16 **MATTERS INVOLVING THE SAME PROPERTY.**

17 Sec. 604. (1) An appeal to the zoning board of appeals may be
 18 taken by a person aggrieved or by an officer, department, board, or
 19 bureau of ~~the~~ **THIS** state or **THE** local unit of government. In
 20 addition, a variance in the zoning ordinance may be applied for and
 21 granted under section 4 of the uniform condemnation procedures act,
 22 1980 PA 87, MCL 213.54, and as provided under this act. The zoning
 23 board of appeals shall state the grounds of any determination made
 24 by the board.

25 (2) An appeal under this section shall be taken within such
 26 time as ~~shall be~~ prescribed by the zoning board of appeals by
 27 general rule, by ~~the~~ filing with the **BODY OR** officer from whom the

1 appeal is taken and with the zoning board of appeals ~~of~~ a notice of
2 appeal specifying the grounds for the appeal. The body or officer
3 from whom the appeal is taken shall immediately transmit to the
4 zoning board of appeals all of the papers constituting the record
5 upon which the action appealed from was taken.

6 (3) An appeal to the zoning board of appeals stays all
7 proceedings in furtherance of the action appealed. ~~from unless~~
8 **HOWEVER, IF** the body or officer from whom the appeal is taken
9 certifies to the zoning board of appeals after the notice of appeal
10 is filed that, by reason of facts stated in the certificate, a stay
11 would in the opinion of the body or officer cause imminent peril to
12 life or property, ~~in which case proceedings may be stayed~~ **ONLY** by a
13 restraining order issued by the zoning board of appeals or a
14 circuit court.

15 (4) Following receipt of a written request ~~concerning a~~
16 ~~request~~ for a variance, the zoning board of appeals shall fix a
17 reasonable time for the hearing of the request and give notice as
18 provided in section 103.

19 (5) ~~Upon receipt of~~ **IF THE ZONING BOARD OF APPEALS RECEIVES** a
20 written request seeking an interpretation of the zoning ordinance
21 or an appeal of an administrative decision, ~~a notice stating the~~
22 ~~time, date, and place of the public hearing shall be published in a~~
23 ~~newspaper of general circulation within the township and shall be~~
24 ~~sent to the person requesting the interpretation not less than 15~~
25 ~~days before the public hearing. In addition, if the request for an~~
26 ~~interpretation or appeal of an administrative decision involves a~~
27 ~~specific parcel, written notice stating the nature of the~~

~~interpretation request and the time, date, and place of the public hearing on the interpretation request shall be sent by first class mail or personal delivery to all persons to whom real property is assessed within 300 feet of the boundary of the property in question and to the occupants of all structures within 300 feet of the boundary of the property in question. If a tenant's name is not known, the term "occupant" may be used.~~ **THE ZONING BOARD OF APPEALS SHALL CONDUCT A PUBLIC HEARING ON THE REQUEST. NOTICE SHALL BE GIVEN AS REQUIRED UNDER SECTION 103. HOWEVER, IF THE REQUEST DOES NOT INVOLVE A SPECIFIC PARCEL OF PROPERTY, NOTICE NEED ONLY BE PUBLISHED AS PROVIDED IN SECTION 103(1) AND GIVEN TO THE PERSON MAKING THE REQUEST AS PROVIDED IN SECTION 103(3).**

(6) ~~At the~~ **A** hearing **UNDER SUBSECTION (5)**, a party may appear ~~in person~~ **PERSONALLY** or by agent or attorney. The zoning board of appeals may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination and may issue or direct the issuance of a permit.

(7) If there are practical difficulties for nonuse variances as provided in subsection (8) or unnecessary hardship for use variances as provided in subsection (9) in the way of carrying out the strict letter of the zoning ordinance, the zoning board of appeals may grant a variance in accordance with this section, so that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice done. The ordinance shall establish procedures for the review and standards for approval of all types of variances. The zoning board of appeals may impose conditions as ~~is~~ otherwise allowed under this act.

1 (8) The zoning board of appeals of all local units of
2 government shall have the authority to grant nonuse variances
3 relating to the construction, structural changes, or alteration of
4 buildings or structures related to dimensional requirements of the
5 zoning ordinance or to any other nonuse-related standard in the
6 ordinance.

7 (9) The authority to grant variances from uses of land is
8 limited to the following:

9 (a) Cities and villages.

10 (b) Townships and counties that as of February 15, 2006 had an
11 ordinance that uses the phrase "use variance" or "variances from
12 uses of land" to expressly authorize the granting of use variances
13 by the zoning board of appeals.

14 (c) Townships and counties that granted a use variance before
15 February 15, 2006.

16 (10) The authority granted under subsection (9) is subject to
17 the zoning ordinance of the local unit of government otherwise
18 being in compliance with subsection (7) and having an ordinance
19 provision that requires a vote of 2/3 of the members of the zoning
20 board of appeals to approve a use variance.

21 (11) The authority to grant use variances under subsection (9)
22 is permissive, and this section ~~shall not be construed to~~ **DOES NOT**
23 require a local unit of government to adopt ordinance provisions to
24 allow for the granting of use variances.

25 Sec. 606. (1) Any party aggrieved by a decision of the zoning
26 board of appeals may appeal to the circuit court for the county in
27 which the property is located. The circuit court shall review the

1 record and decision to ensure that the decision meets all of the
2 following requirements:

3 (a) Complies with the constitution and laws of the state.

4 (b) Is based upon proper procedure.

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

7 (d) Represents the reasonable exercise of discretion granted
8 by law to the zoning board of appeals.

9 (2) If the court finds the record inadequate to make the
10 review required by this section or finds that additional material
11 evidence exists that with good reason was not presented, the court
12 shall order further proceedings on conditions that the court
13 considers proper. The zoning board of appeals may modify its
14 findings and decision as a result of the new proceedings or may
15 affirm the original decision. The supplementary record and decision
16 shall be filed with the court. The court may affirm, reverse, or
17 modify the decision.

18 (3) An appeal ~~under this section~~ **FROM A DECISION OF A ZONING**
19 **BOARD OF APPEALS** shall be filed within 30 days after the zoning
20 board of appeals ~~certifies~~ **ISSUES** its decision in writing ~~or~~
21 ~~approves the minutes of its decision~~ **SIGNED BY THE CHAIRPERSON, IF**
22 **THERE IS A CHAIRPERSON, OR SIGNED BY THE MEMBERS OF THE ZONING**
23 **BOARD OF APPEALS, IF THERE IS NO CHAIRPERSON, OR WITHIN 21 DAYS**
24 **AFTER THE ZONING BOARD OF APPEALS APPROVES THE MINUTES OF ITS**
25 **DECISION. THE COURT MAY AFFIRM, REVERSE, OR MODIFY THE DECISION OF**
26 **THE ZONING BOARD OF APPEALS.** The court ~~shall have jurisdiction to~~
27 **MAY** make ~~such further~~ **OTHER** orders as justice ~~may require~~ **REQUIRES.**

1 ~~An appeal may be had from the decision of any circuit court to the~~
2 ~~court of appeals.~~

3 Sec. 702. (1) The following acts and parts of acts are
4 repealed:

5 (a) The city and village zoning act, 1921 PA 207, MCL 125.581
6 to 125.600.

7 (b) The county zoning act, 1943 PA 183, MCL 125.201 to
8 125.240.

9 (c) The township zoning act, 1943 PA 184, MCL 125.271 to
10 125.310.

11 (2) This section ~~shall not be construed to~~ **DOES NOT** alter,
12 limit, void, affect, or abate any pending litigation,
13 administrative proceeding, or appeal that existed on ~~the effective~~
14 ~~date of this act~~ **JUNE 30, 2006** or any ordinance, order, permit, or
15 decision that was based on the acts repealed ~~by this section~~ **UNDER**
16 **SUBSECTION (1). THE ZONING ORDINANCE NEED NOT BE READOPTED BUT IS**
17 **SUBJECT TO THE REQUIREMENTS OF THIS ACT, INCLUDING, BUT NOT LIMITED**
18 **TO, THE AMENDMENT PROCEDURES SET FORTH IN THIS ACT.**