



ZONING BOARD OF APPEALS

Regular Meeting
November 1, 2023
7:00p.m.

1. CALL MEETING TO ORDER
2. PLEDGE OF ALLEGIANCE
3. ROLL CALL
4. APPROVAL OF AGENDA
5. CORRESPONDENCE / BOARD REPORTS
 - Boards and Commissions Expiration Dates
6. APPROVAL OF MINUTES
 - July 11, 2023 Special ZBA Meeting
7. PUBLIC COMMENT: Restricted to (3) minutes regarding issues not on this agenda
8. NEW BUSINESS
 - A. Adoption of the 2024 Schedule of ZBA Board Meetings**
 - a. Introduction by staff
 - b. Board discussion
 - B. Approval of the 2023 ZBA Annual Report**
 - a. Introduction by staff
 - b. Board discussion
 - C. Training Discussion**
9. OTHER BUSINESS
10. EXTENDED PUBLIC COMMENT: Restricted to 5 minutes regarding any issue
11. FINAL BOARD COMMENT
12. ADJOURNMENT

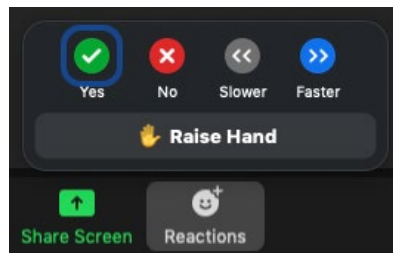
Hybrid Meeting Instructions for the Charter Township of Union Zoning of Board of Appeals

The public can view all Union Township meetings live by clicking on our [YouTube Channel](#). For those who would like to participate, you can do so via Zoom.

[Click here](#) to participate in the Zoom Meeting via computer or smart phone. (Meeting ID Enter “884 6841 7954” Password enter “562748”). Access to the electronic meeting will open at 6:50 p.m. and meeting will begin at 7:00 p.m.

Telephone conference call, dial (312-626-6799). Enter “884 6841 7954” and the “#” sign at the “Meeting ID” prompt, and then enter “562748” at the “Password” prompt. Lastly, re-enter the “#” sign again at the “Participant ID” prompt to join the meeting.

- All public comments for items on the agenda will be taken at the Public Comment and any issue not on the agenda will be taken at the Extended Public Comment section of the Agenda.
- Computer/tablet/smartphone audience: To indicate you wish to make a public comment, please use the “Reactions” icon. **Next, click on the “Raise Hand” icon** near the bottom right corner of the screen.



- **To raise your hand for telephone dial-in participants, press *9.** You will be called on by the last three digits of your phone number for comments, at which time you will be unmuted by the meeting moderator.
- Please state your name and address for the minutes and keep public comments concise.

You will be called upon once all in-person comments have been made, at which time you will be unmuted by the meeting moderator.

Persons with disabilities needing assistance should call the Township office at (989) 772-4600. Persons requiring speech or hearing assistance can contact the Township through the Michigan Relay Center at 711. A minimum of one (1) business day of advance notice will be necessary for accommodation.

Board Expiration Dates

Planning Commission Board Members (9 Members) 3 year term			
#	F Name	L Name	Expiration Date
1-BOT Representative	James	Thering	11/20/2024
2-Chair	Phil	Squatrito	2/15/2026
3-Vice Chair	Ryan	Buckley	2/15/2025
4-Secretary	Doug	LaBelle II	2/15/2025
5 - Vice Secretary	Tera	Albrecht	2/15/2024
6	Stan	Shingles	2/15/2024
7	Paul	Gross	2/15/2025
8	Nivia	McDonald	2/15/2026
9	Jessica	Lapp	2/15/2026
Zoning Board of Appeals Members (5 Members, 2 Alternates) 3 year term			
#	F Name	L Name	Expiration Date
1-Chair	Liz	Presnell	12/31/2025
2 -Vice Chair	Richard	Barz	12/31/2025
3- PC Rep	Ryan	Buckley	2/15/2025
4 -	Vacant		12/31/2023
5 -	Eric	Loose	12/31/2024
Alt. #1	David	Coyne	12/31/2024
Alt #2 (BOT Representive)	Jeff	Brown	11/20/2024
Board of Review (3 Members) 2 year term			
#	F Name	L Name	Expiration Date
1	Doug	LaBelle II	12/31/2024
2	Sarvjit	Chowdhary	12/31/2024
3	Bryan	Neyer	12/31/2024
Alt #1	Randy	Golden	12/31/2024
Construction Board of Appeals (3 Members) 2 year term			
#	F Name	L Name	Expiration Date
1	Colin	Herren	12/31/2023
2	Joseph	Schafer	12/31/2023
3	Andy	Theisen	12/31/2023
Hannah's Bark Park Advisory Board (2 Members from Township) 2 year term			
1	Mark	Stuhldreher	12/31/2024
2	John	Dinse	12/31/2023
Chippewa River District Library Board 4 year term			
1	Ruth	Helwig	12/31/2027
2	Lynn	Laskowsky	12/31/2025



Board Expiration Dates

EDA Board Members (9 Members) 4 year term			
#	F Name	L Name	Expiration Date
1-Chair	Thomas	Kequom	4/14/2027
2-VC/BOT Rep	Bryan	Mielke	11/20/2024
3	James	Zalud	4/14/2027
4	Richard	Barz	2/13/2025
5	Robert	Bacon	1/13/2027
6	Marty	Figg	6/22/2026
7	Sarvjit	Chowdhary	6/22/2027
8	Jeff	Sweet	2/13/2025
9	David	Coyne	3/26/2026
Mid Michigan Area Cable Consortium (2 Members)			
#	F Name	L Name	Expiration Date
1	Kim	Smith	12/31/2025
2	vacant seat		
Cultural and Recreational Commission (1 seat from Township) 3 year term			
#	F Name	L Name	Expiration Date
1	Robert	Sommerville	12/31/2025
Sidewalks and Pathways Prioritization Committee (2 year term -PC Appointments)			
#	F Name	L Name	Expiration Date
1 - BOT Representative	Kimberly	Rice	11/20/2024
2 - PC Representative	Stan	Shingles	2/15/2024
3 - Township Resident	Jeff	Siler	8/15/2023
4 - Township Resident	vacant seat		10/17/2022
5 - Member at large	Phil	Hertzler	8/15/2023
Mid Michigan Aquatic Recreational Authority (2 seat from Township) 3 year term			
#	F Name	L Name	Expiration Date
1-City of Mt. Pleasant	John	Zang	12/31/2023
2-City of Mt. Pleasant	Judith	Wagley	12/31/2022
1-Union Township	Stan	Shingles	12/31/2023
2-Union Township	Allison	Chiodini	12/31/2025
1-Mt. Pleasant Schools	Lisa	Diaz	12/31/2022
1-Member at Large	Mark	Stansberry	2/14/2025
2- Member at Large	Michael	Huenemann	2/14/2025

CHARTER TOWNSHIP OF UNION
Zoning Board of Appeals
Regular Meeting Minutes

A special meeting of the Charter Township of Union Zoning Board of Appeals was held on July 11, 2023, at 7:00 p.m. at the Union Township Hall.

Meeting was called to order at 7:00 p.m.

Roll Call

Present:

Barz, Buckley, Coyne (alternate), Loose, and Presnell

Excused:

Brown (alternate)

Others Present

Rodney Nanney, Community and Economic Development Department Director, Peter Gallinat, Zoning Administrator, David Puskar, Township Attorney, and Tera Green, Administrative Assistant

Approval of Agenda

Coyne moved **Barz** supported to approve the agenda as presented. **Vote: Ayes: 5. Nays 0. Motion carried.**

Correspondence / Board Reports

None

Approval of Minutes

Loose moved **Coyne** supported to approve the May 3, 2023 regular meeting minutes as presented. **Vote: Ayes: 5. Nays 0. Motion carried.**

Public Comment: Restricted to (3) minutes regarding issues not on this Agenda.

Open – 7:02 p.m.

No comments were offered.

Closed – 7:02 p.m.

New Business

A. Election of Vice-Chair

Loose moved **Buckley** supported to appoint Rick Barz as Vice-Chair of the ZBA. **Vote: Ayes: 5. Nays 0. Motion carried.**

- B. PAZ23-01 Administrative Appeal** – Request from William Ervin to appeal the denial of the PLD23-0023 land division application by the Zoning Administrator, Peter Gallinat, to split approximately 10.10 acres from the northeast corner of their 45.73-acre parcel number 14-016-10-001-06. The new parcel is intended for the construction of a one-family residential home that would access the end of Sandstone Drive. The parcel is located in the SW ¼ of Section 16 and zoned R-2A (One and Two Family, Low Density Residential), B-4 (General Business), and OS (Office Service) zoning districts [Legal Description: T14N R4W SECTION 16 NW 1/4 OF SW ¼]. The land division as proposed did not satisfy the standards of Section 7.17.B. (Streets, Roads, and Other Means of Access/Public Access

Required/Minimum Road Frontage) that the front lot line of all lots shall abut onto a publicly dedicated road right-of-way, and that the required frontage on an approved road right-of-way shall be equal to or greater than 100.0 feet in length, which is the minimum lot width for the R-2A zoning district in which the proposed lot would be located.

- a. Updates from staff and the applicant
- b. Public Hearing
- c. Questions from Board of Appeals members
- d. Board of Appeals deliberation and determination as to whether or not the Zoning Administrator's action:
 - o Constituted an abuse of discretion? (YES/NO)
 - o Was arbitrary or capricious? (YES/NO)
 - o Was based upon an erroneous finding of a material fact? (YES/NO)
 - o Was based upon an erroneous interpretation of the Zoning Ordinance? (YES/NO)
- e. If the Board of Appeals answers YES to any of the above, then the Zoning Administrator's action is reversed and the Board of Appeals then *"may, reverse or affirm wholly or in part; modify the order, requirement, decision or determination; or make such order, requirement, decision, or determination as ought to be made, and may issue or direct the issuance of a permit. To that end, the (Board of Appeals) shall have all of the powers of the (Zoning Administrator)."*
 - i. Board of Appeals review of the PLD23-0023 land division application for compliance with applicable Zoning Ordinance standards.
 - ii. Board of Appeals deliberation and action on the land division application (approve, deny, or postpone action with a request for additional information)
 - iii. Board of Appeals determination of compliance with Zoning Ordinance standards:
 - o Meets or exceeds Section 3.8 (R-2A District) standards for a minimum lot width of 100 feet and a minimum lot area of 14,00 square-feet? (YES/NO)
 - o Meets or exceeds the Section 7.17.B. (Streets, Roads, and Other Means of Access/Public Access Required/Minimum Road Frontage) standards that the front lot line of all lots shall abut onto a publicly dedicated road right-of-way, and that the required frontage on an approved road right-of-way shall be equal to or greater than 100.0 feet in length, which is the minimum lot width for the R-2A zoning district? (YES/NO)
 - iv. Board of Appeals action on the land division application (approve, deny, or postpone action with a request for additional information)

Chair Presnell, wanting full transparency, informed the Board that she lives directly across from the parcel in question, which could potentially be a conflict of interest. Deliberation by the Board.

Buckley moved **Barz** supported that the Board finds no conflict in Chair Presnell's participation. **Roll Call Vote: Ayes: Barz, Buckley, Coyne, and Loose. Nays 0. Abstained Chair Presnell. Motion carried.**

Nanney introduced the PZA23-01 Administrative Appeal of the denial of the land division application PLD23-0023. The land division as proposed did not satisfy the standards of Section 7.17.B (Streets, Roads, and Other Means of Access/Public Access Required/Minimum Road Frontage). The Board is here today to hear and decide if the Zoning Administrator correctly applied and enforced the Zoning Ordinance as related to this

application. If the Board reverses the administrative decision, they will then act as Zoning Administrator and make a determination on application PLD23-0023.

Marc McKellar, Kuhn Rogers PLC Attorney, representative of Mr. Ervin, gave the applicant's perspective in the interpretation of the language in the Zoning Ordinance.

Public Hearing

Open: 7:28 p.m.

Patricia Moore, 2396 Sandstone Dr, spoke in favor of the land split for the Ervins and would love to have them as neighbors.

Closed: 7:30 p.m.

Township Attorney, Dave Puskar from Braun Kendrick, made introductory comments based on the content of his memo dated June 30th provided in the packet. Mr. Puskar strongly encouraged the board as they deliberate on each question listed on the agenda, to pay attention to what the standards are and to make a clear record of what the findings are and why.

Deliberation by the Board.

Did the Zoning Administrator constitute an abuse of discretion?

Barz moved **Buckley** supported that the Zoning Administrator did not constitute an abuse of discretion. **Roll Call Vote: Ayes: Barz, Buckley, Loose, and Presnell. Nays: Coyne. Motion carried.**

Were the Zoning Administrator's actions arbitrary or capricious?

Buckley moved **Barz** supported that the Board deems that the Planning Administrator's actions were not arbitrary or capricious. **Roll Call Vote: Ayes: Barz, Buckley, Coyne, Loose, and Presnell. Nays: 0. Motion carried.**

Were the Zoning Administrator's actions based upon an erroneous finding of material fact?

Buckley moved **Coyne** supported that the body finds there was no erroneous findings of material fact. **Roll Call Vote: Ayes: Barz, Buckley, Coyne, Loose, and Presnell. Nays: 0. Motion carried.**

Were the Zoning Administrator's actions based on an erroneous interpretation of the Zoning Ordinance?

Coyne moved **Barz** supported that the Zoning Administrator's actions were based on an erroneous interpretation of the Zoning Ordinance. **Roll Call Vote: Ayes: Barz, Coyne, Loose, and Presnell. Nays: Buckley. Motion carried.**

*** 8:30 p.m. Chair Presnell left the meeting and turned the meeting over to the Vice Chair Barz.**

The Board reversed the Zoning Administrator's action and acted collectively as the Zoning Administrator to review the PLD23-0023 land division application for compliance with the applicable Zoning Ordinance standards. Board deliberation on the land division application.

Coyne moved **Loose** supported that the PLD23-0023 Land Division Application does meet or exceed Section 3.8 (R-2A District) standards for a minimum lot width of 100 feet and a minimum lot area of 14,000 square-feet. **Roll Call Vote: Ayes: Barz, Coyne, and Loose. Nays: Buckley. Motion carried.**

Coyne moved **Loose** supported that the PLD23-0023 Land Division Application meets or exceeds the Section 7.17.B (Streets, Roads, and Other Means of Access/Public Access Required/Minimum Road Frontage) standards that the front lot line of all lots shall abut onto a publicly dedicated road right-of-way, and that the required frontage on an approved road right-of-way shall be equal to or greater than 100.0 feet in length, which is the minimum lot width for the R-2A zoning district. **Roll Call Vote: Ayes: Barz, Coyne, and Loose. Nays: Buckley. Motion carried.**

Coyne moved **Loose** supported to approve PLD23-0023 Land Division Application from William Ervin to split approximately 10.10 acres from the northeast corner of their 45.73-acre parcel number 14-016-10-001-06. **Roll Call Vote: Ayes: Barz, Coyne, and Loose. Nays: Buckley. Motion carried.**

- C. **PZBA23-0001 Zoning Ordinance Interpretation – Request from William Ervin for an ordinance** interpretation to determine if a designated but not constructed right-of-way meets the standards of the “approved road right-of-way” required in Section 7.17.B. The proposed PLD23-0023 land division is near where Sandstone Drive ends in a “T” Turn-around. Where Sandstone ends there is a designated right-of-way for the extension of E. Broadway. This designated right-of-way for E. Broadway is not constructed and is not planned to be constructed as part of the land division.
- a. Updates from staff and the applicant
 - b. Public Hearing
 - c. Questions from Board of Appeals members
 - d. Board of Appeals deliberation
 - e. Board of Appeals Action to *“decide questions that arise in the interpretation of the text of the Zoning Ordinance in a manner consistent with the intents and purposes stated in the Ordinance, and in such a way as to preserve and promote the character of the zoning district in question.”*
 - Motion to take no action, finding that there is no question that requires an interpretation.
 - Motion to interpret Section 7.17.B of the Zoning Ordinance in a way that a designated but not constructed right-of-way [DOES] [DOES NOT] meet the standards of the “approved road right-of-way” requirement for calculating minimum required road frontage for any new lot created by land division.

Marc McKellar, Kuhn Rogers PLC Attorney announced that, due to the approval of PLD23-0023 Land Division Application, the applicant has chosen to withdraw the PZBA23-001 Zoning Ordinance Interpretation application. No further action was taken by the Board on this application.

Other Business

Extended Public Comment: Restricted to 5 minutes regarding any issue.

Open: 8:43 p.m.

No comments were offered.

Closed: 8:44 p.m.

Final Board Comment

Barz – Acknowledge that it was a difficult meeting for the new board and appreciates the patience of everybody that was here.

Adjournment

Vice-Chair Barz adjourned the meeting at 8:45 p.m.

APPROVED BY:

Eric Loose – Secretary

(Recorded by Tera Green)



REQUEST FOR ZONING BOARD OF APPEALS ACTION

To: Zoning Board of Appeals **DATE:** October 20, 2023
FROM: Rodney C. Nanney, AICP, Community and Economic Development Director **DATE FOR CONSIDERATION:** 11/1/2023

ACTION REQUESTED: To adopt the schedule of regular meetings of the Zoning Board of Appeals for the 2024 calendar year to take place at 7:00 p.m. on the first Wednesday of the months of February, March, May, June, September, October, and December, along with the Annual Joint Meeting as noted in the schedule, in accordance with requirements of the Open Meetings Act.

Current Action Emergency

Funds Budgeted: If Yes Account # No N/A

BACKGROUND INFORMATION

The Open Meetings Act requires that the Zoning Board of Appeals adopt and post an annual meeting schedule prior to the start of the calendar year. In past years, the regular meeting date for the Board of Appeals has been the first Wednesday of each month. In practice, however, the Board of Appeals has typically met two to five times during the course of any given calendar year as applications for variances or other business are received.

For 2024, staff noted while reviewing the potential calendar that during the months of January, July, August, and November the regular meeting date is in conflict with holidays or election related activities in the Board Room. In addition, for the past couple of years, the Township’s Annual Joint Meeting of all boards and commissions has been held on the first Wednesday in April.

For these reasons, the 2024 schedule of meetings for the Board of Appeals is proposed to include seven (7) regular meeting dates during the months of February, March, May, June, September, October, and December, plus the Annual Joint Meeting in April.

RESOLUTION

To adopt the schedule of regular meetings of the Zoning Board of Appeals for the 2024 calendar year to take place at 7:00 p.m. on the first Wednesday of the months of February, March, May, June, September, October, and December, along with the Annual Joint Meeting as noted in the schedule, in accordance with requirements of the Open Meetings Act.

Resolved by _____ Seconded by _____

Yes:

No:

Absent:

CHARTER TOWNSHIP OF UNION

Scheduled Meetings for 2024



BOARD OF TRUSTEES: *(Second and Fourth Wednesday of each Month)*

January 10	April 3 <i>(Joint Meeting)</i>	June 26	September 25
January 24	April 10	July 10	October 9
February 14	April 24	July 24	October 23
February 28	May 8	August 14	November 13
March 13	May 22	August 28	November 27
March 27	June 12	September 11	December 18

BOARD OF REVIEW:

March 5 <i>(Organizational Meeting)</i> 9 a.m.	March 11 <i>(Appeal Hearings)</i> 3 p.m. – 9 p.m.	March 12 <i>(Appeal Hearings)</i> 9 a.m. – 3 p.m.
July 16 <i>(Correct Qualified Errors)</i> 9 a.m.	December 10 <i>(Correct Qualified Errors)</i> 9 a.m.	

EDA Board *(Third Tuesday of each Month)* All meetings begin at 4:30p.m.

January 16	April 16	July 23 <i>Informational</i>	September 17
February 20	May 21	August 20 <i>Informational</i>	October 15
March 19	June 18	<i>**regular meeting to follow</i>	November 19
April 3 <i>(Joint Meeting)</i>	July 16	August 20	December 17

PLANNING COMMISSION: *(Third Tuesday of each Month)*

January 16	April 16	August 20	December 17
February 20	May 21	September 17	
March 19	June 18	October 15	
April 3 <i>(Joint Meeting)</i>	July 16	November 19	

ZONING BOARD OF APPEALS: *(First Wednesday of the following months)*

February 7	April 3 <i>(Joint Meeting)</i>	June 5	October 2
March 6	May 1	September 4	December 4

JOINT MEETING DATE: *(Board of Trustees, ZBA, Planning Commission, and EDA) Date April 3 6:00pm*

All the above meetings are to be held at the Union Township Hall, 2010 S. Lincoln Road except for the Annual Joint Meeting TBD. All meetings except for the Board of Review and EDA start at 7:00 p.m. Minutes and Agendas may be obtained at the Township Hall, during regular business hours. Phone 989-772-4600

ZBA ANNUAL REPORT TO THE PLANNING COMMISSION FOR 2023

TO:	Planning Commission	DATE:	October 20, 2023
FROM:	Zoning Board of Appeals		
PROJECT:	Annual Report for 2023		
ACTION REQUESTED: To adopt the annual report to the Planning Commission of ZBA meetings held from December 2022 through November 2023 along with any recommendations regarding proposed changes to the Zoning Ordinance, as required by the ZBA Rules of Procedure.			

Background Information

According to Rules of Procedure the ZBA will prepare, complete, and submit their written report by December 1st of each year. Beginning in December 2022 and through November 2023 the ZBA has met to conduct business on five occasions. These were December 2022, March 2023, May 2023, July 2023, and November 2023. The items of business that the ZBA acted upon are summarized below:

- December 7, 2022, meeting (PZBA22-0001, 2023 meeting schedule).** During the December meeting the ZBA adopted their meeting schedule for 2023. The ZBA also held a public hearing for a text interpretation requested by Thrive Community Church. The ZBA determined the following proposed uses from the list in the public hearing notice would be consistent with and are acceptable accessory uses under the definition of “religious institution” in section 2.2 (Definitions) of the Zoning ordinance, and that the Outdoor Recreation Facilities need to be further vetted by the Planning Commission:
 - Worship services in our worship center/assembly hall on a weekly basis.
 - Classrooms for weekly religious education.
 - Meeting rooms and church offices.
 - Kitchen and café.
 - Host weddings, baptisms, funerals, and other religious and secular ceremonies and celebrations.
 - Host Christian music artists.
- March 1, 2023, meeting (Election of Officers, Section 14.4 Amendment Ord 23-02, MTA Training).** The March ZBA meeting served as an organizational meeting to elect officers who would serve until March of 2024 when new elections would be held. The ZBA was given a copy of the recently adopted Ord 23-02 which amended Section 14.4 Variances and Appeals of the Zoning Ordinance. Township staff explained the need for the changes and how they would affect the ZBA. Members of the ZBA had recently attended online ZBA training provided by MTA. Members discussed questions they had related to the training, training topics that stood out to them as important, and any issues of concern.

3. **May 3, 2023, meeting (PVAR23-01)** During the May meeting the ZBA held a public hearing for a variance related to accessory building height from section 7.5.C.3 of the Zoning Ordinance. The request was for 8 inches. The accessory building was originally constructed without an approved building permit. The variance was granted, allowing the building to remain in place but with the stipulation that it had to be reduced in total size by 300 square feet.
4. **July 11, 2023, special meeting (PZA23-01 Administrative Appeal, PZBA23-0001 Zoning Ordinance Interpretation).** The ZBA held a public hearing for an Appeal of Zoning Administrator Peter Gallinat’s decision to deny a land division application. The denial was based on the Zoning Ordinances requirement for a parcel to have road frontage on a road right-of-way. The ZBA disagreed with this interpretation and reversed the Zoning Administrator’s decision. The applicant later withdrew the application PZBA23-0001 Zoning Ordinance Interpretation.
5. **November 1, 2023, meeting (Approval of annual report and 2024 meeting calendar).**

Any Recommended Changes to the Zoning Ordinance

Respectfully submitted,

Liz Presnell, Chair

(Prepared by Peter Gallinat, Zoning Administrator)



Community and Economic Development Department

2010 S. Lincoln Rd.

Mt. Pleasant, MI 48858

989-772-4600 ext. 232

RNanney@uniontownshipmi.com

October 24, 2023

Zoning Board of Appeals
Charter Township of Union

Subject: Training discussion items

Dear Board of Appeals members:

All members of the Board of Appeals are asked to complete at least one training experience during each year of their term of office. As part of their adoption of the annual General Fund budget for the Township, the Board of Trustees includes funding available for Board of Appeals training purposes. The Township also pays for Board of Appeals members to have ongoing access to the **Michigan Townships Association (MTA) Online Learning Center**.

Thank you for taking the time to participate in training sessions, including the three MTA online training modules for the Zoning Board of Appeals ([Basics, Variances, and Decision-Making](#)) we discussed during our March meeting. If you have not had a chance yet to complete all three modules, I would invite you to do so. If you have lost your access information for the MTA Online Learning Center or have trouble accessing the site, please let me know and we will work with you and MTA to resolve the problem.

In addition to the Board of Appeals' training modules, the [MTA Online Learning Center](#) offers ten other "[Planning & Zoning](#)" training opportunities that can provide useful background information for your work as a member of the Board of Appeals. These include:

- *Breaking the Zoning Code*
- *Intro to Planning & Zoning*
- *Now You Know – The Role of the Zoning Administrator*

In addition to the MTA Online Learning Center's resources, there are other training opportunities available to you as a member of the Board of Appeals, including **MSU Extension's ZBA Online Certificate Course** (flyer attached). Please contact Peter Gallinat, Zoning Administrator, if you would like to participate in this training opportunity.

Finally, there are two articles attached to this memo that I would ask you to read and consider prior to our upcoming meeting:

1. *Ex-Parte Contacts*
2. *Top 10 Mistakes to Avoid When Holding Hearings or Meetings*

Both articles are directed to Planning Commission members, but the guidance provided is equally relevant for members of the Zoning Board of Appeals. I would invite you to plan to come to our 11/1/2023 Board of Appeals meeting with any questions about these or any other topics of concern you would like to discuss. By the way, if you really want to see the "disturbing image" referenced in the "*Top 10 Mistakes...*" article, you can find it here: <https://plannersweb.com/2013/05/top-10-mistakes-meetings/>

If you have any questions in the meantime, please do not hesitate to contact me.

Respectfully submitted,

Rodney C. Nanney, AICP

Community and Economic Development Director

ZBA ONLINE CERTIFICATE COURSE



A NEW MSU EXTENSION SELF-PACED TRAINING

The ZBA Online course is a unique and comprehensive Zoning Board of Appeals (ZBA) training designed to accommodate your schedule. The course includes six self-paced modules engaging the learner with videos, readings, and activities. Complete one module to meet a specific training need or take the full course to obtain a certificate. ZBA Online includes:

- Understanding Basic ZBA Roles & Responsibilities
- Effective Decisions and Ordinance Interpretations
- Hearing Appeals of Administrative Decisions
- Issuing Variances from Ordinance Standards
- Other Responsibilities of the ZBA: Nonconformities
- Circuit Court Review and Standards

Price: \$125 (group discount available)

CRITICAL TRAINING FOR ZBA MEMBERS AND STAFF

The ZBA Online Certificate Course is designed for members of the local government ZBA, local government staff who work alongside the ZBA, and local government managers and attorneys.

The course is based in MSU's Desire to Learn (D2L) online learning platform and can be accessed 24/7 - individuals can do as much or as little at one time as fits their schedule. Connect with computer, tablet, or mobile.

The ZBA Online Certificate Course teaches the latest concepts on ZBA roles and responsibilities, effective decision-making, and protecting due process. The curriculum is based on the award-winning Citizen Planner Program and features ZBA-specific content, engaging activities, case studies, and the latest Michigan case law. Course completion includes an MSU Extension certificate.

To learn more or register, visit:
<http://extension.msu.edu/zbaonline>

Questions, contact the:
Citizen Planner Program
Email: cplanner@msu.edu
Phone: 517-353-6472

MSU is an affirmative-action, equal-opportunity employer, committed to achieving excellence through a diverse workforce and inclusive culture that encourages all people to reach their full potential. Michigan State University Extension programs and materials are open to all without regard to race, color, national origin, gender, gender identity, religion, age, height, weight, disability, political beliefs, sexual orientation, marital status, family status or veteran status. Issued in furtherance of MSU Extension work, acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture. Quentin Tyler, Director, MSU Extension, East Lansing, MI 48824. This information is for educational purposes only. Reference to commercial products or trade names does not imply endorsement by MSU Extension or bias against those not mentioned.

Ex-Parte Contacts

by C. Gregory Dale, AICP

In the last issue, I focused on the ethical problem of conflicts of interest. This column will focus on another common ethical problem facing planning commissioners: "ex-parte" contacts. To begin, let us again look at a hypothetical situation: At a local charity fund-raising event, you are approached by the President of a community council from a neighborhood where a developer is seeking site plan approval for the construction of a shopping center. The individual is an old friend who wants to talk to you about what the community believes will be the impacts of the shopping center on the community. She begins to describe the traffic, stormwater run-off, litter and other problems that they anticipate. How should you react?

First, any contact that you have with a party involved, or potentially involved, in a matter before the planning commission outside of the public hearing process is known as an "ex-parte" contact. Ex-parte contacts can present difficult ethical problems for planning commissioners.

Most people tend to think of ex-parte contacts as referring to contacts that occur outside of the meeting. While that is generally true, the literal meaning of the term "ex parte" is "one-sided." This, of course, suggests that when you engage in an ex-parte contact, you are engaging in a one-sided discussion, without providing the other side an opportunity to respond and state their case.

Critical elements of legal due process involve providing all parties an opportunity for a fair hearing, full disclosure of information that you are considering, and an opportunity to be heard. Engaging in outside or ex-parte contacts can

violate those due process requirements, and ought to be avoided.

Having said that, let me acknowledge that you were appointed as a planning commissioner in large part because of your knowledge and involvement in your community. For many of you, it is simply impossible to avoid all contacts involving matters before you outside of the hearing process. In those cases, each of you must judge your own community's

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tolerance for such type of activities. While you should refrain as much as possible from engaging in ex-parte contacts, let me caution you that if you are going to discuss matters with interested parties outside of the hearing process, that you make yourself available to all sides.

Also, any substantive information or facts that you receive during the course of those contacts that relate to the matter at hand ought to be made a part of the public record so that it can be available for consideration or challenge by all interested parties. This can be done by way of a public statement by you at the commission meeting.

Remember that there is nothing more frustrating for the losing party than to have the impression that the other side

prevailed through the use of "back door" politics. And nothing is more important to you as a planning commissioner than your credibility and integrity.

There is another, perhaps more difficult, aspect of ex-parte contacts which you may face. This involves attempts by elected officials of your jurisdiction to influence your opinion — or simply inform you — of their views on a particular matter before you. This is a difficult problem both because it is hard to prevent, and because it can create a very real bias in your own mind, especially if you are appointed to your position.

Clearly, you ought not encourage this sort of ex-parte contact. If possible, your board or commission should take steps to discourage such contacts, if they are occurring. Your job is to make decisions or recommendations based solely on the evidence presented to you during the hearing. It is at the hearing that elected officials, like other citizens, can present their views.

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Top 10 Mistakes to Avoid When Holding Public Hearings or Meetings

by Jim Segedy, FAICP, and Lisa Hollingsworth-Segedy, AICP



In a recent PlannersWeb survey of readers,

this topic was one that many of you requested. So with our apologies to David Letterman, and in the spirit of helping you avoid the holes in the rocky road of being a planning commissioner, we present the Top Ten Mistakes to Avoid When Holding Public Hearings or Meetings.

For many of our suggestions, please speak with your municipal attorney — obviously laws vary from state to state. Also, take a look at the sidebar to your left for related articles from the planning commissioners Journal.

10. Knowing the difference between a public hearing and a public meeting. These are two different kinds of gatherings for very different purposes. A public meeting is generally defined as a meeting in which business is conducted by a public body. This may or may not include participation by the public. A public hearing is a special type of public meeting for the purpose of the governing body accepting public comment and testimony on local legislation. In a number of communities, the elected body holds public hearings and the planning commission holds public meetings, though this will be governed by state statute. The standards for public hearings and public meetings should be contained within your planning commission by-laws and in your zoning ordinance.

9. Improper notice. Most if not all states have an open meetings law to ensure that all business of the local government is transparent and adequate notice is given so the public can attend meetings where business is discussed. These transparency standards generally apply to ALL levels of local government, including the planning commission and other local advisory bodies.

We have heard planning commissioners from various locations say, “we don’t have to advertise meetings if we’re not going to be voting on anything.” Most states’ statutes for open meetings apply to all meetings held by all public bodies. Therefore to avoid having your actions challenged on the basis of an Open Meetings Act violation, you should give adequate notice of all planning commission meetings, even for site visits to review subject properties for rezoning requests.

8. Engaging in ex parte communication. Someone who knows you’re a planning commissioner sees you in the checkout line at the grocery store, or at church, or at the PTO meeting, and wants to talk to you about a pending rezoning or a development permit under consideration. Though it may seem harmless, this is an important mistake to avoid.



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Ex parte communication is a violation of open meeting laws because you are giving one person unfair advantage by discussing a business matter outside of a public meeting where everyone present would otherwise have access to the same information. When you are approached for ex

parte communication, politely explain that this is official government business and you simply cannot discuss it outside of a properly advertised meeting. Then invite the person to attend the next meeting of the planning commission.

7. Actual or apparent conflict of interest. If you or a member of your family stands to gain from a case before the planning commission, you should disclose this to the planning commission in the public meeting when the case is introduced. What happens after that depends on the conflict of interest standards specified in your by-laws. You may or may not be required to abstain from voting, and you may even need to remove yourself from the room during discussion of the case. If there is a conflict of interest, do not discuss the case with other members of the planning commission. Be familiar with the standards in your by-laws, and follow them. If you're not sure how they apply in a specific instance, seek the advice of your local government's legal counsel.

6. Showing up unprepared. A plumber who comes to your house to repair your faucet without his tool bag won't be able to do his job effectively. As a planning commissioner, you also have a tool bag: your community's comprehensive or master plan, zoning ordinance, subdivision regulations, existing and future land use maps, and zoning map.



Your chief elected official, government manager

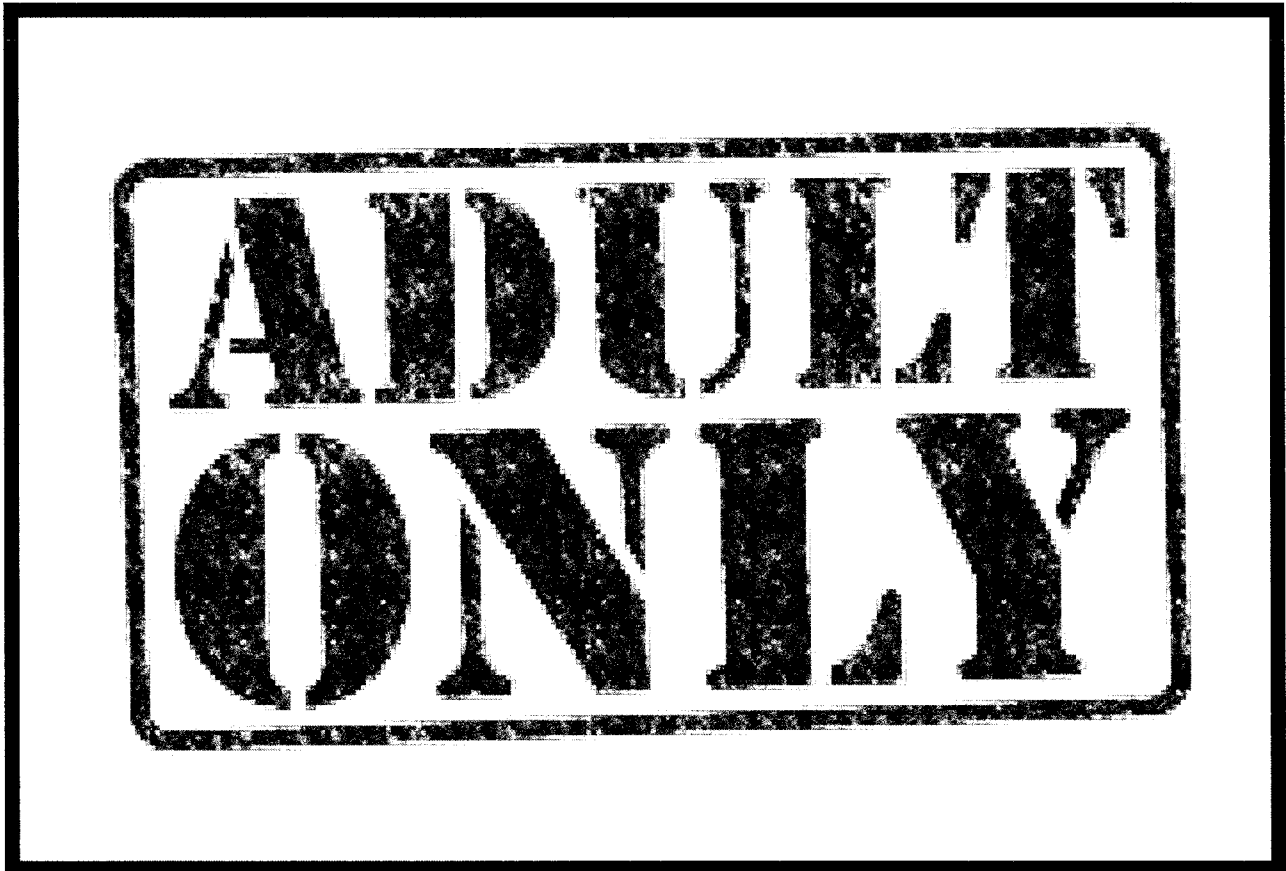
or planning staff should provide these documents to you at the beginning of your term as a planning commissioner, and you should have them for every meeting you attend. They are your basic reference materials for every decision you consider. Likewise, you should be thoroughly familiar with the written site plan review and/or staff report for each case you are to hear, and you should always visit each subject property to visually verify the information in the report and to observe conditions at the site and surrounding properties. You may also need to review engineering reports, traffic data, and other information to be fully prepared to make an informed decision.

5. Being afraid to disagree. A planning commission is a collaborative body, relying on multiple perspectives and shared information from many sources to provide a balanced decision that emphasizes what's best for the community. Healthy discussion, differing perspectives, and sharing of information can help to ensure a planning commission decision that's in the community's best interests.

Consider a story from Jim's experience. The case was for an expansion of a subdivision to create an additional 60 residential building lots, and all members of the planning commission except Jim were in favor of this new growth for their community. Jim was the only member who had visited the site, and who had investigated potential water and sewer system demands of the new housing units. Jim had also studied the site plan and noticed that the stormwater drainage from the subject property was routed through the garage of an adjacent property owner. Jim's information ultimately led the planning commission to realize that the subject property was not adequately prepared for the additional housing units being proposed.

4. Accepting and/or acting on an incomplete application. Even if the proposed project is a great one that the whole community supports, an incomplete application does not provide the planning commission with the basic information needed to protect the community. One minor detail like where the stormwater goes could, if not adequately considered, result in substantial damage to a neighboring property.

It is important for the planning commission to not accept or act upon an incomplete application; in fact, it is a critical part of due process. Additionally, if the planning commission needs additional data to make an informed decision on a case, do not hesitate to table the case until the applicant or the appropriate government department provides you with the information you need.



We warn you that if you click on the Adults Only button you'll find what some might consider a disturbing image — so do so at your own discretion!!

3. Dancing naked. We put this one in just to make sure you are still paying attention. While a little naked dancing could be a liberating experience, doing it at a planning commission meeting could be a violation of your zoning ordinance (depending on how far your meeting place is from the nearest school) as well as making for some awkward moments at your meetings.

2. Making up your mind beforehand. The purpose of the planning commission is to provide objective decisions in the community's best interests based upon the facts in evidence and the community's plan. As a planning commissioner, your responsibility is to not prejudge the case, but to make your best decision based on the information available to you at the meeting, including the staff report, the site visit, relevant information presented at the meeting, and public comment.

1. Getting political. As we stated in #2 above, planning commissioners serve their communities by providing reasoned, objective recommendations on land use and other community development policy that support the community's best interests. Your job is to make decisions and recommendations that are consistent with your state's planning and zoning related laws, the standards for decisions enumerated in your by-laws, and your community's comprehensive, master, or land use plan. Leave the politics to the professionals.



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