

A Closer Look at

THE LAW



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E-Newsletter
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Cunningham Dalman, P.C. is a full service law firm located in Holland, as well as in Douglas, Michigan. Our attorneys possess skill and experience in real estate dispute matters as well as a broad spectrum of other areas of practice, and have proudly served the lakeshore community for over 100 years.

Michigan's New Zoning Law

By: [Randall S. Schipper](#)
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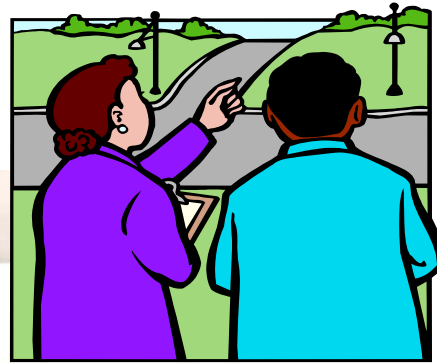
Zoning in Michigan is going to go through some turbulence. This turbulence may affect anyone seeking to develop land or even just make an addition to a structure or split a parcel of land.

A new Zoning Enabling Act, with which zoning ordinances of cities, villages, townships, and counties need to comply, takes effect July 1, 2006. It leaves open numerous questions, questions likely to be answered in contentious court battles over proposed developments of land.

The new act requires a notice of certain zoning applications be mailed to occupants as well as owners of nearby property. If the municipality does not know the name of the occupant it can address the notice to "Occupant". How hard must the municipality try to identify the occupants? This notice is not required if at least 11 adjacent properties are proposed for rezoning. Yet the act does define what "adjacent" means. Does it have the same meaning as in the land division act (in which a property across a street, railroad or utility line may or may not be adjacent)? If the notice is defective, the decision on the zoning application would be open to challenge.

Under the new act, planning commissions are replaced by zoning commissions, but the transition procedure is not spelled out clearly. As a result, a decision of a zoning commission could be open to challenge on the ground that the body is not properly constituted. The new act has extensive provisions for the zoning commission to adopt and recommend to the legislative body of the municipality a zoning plan, land use map, and zoning ordinance. But it does not say if a municipality that already has these in place can continue relying on the existing ones or must adopt new ones. If the municipality continues relying on

the ones currently in effect, as it most likely will, it could be subject to challenge.



Previously the zoning enabling act covering townships provided the right of a referendum on amendments to the zoning ordinance, something people often used to block rezoning for major projects. The separate act governing city zoning did not provide a right of referendum; another law simply said cities had to cover the issue in its charters. The new act covers zoning for both townships and cities and expressly provides a right of referendum in townships but says nothing about it in cities. Normally the failure to provide a corresponding right for cities would mean there is no such right. Does the new act effectively ban such referenda regarding changes to a city's zoning ordinance? It might, so a developer that loses a referendum may sue over the question.

The members of a zoning board of appeals must be "representative of the population distribution and of the various interests present in the local unit of government." Is that the ethnic distribution or geographic distribution? What are the legally cognizable "interests" that must be represented? Homeowners? Tenants? Homebuilders? Environmentalists? Educators? Retailers? The list could go on. If the membership of the zoning board of appeals does not meet this test, its

decisions will be open to challenge yet there is ample room for argument over whether the particular board meets it. To make it more interesting, once appointed, a member may only be removed for doing something wrong. Does that include no longer representing one of the various interests or moving within the municipality, upsetting whatever geographic distribution the municipality sought to achieve?

The new law also resurrects the question of whether a township can grant a use variance. Just recently the courts ruled that townships have that authority, but the provisions of the new act means the power to grant use variances will turn on the history of the particular township. A township may grant use variances in the future only if, as of February 15, 2006, its ordinance specifically authorized granting a “use variance”. Most township zoning ordinances do not use the magic language but they allow granting a variance upon a showing of “unnecessary hardship”, the standard for a use variance. Will that suffice? This question can be avoided if the township has granted a use variance before February 15, 2006, but their records are often missing or spotty at best, not identifying what sort of variance was granted. And one may not be able to rely on either the township’s zoning administrator or attorney to answer the question. Further, sometimes it is hard to tell whether a variance is a use variance or a dimensional variance. For example, if a township’s zoning ordinance allows homes on one acre lots in

its agricultural district and homes on one-third acre lots in a residential district, is a variance allowing homes on one-third acre lots in the agricultural district a use variance, because it allows a use otherwise allowed in a different zoning district to be within the agricultural zone, or a dimensional variance, because it changes the dimensions for a use otherwise allowed in the agricultural district? Variances will likely be challenged on this ground. This question will apply to cities too because the new act requires a two-thirds vote of the ZBA to approve a use variance, even by a city, but only a majority for a dimensional variance.

Finally, before if one had a nonconforming use or building and wanted to alter it, if the zoning administrator wouldn’t permit that, the owner’s recourse was to the zoning board of appeals. The act now appears to allow the owner to go directly to circuit court. Courts though have long required an owner to exhaust all administrative remedies, such as the zoning board of appeals, before going to court.

The new zoning enabling act brings many changes to our zoning law. Even those things in the old law that were carried into the new law may be applied differently under the new law. There may be an honor in having your name on a long, expensive legal fight to sort out some of these questions, but it would be far cheaper and quicker to avoid such a fight if possible.

Attention Landlords: Good News and Bad News

By: [Gregory J. McCoy](#)

Attorney at Law

Under a new law effective July 1, 2006, if there are damages caused by a tenant that the landlord repairs on his/her own (without hiring a contractor), the landlord is entitled to be compensated for his/her time at the same rate as if hiring a contractor, based on usual and customary charges for the repair. However, the bad news is that if the landlord fails to make a repair that was required under the lease and the tenant makes the repair, the tenant is to be compensated in the same manner.

This new law only applies in the context of an eviction proceeding. In other words, if the dispute over repair costs is, for example, in the context of a

fight over a security deposit after an eviction has occurred or in a lawsuit to collect unpaid rent, this statute does not apply, though courts have sometimes awarded compensation for a landlord's personal labor under common law.

Final Caveat: if the landlord (or tenant) wants to be compensated for his time, he would need to have a contractor testify at trial or be able to provide other evidence as to the "usual and customary" charges for the repair. This rule of evidence would not apply in small claims court, so written and possibly verbal quotes from a contractor would likely be sufficient. Lastly, landlords should keep detailed records of the time spent and expenses incurred.

