



Fact-Finding, Standards of Review, and Much, Much More

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Disclaimer



This presentation is for informational and educational purposes only.

It is not intended as legal advice.

Before acting on the basis of any information included in this presentation, those who have fact-specific questions should consult their lawyer.

Why are we talking about fact-finding and review standards?

- ▶ Both drive the defensibility of decisions to approve or deny a discretionary zoning decision.
 - Discretionary decisions are special land uses and planned unit development or any other land use that requires a public hearing.
- ▶ Both are key to demonstrating that any conditions imposed meet the reasonableness requirement for conditions imposed as part of a discretionary zoning decision.
- ▶ Planners are instrumental in drafting standards of review.
- ▶ Planners are uniquely qualified to identify facts that tend to support approval, approval with conditions, or denial.
- ▶ The “substantial evidence” test is all about facts in the record and governs the review of zoning decisions by the ZBA or circuit court.

Road Map

- ▶ Starting with who reviews disputed zoning decisions and the standard of review
 - Focusing on the substantial evidence test
- ▶ Level set review of what the MZEA requires if a zoning ordinance provides for:
 - Site plan review
 - Special land uses
 - Planned unit developments
 - Approval conditions
- ▶ Along the way discuss case law illustrating the importance of fact-finding
- ▶ Close with a discussion of rezoning standards of review and Q&A

Who Reviews Disputed Zoning Decisions

- ▶ Questions that arise in the administration of the zoning ordinance, including any administrative order, requirement, decision, or determination made by an administrative official or body are decided by the zoning board of appeals.
- ▶ Special land use and planned unit development decisions are only reviewed by the zoning board of appeals if the ordinance so provides.
- ▶ Otherwise special land use and planned unit development decisions are reviewed by the circuit court.
- ▶ Circuit court also hears and decides appeals of decisions of the ZBA, including its review of administrative decisions.

Direct Review of Administrative & Quasi-Judicial Decisions

Article 6, § 28 of the **Michigan Constitution** states, in pertinent part:

All final decisions, findings, rulings and orders of any administrative officer or agency existing under the constitution or by law, which are judicial or quasi-judicial and affect private rights or licenses, shall be subject to direct review by the courts as provided by law. This **review shall include, as a minimum**, the determination whether such final decisions, findings, rulings and orders are **authorized by law**; and, **in cases in which a hearing is required, whether the same are supported by competent, material and substantial evidence on the whole record.**

Appellate Review of ZBA Decisions

MCL 125.3606(1)

(1) Any party aggrieved by a decision of the zoning board of appeals may appeal to the circuit court for the county in which the property is located. The circuit court shall **review the record** and decision to ensure that the decision meets all of the following requirements:

- (a) Complies with the constitution and laws of the state.**
- (b) Is based upon proper procedure.**
- (c) Is supported by competent, material, and substantial evidence on the record.**
- (d) Represents the reasonable exercise of discretion granted by law to the zoning board of appeals.**

Review is Limited

- ▶ Appeal of a administrative or quasi-judicial decision is limited to the record made before the municipal body.
- ▶ Court does not:
 - Review the evidence de novo
 - Make credibility determinations
 - Weigh evidence
- ▶ No new evidence unless the court can be persuaded to remand the case back to the municipal body.
- ▶ Authorized by law means a decision must comply with law, not exceed authority, be based on proper procedure, and not be arbitrary or capricious.

Substantial Evidence Test

- ▶ A zoning decision must be supported by competent, material, and substantial evidence on the record as a whole.
 - ▶ This is what is known as the “substantial evidence” test
- ▶ Substantial evidence is evidence that a reasonable person would accept as sufficient to support a conclusion.
 - ▶ Conclusion standing alone is not evidence
- ▶ The evidence must be more than a scintilla but can be less than a preponderance.
- ▶ Meeting minutes are the official transcript – the more comprehensive the better.
 - ▶ This is why in the old days applicants brought court reporters and now may make audio or video recordings

MCL 125.3501

Site Plan Review

- ▶ Site plan review **MAY** be required for by right uses.
- ▶ Site plan review **MUST** be required for all special land uses and planned unit developments.
- ▶ If required, the ordinance **MUST** specify;
 - body or official responsible for reviewing and granting approval
 - procedures and requirements for submission and approval of site plans

MCL 125.3501

Site Plan Review

- ▶ A decision rejecting, approving or **conditionally approving** a site plan **MUST** be based upon the requirements and standards contained in the zoning ordinance, other statutorily authorized and properly adopted planning documents, and other applicable law.
- ▶ If a site plan contains the required information and is in compliance with requirements and standards contained in the ordinance, other statutorily authorized and properly adopted planning documents, and other applicable law, it **MUST** be approved.
- ▶ A decision to deny **MUST** be supported with record evidence showing a failure to fulfill one or more requirements

Site Plan Review – Case Law

- ▶ Phrase “other local unit of government planning documents” is not defined by the MZEA
- ▶ No published case law on what planning documents can be relied upon as part of the site plan review process.
- ▶ However, in an unpublished decision of the Michigan Court of Appeals in ***KI Properties Holdings and DF Land Development, LLC v. Ann Arbor Charter Township***, Case No. 348010 (Feb. 4, 2020), the court found the township’s reliance on its master plan as a basis for denying site plan approval and permits for tree removal and a steep slope use was proper.

KI Properties Holdings Factual Background

- ▶ Proposed development was a 120,000 square foot, two-story research and development building.
- ▶ Land was heavily wooded with significant elevation changes and included a tributary of Fleming Creek.
- ▶ Site was zoned for research and development so the use permitted by right.
- ▶ Township involved its planning and engineering consultants in the review.
- ▶ Court notes that a common theme of the reviews was that the project placed too much burden on the land and that a different plan could preserve more woodlands and establish a greater buffer between the developed area and the tributary.

KI Properties Holdings

Factual Background (con't)

- ▶ Planning Commission asked the developer to modify its plans.
- ▶ Developer submitted a modified plan that still required significant disturbance to the site and grading and removal of 480 protected trees and 28 landmark trees.
- ▶ Planning Commission again asked the developer to modify its plans because the intensity of the proposed development would adversely affect the hydrological benefits of the tributary and was inconsistent with preservation of woodlands and natural resources.
- ▶ Planning Commission and consultants suggested alternative configurations that would minimize impacts to the site.
- ▶ Developer refused to make further changes on the grounds that it had met the minimum standards and therefore fulfilled the requirements for approval.

KI Properties Holdings

Procedural Background

- ▶ Developer appealed the denials to the ZBA
 - Arguing the substantial evidence test
- ▶ ZBA initially denies the appeal as untimely; Developer appeals
- ▶ Circuit remands and ZBA affirms Planning Commission decision
- ▶ Developer appealed the ZBA decision to the circuit court and files a complaint in circuit court asserting due process violations
- ▶ Circuit court granted the appeal and reverse the ZBA, finding the Planning Commission failed to base its findings on competent, substantial, and material evidence and enjoined the township from preventing development, subject only to normal administrative permitting and dismisses constitutional claims as moot
- ▶ Township and Developer file cross-appeals in the Court of Appeals

Reliance on Master Plan Proper Because ...

- ▶ The law requires zoning to be based on a master plan that, in relevant part, is “designed to encourage the use of lands in accordance with their character and adaptability, to limit improper use of land, [and] to conserve natural resources and energy.”
- ▶ “The Legislature required zoning ordinances to be made with reasonable consideration of the character of each district, its peculiar suitability for particular uses, the conservation of property values and natural resources, and the general and appropriate trend and character of land, building, and population development.”

Reliance on Master Plan Proper Because Master Plan ...

- ▶ Recognized the rural character of the township and emphasized that its landscape was dominated by agricultural lands, woodlands, wetlands, the Huron River and three major streams, including Fleming Creek.
- ▶ Discussed how these sensitive natural resources helped define the township and distinguish it from neighboring Ann Arbor
- ▶ Identified Fleming Creek as one of the highest quality tributaries in the Huron River watershed and noted that the Fleming Creek Advisory Council had been invited to review all development proposals within the watershed and provide advice.

Reliance on Master Plan Proper Because Master Plan ...

- ▶ Recognized that spread-out development increases impervious surfaces by lengthening roads and driveways and creating parking areas to accommodate everyday needs and services.
- ▶ Discussed the importance of forests along watercourses to maintaining the health of the watercourse and that the once forested township now only had fragments of native forests remaining.
- ▶ Declared township's goal to retain its largely rural character and went on to describe in detail the existing natural features that should be protected and preserved to advance the goal.

Reliance on Master Plan Proper Because Master Plan ...

- ▶ Recognized that the level of impervious surfaces within a particular watershed constituted an important factor implicating the health of the watershed.
- ▶ Included finding that the failure to protect vital natural resources would subtract from the quality of life of residents and neighboring communities.
- ▶ Stated that lands that could not be developed in their natural state were unsuitable for development.
- ▶ Specified goals for the protection of stream corridors, watersheds, wetlands, and woodlands.

MCL 125.3502

Special Land Uses

- ▶ A zoning ordinance may provide for special land uses in a zoning district.
- ▶ If it does, the zoning ordinance must specify:
 - ▶ the land uses eligible for special land use approval
 - ▶ the body or official responsible for review and approving an application
 - ▶ may be planning commission, zoning administrator, or the legislative body
 - ▶ the procedures and supporting materials required for an application
- ▶ Special land uses may be denied, approved, or **approved with conditions**.
- ▶ Decision must incorporate a statement of findings and conclusions relative to the special land use that specifies the basis for the decision and any conditions imposed.

MCL 125.3503

Planned Unit Developments

- ▶ A zoning ordinance may provide for planned unit developments.
- ▶ If it does, the zoning ordinance must specify:
 - the body or official responsible for review and approving an application
 - may be planning commission, zoning administrator, or the legislative body
 - the conditions that create project eligibility
 - the participants in the review process
 - the requirements and standards for review and approval
 - the procedures required for application, review and approval

MCL 125.3504

Standards of Review

- ▶ When a zoning ordinance provides for **discretionary zoning decisions**, the ordinance must specify the regulations and standards upon which decisions will be based.
- ▶ Standards must be:
 - ▶ Consistent with and promote the intent and purpose of the zoning ordinance.
 - ▶ Insure compatibility with adjacent land uses, the natural environment, and the capacities of public services and facilities affected by the land use.
 - ▶ Insure that the land use is consistent with public health, safety, and welfare of the local unit of government.

MCL 125.2504

Standards of Review (con't)

- ▶ **Intent and purpose of zoning ordinance?**

To regulate the use of land and structures to meet the needs of the state's citizens for food, fiber, energy, and other natural resources, places of residences, recreation, industry, trade, service, and other uses of land, to ensure that the land is situated in appropriate locations and relationships, to limit inappropriate overcrowding of land and congestion of population, transportation systems, sewage disposal, water, energy, education, recreation, and other public facilities, to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, recreation, and other public service and facility requirements, and to promote public health, safety, and welfare.

MCL 125.3201

Standard of Review - Case Law

“Without definite standards an ordinance becomes an open door to favoritism and discrimination, a ready tool for the suppression of competition through the granting of authority to one and withholding from another ... A zoning ordinance cannot permit administrative officers or boards to pick and choose the recipients of their favors.”

***Osius v St Clair Shores*, 344 Mich 693 (1956)**

- ▶ Holding that broad statements as to public health, safety, and general welfare are not a sufficient guide for the exercise of discretion and zoning decisions made without the guidance of a standard does not comport with equal protection.

Standard of Review - Case Law

Lakeview Vineyards, LLC v. Oronoko Charter Township, No. 364347 (Mich. App. June 13, 2024) (unpublished)

- ▶ Lakeview sought a special land use permit to open a tasting room at Chill Hill Winery.
- ▶ A planning commissioner who was the owner of a direct competitor was involved in meetings and discussions pertaining to the conditions imposed, though the commissioner recused himself before the final meeting and vote
- ▶ The use was unanimously approved with a list of conditions that included hours of operation and sound.

Lakeview Vineyards, LLC v. Oronoko Charter Township (con't)

- ▶ Lakeview appealed the decision to circuit court on the grounds that decision was not based on competent, material, and substantial evidence and that it had been deprived of an impartial decision-maker.
- ▶ The circuit found that the Planning Commission did not incorporate a statement of findings and conclusions specifying the basis for the conditions imposed or follow proper procedure
- ▶ The court affirmed approval of the permit and struck the hours-of-operation and sound conditions.

Lakeview Vineyards, LLC v. Oronoko Charter Township (con't)

- ▶ Though the Planning Commission discussed why sound and hour conditions should be implemented, the discussion consisted of statements made by individuals, not the board as a whole.
- ▶ Though noise complaints were mentioned, no specific instances or comprehensive data were introduced to support the sound condition.
 - For this reason, court found insufficient evidence to support the condition
- ▶ The list of similar businesses and hours of operation provided by the competitor on the Planning Commission was selective and incomplete.
 - For this reason, the list was not substantial and competent evidence.

Standard of Review - Case Law

Northern Michigan Environmental Action Council v. Traverse City, No. 332590 (Mich. App. Oct. 24, 2017) (Unpublished)

- ▶ Appeal by opponents of a decision to approve a special land use permit for 96-foot tall building that would include 162 apartments and retail space
- ▶ Circuit court vacated the approval and remanded the matter back to the City Commission “for a cogent analysis of the project’s impacts” after finding that the Commission’s incorporation by reference of a staff report that included conclusory statements relative to standards of review and the record “bereft” of documents supporting the conclusions
- ▶ Court of appeals affirmed the decision to vacate and remand

Contested Standard of Review

(c) The use shall be served adequately by public infrastructure and services, including but not limited to streets and highways, police and fire protection, refuse disposal; water, waste water, and storm sewer facilities; electric service and schools.

Staff Report Analysis and Findings

Analysis: The proposed buildings are located on Front and Pine Streets which are both designated as collector streets. Nearby Division Street and Grandview Parkway which are designated as arterials. Schools should not be significantly impacted by the proposed residential dwellings in the building. Overhead electric lines that run from the Warehouse District across the river south to Hannah Park are planned to be buried in Spring of 2016. The developer will work with Traverse City Light and Power Engineering for a plan to have a power supply once the undergrounding takes place. A 12-inch water main is located under Front Street. An 8" sanitary sewer is located under Pine Street. The City Engineer has previously stated that the existing utilities to serve the development are adequate. The Police Department has indicated no concerns with the development.

Staff Report (con't)

The Fire Department has raised concerns of being able to maneuver the 55-foot ladder truck to be adjacent to the riverfront building's long access as required by the Fire Code. The Fire Marshall will need to review the diagram submitted by the developer on October 28, 2015 that indicates a fire truck of this size and type can be in fact positioned along the riverfront building. The access route for the fire truck would be within the parking structure so this parking structure will need to meet the structural specifications to hand the weight of the ladder truck.

Finding: Provided the Fire Marshall finds the access routes to the development meet the Fire Code, the use can be served adequately be existing utilities.

Staff Report Defects

- ▶ Standard required consideration of whether the use will be adequately served by existing schools and police protection, while the report states without explanation or evidence, “Schools should not be significantly impacted.”
- ▶ Regarding police protection, the report simply mentioned that the Police Department has indicated no concerns with the development without explanation or supporting data or even naming the police department employee who was consulted.
- ▶ Report estimated trip generation using the Trip Generation Manual and minimized the number by simply asserting the number may be overly high because people might chose to walk, bike or use public transit
- ▶ Transportation network functional classification map and traffic count map standing alone without analysis did not support conclusion that street system could handle the additional traffic.

City Commission Findings

1. Facts and conclusions in the staff report dated October 29, 2015, with regarding to this standard are adopted.
2. Various departments, including the Engineering Department, Police Department, Traverse City Light and Power, and the Fire Department through its Fire Marshal, have found this use to be safe and adequately served by public infrastructure, and services.
3. Street improvements will be made.
4. As pedestrian and bicycle use increases, motorists will regard the area more as a heavily traversed area by such users, making it safer.
5. The trip generation manual used by the City Planning Department is considered conservative estimate, which means that the number of vehicle trips may actually be less than otherwise anticipated by the Planning Department by its use of such manual.

Commission Findings Defects

- ▶ Not supported by evidence regarding the adequacy of police protection, existing highways and streets, and local schools.
- ▶ No evidence of whether an appropriate city employee made any substantial appraisal of these services.

Contested Standard of Review



(d) The use shall not create excessive additional requirements for infrastructure, facilities, and services provided at public expense.

Staff Report Analysis and Findings

The current electrical undergrounding along Pine Street and the pedestrian bridge were planned capital improvements for the district. The sewer main along the alley will eventually need to be relined with or without the proposed development. Tax Increment Financing will pay for half of the streetscape improvements and the developer will pay for all of the pedestrian bump-outs. Additional tax revenues generated by the development will off-set the increase of municipal services costs required for the growing community.

Finding: The building will no create any excessive expenditure with public funds.

Staff Report Defects

- ▶ Did not determine whether the development required additional infrastructure or services that would be excessive or the public cost to provide upgrades to infrastructure and services.
- ▶ Merely mentioned electrical undergrounding already planned and sewer relining that needed with or without the development.
- ▶ Only specific factual analysis was a conclusion that TIF fund would pay for pedestrian bump-outs; no other infrastructure improvements discussed.
- ▶ Concluded development would provide tax revenue to offset cost of increased services and infrastructure, while ignoring that TIF would go to the developer, diverting city tax revenue.
- ▶ No analysis of whether city's tentative plan to build a parking garage to support the development would be an excessive expenditure to improve infrastructure with public funds.

City Commission Findings

1. Facts and conclusion in the staff report dated October 29, 2025, with regard to this standard are adopted.
2. The project will bring additional tax revenue which will provide additional infrastructure, facilities, services, including through TIF and Brownfield programs

City Commission Findings Defect

City Commission merely adopted the staff report's conclusion and repeated it; there was no factual analysis or data to support that conclusion.

“A mere conclusion without reasoning or factual analysis to support it is not evidence that a reasonable person would accept as sufficient to support a conclusion”

MCL 125.3504

Conditions

“Reasonable conditions” may be imposed and may include conditions necessary to:

- Insure public services and facilities affected by the land use will be capable of accommodating increased service and facility loads caused by the land use.
- Protect the natural environment and conserve natural resource and energy.
- Insure compatibility with adjacent land uses.
- Promote use of land in a socially and economically desirable manner.

MCL 125.3504 - Conditions (con't)

Conditions imposed **MUST** meet all of the following requirements:

- Be designed to protect natural resources, the health, safety and welfare, as well as the social and economic well-being of those who will use the land use and residents and landowners immediately adjacent, and the community as a whole.
- Be related to a valid exercise of the police power and purposes affected by the land use.
- Be necessary to meet the intent and purpose of the zoning requirements, be related to the standards established in the zoning ordinance for the land use, and be necessary to insure compliance with those standards.

MCL 125.3504 - Conditions (con't)

- ▶ Conditions imposed **MUST** be recorded in the record of the approval action and remain unchanged except upon the mutual consent of the approving authority and the landowner.
- ▶ Approving authority **MUST** maintain a record of changed conditions that are changed.

Unconstitutional Conditions

- ▶ Where a permit decision includes a requirement for the dedication of land or an easement to a local unit of government or a payment-in-lieu of dedication, the local unit of government bears the burden of showing that the “exaction” is constitutional.
- ▶ Constitutional test requires showing an essential nexus and rough proportionality.
- ▶ Precise math not required but studies are.

Rezoning Standards

- ▶ Zoning ordinances have started to include standards governing the review of rezoning requests.
- ▶ Legislative acts are limited by constitutional law and, in the case of local units of government, further limited by state law.
 - Legislative acts cannot violate substantive or procedural due process rights
 - Legislative acts cannot take private property without the payment of just compensation
 - Legislative acts cannot prohibit certain land uses

Rezoning Standards (con't)

- ▶ The MZEA does not require or authorize standards of review for rezoning decisions
 - Questionable whether a present legislative body can tie the hands of a future legislative body
 - Review standards could permissible is posited as procedural guidelines for the Planning Commission's recommendation on a rezoning application.
- ▶ Text amendments can achieve same results without standards
- ▶ Courts have generally held that each zoning case is different and must be analyzed in light of the facts of the particular property in question.

Sample Guidelines vs. Mandates

Guidelines

- (1) Existing uses of property within the general area of the property in question;
- (2) The zoning classification of property within the general area of the property in question;
- (3) The suitability of the property in question to the uses permitted under the existing zoning classification;
- (4) The trend of development, if any, in the general area of the property in question, including changes, if any, which have taken place in its present zoning classification; and
- (5) The objectives of the current master plan for the city.

Mandatory Standards

Whether the rezoning is consistent with the policies and uses proposed for the area by the master plan

Whether the land can be used as currently zoned

Whether all of the uses allowed under the proposed rezoning would be compatible with other zones and uses in the surrounding area.

Whether any public services and facilities would be significantly adversely impacted by a development or use allowed under the requested rezoning

Whether the uses allowed under the proposed rezoning would be equally or better suited to the area than uses allowed under the current zoning of the land.

Following an incomplete list of considerations risks overlooking the one that may be decisive in a particular case.

Questions?