

Land Use Series

May 19, 2008

Bringing
Knowledge
to Life!

#7: Sample Zoning Board of Appeals Rules of Procedure

The following represents a sample Rules of Procedure for a zoning board of appeals in Michigan. These rules are written in attempt to cover most needs that may occur. Before adoption they should be reviewed, and sections which are not pertinent omitted.

Section 603(1) of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et seq.*) indicates a zoning board of appeals may have rules of procedure, or by-laws. If a legislative body of a city or village acts as the zoning board of appeals they shall establish separate rules to govern its procedure when acting as the zoning board of appeals (§601(2)). The statute includes a number of topics which should be addressed in rules of procedure:

- How meetings are called (§602(1)).
- To govern the zoning board of appeals procedures (§603(1)).
- To indicate the prescribed time limit within which an appeal must be taken (§604(2)).

There are other matters which can be covered in rules of procedure and are found in this sample.

For any step of this process, the Michigan State University Extension members of the MSU Land Use Team can assist with sample materials; coordinating efforts between the township, county, and the state; and providing guidelines.

This pamphlet is not designed as a substitute for reading and understanding the Michigan Zoning Enabling Act. This outline is not a substitute for legal advice or for professional planner services.

Michigan State University
Extension Land Use Team

<http://ntweb11a.ais.msu.edu/luaoe/index.asp>

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Author:

Kurt H. Schindler, REGIONAL LAND USE
EDUCATOR, member MSU LAND USE TEAM

Phone: (231)779-9480

Fax: (231)779-9105

e-mail: schindl9@msu.edu

overland mail:

MSU Extension, Wexford County
401 N. Lake Street – Suite 400
Cadillac, Mich. 49601-1891

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- Jason Ball, MSU GRADUATE STUDENT
- Brad Neumann, LAND USE EDUCATOR, St Joseph County;
- Jasneet Sharma, LAND USE EDUCATOR, Hillsdale and Lenawee Counties;
- Lincoln Sweet, MSU GRADUATE STUDENT;
- Mark A. Wyckoff, DIRECTOR PLANNING AND ZONING CENTER AT MSU

This outline is not designed as a substitute for reading and understanding the Michigan Zoning Enabling Act. This outline is not a substitute for legal advice.

These sample Rules of Procedure are also available in a separate word processor document

(Microsoft Word™ and WordPerfect™) at the website www.msue.msu.edu/lu. Then use the “search and replace all” function to replace “[local unit of government]” with the name of your municipality and “[date]” with the effective date the rules are adopted. The material in sidebars, or boxes, in this pamphlet are not in the word processor version of the sample Rules of Procedure.

Related Publications

There are also separate procedural checklists for performing other planning and zoning functions. They are:

- *Land Use Series*: “Check List #1A; To Create a Planning Commission or Amend an Existing Planning Commission Ordinance.”
- *Land Use Series*: “#1B; Sample Ordinance to create a planning commission”
- *Land Use Series*: “#1C; Summary of changes between new Michigan Planning Enabling Act and the three old planning acts: Municipal Planning Act, County Planning Act, and Township Planning Act.”
- *Land Use Series*: “Checklist #1D; Steps to Transition an Existing Planning Commission to Comply with the Michigan Planning Enabling Act”
- *Land Use Series*: “#1E; Sample Bylaws for a planning commission.”
- *Land Use Series*: “Checklist #1F; What Should be in a Master Plan”
- *Land Use Series*: “Checklist #1G; For Adoption of a Plan in Michigan”
- *Land Use Series*: “Checklist #1H; The Five Year Plan Review.”
- *Land Use Series*: “Checklist #1I; For Adoption of an Amendment to a Plan”
- *Land Use Series*: “Checklist #1J; Adopting and Updating a Capital Improvement Program”
- *Land Use Series*: “Checklist #1K; Review of Infrastructure and Public Capital Expenditure”
- *Land Use Series*: “Checklist #1L; Adoption or Amendment of Subdivision Rules”
- *Land Use Series*: “#1M; How Governments Make Submissions on a Neighbor’s or County’s Proposed Plan”
- *Land Use Series*: “#1N; How a Planning Commission Should Respond to Submissions”
- *Land Use Series*, “Checklist #2; for Adoption of a Zoning Ordinance in Michigan.”
- *Land Use Series*, “Checklist #3; for Adoption of an Interim Zoning Ordinance in Michigan.”
- *Land Use Series*, “Checklist #4; for Adoption of a Zoning Ordinance Amendment (Including Pud) in Michigan”
- *Land Use Series*, “Checklist #5; for Processing a Special Use Permit (Including Pud) Application in Michigan.”
- *Land Use Series*, “Checklist #6; for Processing a Zoning Appeal and Variance in Michigan.”

All of these are available at www.msue.msu.edu/lu/.

[local unit of government] Zoning Board of Appeals
Rules of Procedure
Adopted _____

1. Purpose

- A. The following rules of procedure are hereby adopted by [local unit of government] Board of Appeals (hereinafter known as Appeals Board) to facilitate the performance of its duties as outlined in [local unit of government] Zoning Ordinance.

2. Membership

- A. The membership of the Appeals Board shall be the number and appointed according to the procedure as established in the [local unit of government] Zoning Ordinance of _____(date of adoption) and section 601 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3601).

Membership of the Appeals Board.
Membership of the Appeals Board should be reviewed and edited carefully, making sure the Rules match the membership requirements found in the zoning ordinance.

- B. Attendance. If any member of the Appeals Board is absent from three consecutive regularly scheduled meetings, then that member shall be considered delinquent. Delinquency shall be grounds for the [legislative body] to remove a member from the Appeals Board for nonperformance of duty or misconduct after holding a public hearing on the matter. The Appeals Board secretary, or acting secretary in the absence of the elected secretary, shall keep attendance records and shall notify the [legislative body] whenever any member of the Appeals Board is absent from three consecutive regularly scheduled meetings, so the [legislative body] can consider further action allowed under law or excuse the absences.

- C. Training. Each member shall have attended at least four hours per year of training in planning and zoning during the member's current term of office. If so provided by the zoning ordinance, failure to meet the training requirements shall result in the member not being reappointed to the Appeals Board. Training shall be provided by one or more of the following organizations: Michigan Association of Planning, Michigan State University Extension, Michigan Townships Association, Michigan Municipal League, continuing education programs of Michigan State University, University of Michigan, Northern Michigan University, Central Michigan University,

Training
The Appeals Board should have a requirement that training is required to be eligible for reappointment. The number of hours required might be changed to reflect what your community's budget will support.

- D. Liaisons. The purpose of liaisons is to provide certain [local unit of government] and quasi-[local unit of government] officials ability to participate in discussion with the Appeals Board in addition to speaking in public participation, and nothing else. Liaisons cannot vote, introduce motions, initiate any other parliamentary action, be counted for a quorum or be expected to comply with attendance requirements pursuant to Section 2.B of these Rules of Procedure. Liaisons are, if not already an appointed Appeals Board member, are:

Liaison Members.
This section should be reviewed carefully. Review the list to insure there are not any additions or deletions.

1. Planning Department Staff, and their agents and consultants.
2. Zoning Administrator.
3. The Appeals Board's attorney.
4. The County Surveyor.
5. The County Register of Deeds.
6. County Extension Director.
7. Regional (multi-county) Planning Staff.

3. **Conflict of Interest and Incompatibility of Office.**

A. Each member of the Appeals Board shall avoid situations that are conflicts of interest, and/or incompatibility of office. As used here, a conflict of interest shall at a minimum include, but not necessarily be limited to, the following:

- a. Issuing, deliberating on, voting on, or reviewing a case concerning him or her.
- b. Issuing, deliberating on, voting on, or reviewing a case concerning work on land owned by him or her or which is adjacent to land owned by him or her.
- c. Issuing, deliberating on, voting on, or reviewing a case involving a corporation, company, partnership, or any other entity in which he or she is a part owner, or any other relationship where he or she may stand to have a financial gain or loss.
- d. Issuing, deliberating on, voting on, or reviewing a case which is an action which results in a pecuniary benefit to him or her.
- e. Issuing, deliberating on, voting on, or reviewing a case concerning his or her spouse, children, step-children, grandchildren, parents, brothers, sisters, grandparents, parents-in-law, grandparents in-law, or members of his or her household.
- f. Issuing, deliberating on, voting on, or reviewing a case where his or her employee or employer is:
 - (1) an applicant or agent for an applicant, or
 - (2) has a direct interest in the outcome.

2. When a conflict of interest exists, the member of the Appeals Board, shall do all of the following immediately, upon first knowledge of the case and determining that a conflict exists:

3. declare a conflict exists at the next meeting of the Appeals Board:
4. cease to participate at the Appeals Board meetings, or in any other manner, or represent one's self before the Appeals Board, its staff, or others, and
5. during deliberation of the agenda item before the Appeals Board leave the meeting, or remove one's self from the front table where members of the Appeals Board sit, until that agenda item is concluded.

B. If a member of the Appeals Board is appointed to another office, which is an incompatible office with his or her membership on the Appeals Board, then on the effective date of the appointment to the other office, that shall result in an automatic resignation from the Appeals Board. If a member of another office is appointed to the Appeals Board, which is an incompatible office with his or her membership in the other office, then on the effective date of the appointment to the Appeals Board, that shall result in an automatic resignation from the other office.

Adjacent Land and Conflict of Interest

Some thought should be given to how far away from one's own property one goes to consider it to be a conflict of interest. In a very small community, with a large distance from the property, it may be hard to ever have a situation which is not a conflict for a number of members of the Appeals Board. This practical matter should be balanced with the need to avoid the appearance of conflict and actual conflicts.

Courts have only gone as far as the adjacent parcel, and do not consider it a conflict beyond that. Some communities have used a "within 300 feet" standard (the same distance where notices are required).

Family and Conflict of Interest

Some thought should be given to how expansive, or limited is the list of who is included in "family". In a very small community, with an expansive list of family, it may be hard to ever have a situation which is not a conflict. This practical matter should be balanced with the need to avoid appearance of and actual conflicts.

Ex Parte Contact

There are several different ways to handle *Ex Parte* Contact. The goal, is that private conversations outside of a public meeting do not take place with members of the Appeals Board. And if that does happen, then have a means to share the content of the conversation with everyone involved, so everyone knows what was said, and those that wish to can provide a rebuttal.

4. **Duties of all members.**

A. *Ex Parte* contact

1. Members shall avoid *Ex Parte* contact about cases where an administrative decision is before the Appeals Board whenever possible.
2. Despite one's best efforts it is sometimes not possible to avoid *Ex Parte* contact. When that happens, the member should take detailed notes on what was said and report to the Appeals Board at a public meeting or hearing what was said, so that every member and other interested parties are made aware of what was said.

B. Site Inspections

1. Site inspections shall be done by the zoning administrator or other staff. A written report of the site inspection shall be orally presented to the Appeals Board at a public meeting or hearing on the site.
2. If desired, no more than one member of the Appeals Board may accompany the zoning administrator or staff on a site inspection.

Site Inspections

There are many alternative ways for site inspections to be handled. Some communities have the entire Appeals Board do a site inspection as a group. If that is done the site inspection must be posted as a public meeting and there must be accommodations for the audience to also come along. What is important is that the Rules of Procedure spell out how it will be done in your community.

C. Not Voting On the Same Issue Twice.

1. Any member of the Appeals Board shall avoid situations where they are sitting in judgement and voting on a decision, which they had a part in making. As used here, sitting in judgement and voting on a decision which they had a part in making at a minimum shall include, but not necessarily be limited to, the following:
 - a. When the appeal is of an administrative or other decision by Planning Commission, and the member of the Appeals Board sits both on the Planning Commission and Appeals Board.
 - b. When the appeal is of an administrative or other decision by the legislative body, and the member of the Appeals Board sits both on the legislative body and Appeals Board.
 - c. When the appeal is of an administrative or other decision by any committee of the Planning Commission, legislative body, other committee, and the member of the Appeals Board sits both on that committee and Appeals Board.

D. Accepting gifts.

1. Gifts shall not be accepted by a member of the Appeals Board or liaisons from anyone connected with an agenda item before the Appeals Board.
2. As used here, gifts, shall mean cash, any tangible item, or service, regardless of value; and food valued over \$10.

Accepting Gifts

There are many alternative ways for how to handle members of the Appeals Board receiving gifts. There is not a "right" or a "wrong" way to do it. It is important this is discussed and the Rules of Procedure spell out the rules your Appeals Board to. Consider that it may be okay for small gifts to be received (a box of candy for example), but not something that might be viewed by the public as a bribe.

E. Spokesperson for the Appeals Board.

1. Free and open debate should take place on issues before the Appeals Board. Such debate shall only occur at meetings of the Appeals Board.
2. Once a vote is taken and an issue is decided by vote, the duty of each member of the Appeals Board is to represent the position reflected by the outcome of the vote. Minority reports and requests for reconsideration may take place only at an open meeting of the Appeals Board.
3. From time-to-time, or on a specific issue the Appeals Board may appoint a spokesperson for the Appeals Board for all matters which occur outside of the meetings of the Appeals Board.

F. Code of Conduct.. Each member, upon appointment, shall sign a code of conduct.

5. Officers

- A. Selection. At the regular meeting in [insert the specific month] of each year, the Appeals Board shall select from its membership a Chair, Vice-Chair, Secretary, and Deputy Secretary. All officers are eligible for reelection. In the event the office of the Chair becomes vacant, the Vice-Chair shall succeed to this office for the unexpired term and the Appeals Board shall select a successor to the office of Vice-Chair for the unexpired term. In the event the office of the Secretary becomes vacant, the Deputy Secretary shall succeed to this office for the unexpired term and the Appeals Board shall select a successor to the office of Deputy Secretary for the unexpired term. The Appeals Board or Secretary may also designate another person who is not a member of the Appeals Board to be the recording secretary.
- B. Tenure. The Chair, Vice-Chair and Secretary shall take office [insert the specific month] 1 following their selection and shall hold office for a term of one year or until their successors are selected and assume office.
- C. Chair's Duties. The Chair retains his or her ability to discuss, make motions and vote on issues before the Appeals Board. The Chair shall:
1. Preside at all meetings with all powers under parliamentary procedure;
 2. Shall sign all decisions of the Appeals Board pursuant to M.C.L. 125.3606(3);
 3. Shall rule out of order any irrelevant remarks; remarks which are personal; remarks about another's race, religion, sex, physical condition, ethnic background, beliefs, or similar topics; profanity; or other remarks which are not about the topic before the Appeals Board;
 4. Restate all motions as pursuant to Section 5.E of these Rules of Procedure;
 5. Appoint committees;
 6. Appoint officers of committees or choose to let the committee select their own officers.
 7. May call special meetings pursuant to Section 5.B of these Rules of Procedure;
 8. Appoint an Acting-Secretary in the event the Secretary is absent from an Appeals Board meeting.
 9. Review with the Secretary or staff, prior to an Appeals Board meeting, the items to be on the agenda if he or she so chooses;
 10. Act as the Appeals Board's chief spokesman and lobbyist to represent the Appeals Board at local, regional and state government levels.
 11. Represent the Appeals Board, along with the [legislative body] Appeals Board member, before the [legislative body]; and
 12. Represent the Appeals Board, along with the Planning Commission member, before the Planning Commission; and
 13. Perform such other duties as may be ordered by the Appeals Board.
- D. Vice-Chair's Duties. The Vice-Chair shall:
1. Act in the capacity of Chair, with all the powers and duties found in Section 5.C of these Rules of Procedure, in the Chair's absence; and
 2. Perform such other duties as may be ordered by the Appeals Board.
- E. Secretary's Duties. The Secretary shall:
1. Execute documents in the name of the Appeals Board;
 2. Be responsible for the minutes of each meeting pursuant to section 6.A of these Rules of Procedure if there is not a recording secretary.
 3. Review the draft of the minutes, sign them, and submit them for approval by the Appeals Board and shall have them spread in suitable volumes. Copies of minutes shall be distributed to each member of the Appeals Board prior to the next meeting of the Appeals Board (the Secretary may delegate this duty to Appeals Board staff);
 4. Receive all communications, petitions and reports to be addressed by the Appeals Board, delivered or mailed to the Secretary in care of the Planning Department Office;
 5. Keep attendance records pursuant to Section 2.B of these Rules of Procedure;
 6. Provide notice to the public and members of the Appeals Board for all regular and special meetings, pursuant to the Open Meetings Act, P.A. 267 of 1976, as amended, M.C.L. 15.261 *et seq.* (the Secretary may delegate this duty to Appeals Board staff);

Code of Conduct

A sample code of conduct is available at www.msue.msu.edu/lu. A code of conduct could also be combined with an oath of office, if such oaths are practice in the community.

7. Prepare an agenda for Appeals Board meetings pursuant to Section 5.K of these Rules of Procedure (the Secretary may delegate this duty to Planning Department staff);
 8. May hire on behalf of the Appeals Board for the local unit of government an Appeals Board recording secretary (who shall not be a member of the Appeals Board); and
 9. Perform such other duties as may be ordered by the Appeals Board.
- F. Deputy Secretary's Duties. The Deputy Secretary shall:
1. Act in the capacity of Secretary, with all the powers and duties found in Section 5.E of these Rules of Procedure, in the Secretary's absence; and
 2. Perform such other duties as may be ordered by the Appeals Board.
- G. Recording Secretary's Duties. The Recording Secretary shall not be a member of the Appeals Board or any of its committees, and shall:
1. At each meeting take notes for minutes and prepare a first draft of minutes pursuant to section 6.A of these Rules of Procedure for review and signature by the Secretary; and
 2. Perform such other duties as may be ordered by the Appeals Board or secretary.

6. Demand for Appeal

- A. Filing. The following may file for an appeal
1. Any aggrieved person, or the person's authorized agent;
 2. Officer, department, board, or bureau of the state; and
 3. Officer, department, board, or bureau of a local unit of government.
- B. The filing for an appeal of a decision or for a variance shall be in writing on a form provided by the zoning administrator, and upon payment of a fee as may be established from time to time by the legislative body. Such *Demand for Appeal* shall be filed with the zoning administrator not more than 30 days from the date of the decision being appealed. A *Demand for Appeal* for a variance shall be filed with the zoning administrator at any time.
- C. Notification. Within 10 days from the date of the receipt of the *Demand for Appeal* which is found to be complete, the zoning administrator shall contact the Chair of the Appeals Board and set up a date(s) and time for the Appeals Board to meet to hold a hearing and a meeting to consider and act on the case. Notice of such meeting(s) shall be made by the zoning administrator as specified in Section 6.D, 6.E, 6.F, 6.G of these Rules of Procedure.
- D. The notice sent to members of the Appeals Board shall include:
1. Copies of the *Demand for Appeal* or request for a variance form;
 2. the entire content of the zoning administrator's file, and/or other file(s) on the case;
 3. other relevant correspondence, permits by other applicable enforcement agencies;
 4. previous zoning permits and record of appeals board actions concerning the property in question; and
 5. anything else which is relevant.
- E. The zoning administrator shall prepare copies of the above for inclusion in the package sent to Appeals Board members.
- F. The notice shall include the following information:
1. Describe the nature of the request
 2. Indicate the property(ies) which is(are) subject of the hearing.
 3. A listing of all existing street addresses within the property(ies) which is(are) subject of the appeal. (Street addresses do not need to be created and listed if no such addresses currently exist. If there are no street addresses another means of identification may be used.
 4. A statement of when and where the issue will be considered.
 5. An indication of when and where written comments will be received concerning the issue.

Aggrieved Party

means one whose legal right has been invaded by the act complained of, or whose pecuniary interest is directly and adversely affected by a decree or judgment. The interest involved is a substantial grievance, through the denial of some personal, pecuniary or property right or the imposition upon a party of a burden or obligation. It is one whose rights or interests are injuriously affected by a judgment. The party's interest must be immediate, pecuniary, and substantial and not nominal or a remote consequence of the judgment. Only aggrieved parties can appeal a particular order or judgement.

- G. The notices shall be given not less than 15 days before the date of consideration for approval. Notices shall be:
1. Published in a newspaper of general circulation in the local unit of government. (Note: "General circulation" means a newspaper which has a paid subscription, and does not mean a free-distribution advertiser or similar type publication.)
 2. Sent by mail or personal delivery to owners of property(ies) for the land which is the subject of the appeal.
 3. Sent by mail or personal delivery to all persons to whom real property is assessed within 300 feet of the property(ies) which is the subject of the appeal regardless of whether the owner and property is located in the zoning jurisdiction or not.
 4. Sent by mail or personal delivery to all persons which occupy all structures within 300 feet of the property(ies) which is the subject of the appeal regardless of whether the structure and occupant is located in the zoning jurisdiction or not.
 5. Sent by mail or personal delivery to the person requesting the interpretation.
 6. Sent by mail or personal delivery to the governing body's attorney's office.
 7. Sent by mail or personal delivery to the landowner, and
 8. Sent by registered mail with return receipt to the person and/or agent seeking the appeal or variance.
- H. Deadline for Action. The above notwithstanding, the Appeals Board shall hear the case and render and file its decision with a statement of reasons for the decision with the zoning administrator not more than 30 days after receipt of the case, unless a longer period of time is mutually agreed upon by the petitioner and Appeals Board.
- I. Notice of Decision. The Secretary, or designate, shall cause to have notices of the Appeals Board decision delivered in person or by first class mail to the zoning administrator; to the governing body's attorney's office; and to anyone else requesting a copy in writing. Further, a certified written notice of the decision to the petitioner, or his agent, filing the *Demand for Appeal* shall be sent by restricted registered mail with return receipt.

7. Meetings.

- A. Regular Meetings. The Appeals Board shall meet at least once each year during the month of _____ (pick a month). Any other meetings of the Appeals Board will be called as needed in response to receipt of a *Demand for Appeal*, so long as the meeting is scheduled within 20 days of the *Demand for Appeal*. The meeting can be called by the zoning administrator, the chairman of the Appeals Board, or, in the Chair's absence, the Vice-Chair.
- B. Other meetings. Meetings shall be called by delivering meeting notice by first class mail or by personal delivery to members of the Appeals Board at least seven days prior to such meeting (so that members receive the notice prior to the weekend prior to the meeting date). The notice shall state the purpose, time, location of the meeting.
- C. Public. All meetings, hearings, records, and accounts shall be open to the public, and posted in compliance with P. A. 267 of 1976, as amended, (being the Michigan Open Meetings Act). All regular and special meetings, hearings, records and accounts shall be open to the public.
1. All public comment on all agenda items should be presented at the beginning of the meeting where provided in the printed agenda. After that point during the meeting, public comment is normally not allowed; however, sometimes the Appeals Board may direct questions to members of the public. Public comment is at the beginning of the meeting so the Appeals Board can hear concerns and questions before acting on an issue. Those making public comment are expected to be familiar with the issue and have prepared comments ahead of time. To help the public in preparing for the meeting, any written material shall be made available without cost for members of the public asking for a copy prior to the meeting.

Meeting time, location

Section 7.A. should include the location and meeting time, e.g. "Third Wednesday of each month, at 7pm in the courthouse, 123 Fourth Street, Anytown."

Some communities do not have a need for monthly Appeals Board meetings. In those cases the meetings can be set up as needed, or a meeting date can be established for each month (so everyone keeps that date and time open in their calendar) and if there is not any business the meeting is simply not held.

2. The Chair may limit the amount of time allowed for each person wishing to make public comment at a Appeals Board meeting. The Chair may ask members of the audience to caucus with others sharing similar positions so they may select a single spokesperson. If a single spokesperson is selected, that individual shall be able to make public comment at the Appeals Board meeting without time limit or an extended time limit.
- D. Quorum. Half the total membership of the Appeals Board, rounded up to the next whole number, shall be the quorum for the transaction of business and the taking of official action for all matters.
 - E. When a petitioner fails to appear at a properly scheduled meeting of the Appeals Board, the Chair may entertain a motion from the Appeals Board to dismiss the case for want of prosecution. In the absence of a motion by the Appeals Board, the chair shall rule. In cases which are dismissed for want of prosecution, the petitioner will be furnished written notice of the action by the Secretary. The applicant shall have seven (7) days from the date of the notice of dismissal to apply for reinstatement of the case. In such cases, applicant must file a written request with the Secretary for reinstatement. Reinstatement shall be at the discretion of the Chair for good cause shown, and upon payment of a fee set from time to time by the governing body. In all cases reinstated in the above described manner, the case will be docketed and re-advertised in the usual manner prescribed for new cases.
 - F. Order of Business. Agenda. The Secretary, or designee, shall prepare an agenda for each meeting and the order of business therein shall be as follows:
 - A. *Call to order, roll call, and Pledge of Allegiance.*
 - B. *Site inspection, then recess (optional, if the meeting is posted to include a site inspection).*
 - C. *Reconvene and roll call (if following a site inspection).*
 - D. *Election of officers, if necessary.*
 - E. *Public Hearings. The Chairman will declare a hearing open and state its purpose.*
 - (1) *The Chairman shall summarize, provide copies, or conspicuously post the procedure for public hearing as outlined in Sections 7.C, 7.F of these Rules of Procedure for any members of the public in attendance, or provide copies.*
 - (2) *Case Number _____.*
 - (i) *The zoning administrator presents the petitioner's request, his action on the matter and reasons for his decisions plus a written copy of the petitioner's request.*
 - (ii) *The petitioner --through himself, his agent, his lawyer-- may present his case, including presenting witnesses on his behalf. No time limit will be imposed on the petitioner.*
 - (iii) *Members of the Appeals Board shall report on their site inspection and any conversations with the petitioner they may have had.*
 - (iv) *Members of the public who support the petitioner speak and correspondence is read. At the chairman's option he may:*
 - (a) *recess the meeting for a short time to allow those in support to caucus in order to have one speak on their behalf for an unlimited period of time if there are a large number of people present on an issue or for a set duration of time.*
 - (b) *allow many to speak in favor of the petitioner and can impose a time limit for the speaker that is three (3) minutes or more per speaker.*
 - (v) *Members of the public who oppose the petitioner speak and correspondence is read. At the chairman's option he may:*
 - (a) *recess the meeting for a short time to allow those in opposition to caucus in order to have one speak on their behalf for an unlimited period of time if there are a large number of people present on an issue.*
 - (b) *allow many to speak in opposition of the petitioner and can impose a time limit for the speaker that is three (3) minutes or more per speaker.*
 - (vi) *Rebuttal. Anyone may ask the Chairman questions on presentations or speeches given at this hearing. The Chairman will seek an answer to the question. Answers shall be given to the Chairman. No discussion, questioning or answering shall take place between any two or more people except between the Chairman and the individual who has the floor.*
 - (vii) *Close the hearing. (At this point all public participation on the issue ends.)*
 - F. *Public Comment for on this agenda but which are not items subject to a hearing at this meeting).*
 - G. *Recess to another night as provided in Section 7.H of these Rules of Procedure (optional).*
 - H. *Housekeeping Business.*

- (1) *Approval of minutes from previous meeting.*
- (2) *Other.*
- I. *Business Session.*
 - (1) *Action on pending case number _____.*
 - (i) *Discussion: Review of the facts based on all information presented (from the application, written request for appeal, zoning ordinance, physical characteristics of the parcels, staff reports, hearing testimony). Discussion continues until a member is confident enough to propose a motion that includes a "finding of fact" and/or "conclusions", and "rationale explaining why conclusions are reached" and "conditions" if any.*
 - (ii) *Motion is proposed on "finding of fact".*
 - (iii) *Discussion on the motion.*
 - (iv) *Action on the motion*
 - (v) *Discussion focusing on standards and requirements of the ordinance.*
 - (vi) *Motion is proposed on "rationale, conclusions, conditions".*
 - (vii) *Discussion on the motion.*
 - (viii) *Action on the motion.*
 - (2) *Other business of the Appeals Board.*
- J. *Public comment for items not on this agenda or subject to a hearing at this meeting.*
- K. *Adjournment.*
- G. *Placement of Items on the Agenda.*
 - 1. The [Planning Department/Zoning Administrator] shall be the office of record for the Appeals Board.
 - 2. The [Planning Department/Zoning Administrator] may receive items on behalf of the Appeals Board between the time of the adjournment of the previous Appeals Board meeting and eight business days prior to the next regularly scheduled Appeals Board meeting.
 - 3. Items received by the [Planning Department/Zoning Administrator] between seven business days prior to the next regularly scheduled Appeals Board meeting and the next regularly scheduled Appeals Board meeting shall be set aside to be received by the Appeals Board at its next regularly scheduled Appeals Board meeting. The Appeals Board may act on those items of a minor nature or table action to the subsequent regular or special Appeals Board meeting. Those items of a major nature including all variances, ordinance, and map interpretations, items normally receiving staff review, analysis, or recommendation shall be tabled until the subsequent regular or special Appeals Board meeting.
 - 4. The deadline to add items to the Appeals Board's meeting agenda shall be seven business days prior to the next regularly scheduled Appeals Board meeting.
- H. *Comments Out of Order.* The chair shall rule out of order any irrelevant remarks; remarks which are personal, about another's race, religion, sex, physical condition, ethnic background, beliefs, or similar topics; profanity; or any other remarks which are not about land use.
- I. *Recesses.* The Chair, or the Appeals Board, after the meeting has been in session for two hours (not including site inspections), shall suspend the Appeals Board's business and evaluate the remaining items on its agenda. The Appeals Board shall then decide to finish that meetings agenda, may act to continue the meeting on another day (fix the time at which to adjourn), or complete some agenda items and continue the meeting on another day to complete other agenda items or postpone certain agenda items to the next meeting. If applicable such action shall include the time, day, month, date, year and location the appeals board will reconvene. If more than 18 hours will pass before the reconvened appeals board meeting, public notice shall be given to comply with P.A. 267 of 1976, as amended, (being the Michigan Open Meeting Act M.C.L. 15.261 *et seq.*). Upon reconvening, a roll call of attendance shall be the first item of business before proceeding with the same agenda. The appeals board shall resume with the same meeting agenda, proceeding at the same point where they left off, without the addition of additional business.

- J. Parliamentary Procedure. Appeals Board meetings shall then be governed by *Roberts Rules of Order Newly Revised*, (10th Edition, Perseus Publishing, New York, 2000 (ISBN 0-7382-037-6)) for issues not specifically covered by these Rules. Where these Rules of Procedure conflict, or are different than *Robert's Rules of Order*, then these Rules of Procedure control.
- K. Motions.
1. Motions shall be restated by the Chair before a vote is taken.
 2. Findings of Fact. All actions taken in an administrative capacity (including but not limited to appeals, special use permits, subdivisions, zoning, site plan review, planned unit developments, variances, determination of compliance with an adopted plan, review of township zoning) shall include each of the following parts.
 - a. A findings of fact, listing what the Appeals Board determines to be relevant facts (including parcel owner, parcel legal description, what is applied for) in the case in order to eliminate misleading statements, hearsay, irrelevant, and untrue statements.
 - b. Conclusions, listing reasons based on the facts for the Appeals Board's action.
 - c. The Appeals Board's action, recommendation or position, approval, approval with conditions, or disapproval.
 3. Any other motion shall be stated in prose or in the form of a resolution.
- L. Voting. Voting shall be by roll call vote, and shall be recorded by "yes" or "no". Members must be present to cast a vote. A motion is only adopted if over half the total membership of the Appeals Board (regardless of the number actually present at the meeting) casts their votes in favor of the motion.

8. Records

- A. Preparation. The Appeals Board Secretary shall keep, or cause to be kept, a record of Appeals Board meetings, which, shall at a minimum include an indication of the following:
1. A copy of the meeting posting as required in Section 6.D, 6.E, 6.F, 6.G of these Rules of Procedure.
 2. A signed statement indicating that notices, as required in Section 6.D, 6.E, 6.F, 6.G of these Rules of Procedure, were sent out, with a list of to whom, and an indication of by whom, and a copy of a newspaper notice, if one was published.
 3. A copy of the *Demand for Appeal*, including any maps, drawings, site plans, etc.
 4. The original of the minutes of the meeting (including the hearing and site inspection) which shall include, in chronological sequence of occurrence:
 - a. Time and place the meeting was called to order.

Parliamentary Procedure.

There are several editions of *Robert's Rules of Order* ranging from 1876-2000. There are also different takes on *Robert's* such as simplified versions by various publishers. There are also different rules of order to consider such as

- *Mason's Manual of Legislative Procedure* (by Paul Mason, Natl Conference of State, (ISBN-10: 1580241166));
- *Democratic Rules of Order* (Gordon Soules Book Publishers Ltd., Gibsons BC Canada (ISBN 0969926049));
- *Standard Code of Parliamentary Procedure* (by Alice Sturgis, McGraw-Hill Companies (ISBN-10: 0070625220)); and
- *Jefferson's Manual (Manual of Parliamentary Practice for the Use of the Senate of the United States)*, (by Thomas Jefferson in 1801, as revised, U.S. Government Printing Office).

Some are simpler and easier to understand than *Robert's*. Any can be cited in one's Rules of Procedure. It is important that rules of procedure are specific as to which rules of order, and which version is being used.

Voting: Use Variance

If your community issues use variances, an additional sentence should be added to "Voting" to indicate a motion to adopt a use variance requires a 2/3 vote of the total membership.

- b. Attendance.
 - c. Indication of others present (listing names if others choose to sign in and/or a count of those present).
 - d. Summary or text of points of all reports (including reports of what was seen and discussed at a site inspection) given at the meeting and who gave the report and in what capacity. An alternative is to attach a copy of the report if offered in writing.
 - e. Summary of all points made in public participation or at a hearing by the applicant, officials, and guests and an indication of who made the comments. An alternative is to attach a copy of the public's statement, petition, or letter, if it is provided in written form.
 - f. Full text of all motions introduced, whether seconded or not, who made the motion, and who seconded the motion. For each motion, the following should be included:
 - (1) Who testified and a summary of what was said..
 - (2) A statement of what is being approved (e.g. special use permit, variance, conditional use permit, subdivision, land division, etc.)
 - (3) The location of the property involved (tax parcel number and description, legal description is best).
 - (4) What exhibits were submitted (list each one, describe each, number or letter each and refer to the letter or number in the minutes).
 - (5) What evidence was considered (summary of discussion by members at the meeting).
 - (6) The administrative body's findings of fact.
 - (7) Reasons for the decision made. (If the action is to deny, then each reason should refer to a section of an ordinance which would be violated or with which not complied.)
 - (8) The decision (e.g. approve, deny, approve with modification).
 - (9) A list of all required improvements (and if they are to be built up-front or name the type of performance security to be used), if any.
 - (10) List of all changes to the map/drawing/site plan that was submitted. (Sometimes it is easier to use a black flair felt pen and draw the changes on the map of what was applied for, rather than listing the changes. Do not use different colors. The map will most likely be photo copied. Then colors on the copy will not show at all or will just be black.)
 - (11) Make the map/drawing/site plan part of the motion (e.g. "...attached to the original copy of these minutes as appendix `A', and made a part of these minutes...").
 - g. A summary of all points made by members and staff in debate or discussion on the motion or issue.
 - h. Who called the question.
 - i. The type of vote and its outcome. If a roll call vote, indicate who voted yes, no, abstained or a statement the vote was unanimous. If not a roll call vote, then simply a statement: "the motion passed/failed after a voice vote."
 - j. That a person making a motion withdrew it from consideration.
 - k. All the Chair's rulings.
 - l. All challenges, discussion, and vote/outcome on a Chair's ruling.
 - m. All parliamentary inquiries or points of order.
 - n. When a voting member enters or leaves the meeting.
 - o. When a voting member or staff has a conflict of interest and when the voting member ceases or resumes participating in discussion, voting, and deliberations at a meeting.
 - p. All calls for an attendance count, the attendance, and the ruling if a quorum exists or not.
 - q. The start and end of each recess.
 - r. All chair's rulings of discussion being out of order.
 - s. Full text of any resolutions offered.
 - t. Summary of announcements.
 - u. Summary of informal actions, or agreement on consensus.
 - v. Time of adjournment.
5. The records of any action on a case by the zoning administrator.
 6. The records of all past records regarding the property involved in a case (previous permit, special use permit, variances, appeals).
 7. Any relevant maps, drawings, photographs, presented as evidence at a hearing.
 8. Copies of any correspondence received or sent out in regard to a case.
 9. A copy of relevant sections, or a list of citations of sections of the zoning ordinance.
 10. A copy of any follow-up correspondence to or from the petitioner regarding the decision.

- B. Retention. The record of each meeting shall be permanently kept on file and spread in suitable volumes, with a copy filed with the clerk of the [local unit of government]. All the pertinent documents and minutes for each case before the Board of Appeals shall be copied and filed with the zoning administrator's office. Copies of the minutes shall be distributed to each member of the Appeals Board. Copies of the minutes shall be available to the public within seven days of the meeting.

9. Mileage and Per Diem

- A. Mileage and per diem may be paid to members of the Appeals Board at rates established by the legislative body for attending Appeals Board meetings, and other authorized meetings and trips, if those members submit a bill for the same. Only mileage may be paid for attendance at site inspection meetings, if those members submit a bill for the same. No mileage or per diem is paid to any members unless authorized and budgeted by the [legislative body].

10. Other Duties

- A. The Appeals Board may also formulate and provide advice and may advise policy to the planning commission, [legislative body], or any committee thereof, on issues dealing with administration, text, map and enforcement of the zoning ordinance.

11. Adoption, Repeal, Amendments

- A. Upon adoption of these Rules of Procedure of _____ [date], they shall become effective and all previous rules of procedure, as amended, shall be repealed.
- B. These Rules of Procedure may be amended at any regular or special meeting by a two-thirds ($\frac{2}{3}$) vote of the total members of the Appeals Board, so long as such amendment does not result in a conflict with state law, zoning ordinance or court decision.

[May 19, 2008; Wexford MSUE CED: C:\Documents and Settings\Kurt Schindler\My Documents\wp\BullitensMSUE Wexford\pamphlet7ZBA-Rules.wpd]