

May 1, 2008

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Check List # 5 For Processing a Zoning Special Use Permit (including some PUDs) in Michigan

This is a step-by-step procedure for planning, land use and zoning. This particular checklist (#5) is for administratively reviewing special use permits in Michigan. It is for Planned Unit Development (PUD) special use permits also. This checklist is designed to provide a list of steps – in order – leading to a well planned and zoned community. This outline is based on Public Act 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et. seq.*), and recommendations of Kurt H. Schindler, MSU Extension land use team member. This version of the checklists includes to the Michigan Zoning Enabling Act through February 12, 2008 (P.A. 12 of 2008).

There are also separate procedural checklists for performing other zoning and planning functions. They are listed in the box on page 2.

The Michigan Zoning Enabling Act is a new statute, that changes how various zoning procedures are done. The entire purpose of this act was to create a single set of procedures to follow regardless if zoning is being done in a city, village, township, or county. After July 1, 2006 (the effective date of the act) only the procedures in the Michigan Zoning Enabling Act should be used (and the following statutes must not be used any more). Even if local zoning has a different procedure, the procedures in the Michigan Zoning Enabling Act have to be used starting July 1, 2006.

Within a year (July 1, 2007) local zoning has to be amended to reflect the procedures in the Michigan Zoning Enabling Act. This act replaces the following statutes. Only for matters that took place before July 1, 2006 should the old statutes be referenced:

1. P.A. 183 of 1943, as amended, (being the County Zoning Act, M.C.L. 125.201 *et seq.*) See MSU Extension Land Use Team's *Land Use Series* "Checklist # C2; For Adoption of a County Zoning Ordinance in Michigan".
2. P.A. 184 of 1943, as amended, (being the Township Zoning Act, M.C.L. 125.271 *et seq.*) See MSU Extension Land Use Team's *Land Use Series* "Checklist # T2; For Adoption of a Township Zoning Ordinance in Michigan".
3. P.A. 207 of 1921, as amended, (being the City and Village Zoning Act, M.C.L. 125.581 *et seq.*) See MSU Extension Land Use Team's *Land Use Series* "Checklist # M2; For Adoption of a City and Village Zoning Ordinance in Michigan".

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

*"Thirty seven million
acres is all the Michigan
we will ever have."*

Former Governor
William G. Milliken

Michigan State University
Extension Land Use Team

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

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the township, county, and the state; and providing guidelines.

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. There is no substitute for hiring an

attorney. **Do not** attempt to adopt or amend an ordinance without an attorney.

It is **important** to document each step of the process in planning and zoning a community. Keep detailed minutes, affidavits of publication and mailing, open meeting notices, letters of transmittal, and communications all on file, so years from now they are still available.

This checklist is divided into three columns.

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/.

Glossary

The following terms are used in this publication, and have the following specific meanings.

§ means the section number of Public Act 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et. seq.*),

Chief administrative official means the manager or other highest nonelected administrative official of a city or village.

Chief elected official means the mayor of a city, president of a village, supervisor of a township, or chair of a county board of commissioners.

Ex officio member means a member of a planning commission, with full voting rights unless otherwise specified by city or village charter, by virtue of holding another office.

Legislative Body means the county board of commissioners of a county, the board of trustees of a township, the council of a city or village, or other similar duly elected representative body of a county, township, city, or village.

Local Unit of Government means a county, township, city, or village.

Municipality means a city, village or township.

Plan means any plan adopted under the Michigan Planning Enabling Act or one of the three former planning acts, regardless of what it is titled.

Planning Commission means the local unit of government planning commission created under the Michigan Planning Enabling Act or one of the three former planning acts, regardless of what it is titled. In a few communities it may still be a "zoning board" (townships) or "zoning commission" (city and villages). Has used here, the use of the term "planning commission" includes all of these terms.

Zoning jurisdiction means the area encompassed by one of the following:

- legal boundaries of a city or village for a city or village respectively;
- legal boundaries of a township outside the limits of a city(ies) and village(s) for a township;
- legal boundaries of a county outside the limits of a city(ies) and village(s); or the county including any city(ies) and village(s) which has adopted the county plan (See §209, M.C.L. 125.3209)..

The first column has a place to check when the task is done, and a place to check when the documentation has been placed in a permanent file. The second column is the step, or task, to complete in order to adopt a proper plan/zoning ordinance, or amendment to either. The third column is what should be included in a permanent file to document the work that has been done. Sometimes the middle

column is further divided into two columns. The heading will indicate which **one** should be followed in your community's case. It is always a matter of doing one or the other, never both.

This check list is intended to be linear, with each step being done in order, and most requiring the previous step to be done before starting the next.

Check when task is done	Step, or Task	Copy in the permanent file
<input type="checkbox"/> Task is done	Step 1. (Optional) A pre-application conference before submitting an application may be provided for in the zoning ordinance.	Notes on the pre-application conference.
<input type="checkbox"/> In the file		
<input type="checkbox"/> Task is done	Step 2. An application for a special use permit is received, usually by the zoning administrator.	The application.
<input type="checkbox"/> In the file		
<input type="checkbox"/> Task is done	Step 3. The zoning administrator (usually) reviews the application to determine if the application is complete. (Actual requirements and standards for approving a request for a special use permit shall be specified in the zoning ordinance (§502(1)(c); M.C.L. 125.3502(1)(c)).)	The zoning administrator's review for completeness.
	A special use permit application may include a site plan. The site plan can be reviewed concurrently with the special use permit application, or it can be reviewed after the initial approval of a site plan, as shown in this checklist. It is possible for other procedures to also be used.	The site plan, if applicable.
<input type="checkbox"/> Task is done	Step 4. The zoning administrator verifies the specified special use is listed in the zoning ordinance as eligible for approval in that zoning district (§502(1)(a), M.C.L. 125.3502(1)(a)).	Finding the application is complete.
<input type="checkbox"/> In the file		
	If the application is complete, a time when the special use permit will be considered is scheduled, and the administrator prepares a staff report on the special use permit application.	Copy of list of deficiencies.
	If the application is not complete, the application is returned to the applicant with a list of deficiencies.	
	(Actual requirements and standards for approving a request for a special use permit shall be specified in the zoning ordinance (§502(1)(c); M.C.L. 125.3502(1)(c)). See also §504, M.C.L. 125.3504.)	
<input type="checkbox"/> Task is done	Step 5. Notices concerning the special use permit are prepared.	The staff report.

Check when task is done	Step, or Task	Copy in the permanent file		
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 6a. The notice shall include the following information:</p> <ul style="list-style-type: none"> • Describe the nature of the request (§103(4)(a), M.C.L. 125.3103(4)(a)). • Indicate the property(ies) which is(are) subject of the hearing (§103(4)(b), M.C.L. 125.3103(4)(b)). • If the special use permit application involves less than 11 adjacent properties (§202(3), M.C.L. 125.3202(3)), then a listing of all existing street addresses within the property(ies) which is(are) subject of the special use permit application. (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 (§103(4)(b), M.C.L. 125.3103(4)(b)). • A statement of when and where the issue will be considered (§103(4)(c), M.C.L. 125.3103(4)(c)). • An indication of when and where written comments will be received concerning the issue (§103(4)(d), M.C.L. 125.3103(4)(d)). <p>The notices shall be given not less than 15 days before the date of consideration for approval (§103(3), M.C.L. 125.3103(3)). Notices shall be:</p> <ul style="list-style-type: none"> • Published in a newspaper of general circulation in the local unit of government (§103(1), M.C.L. 125.3103(1)). (Note: “General circulation” means a newspaper which has a paid subscription, and does not mean a free-distribution advertiser or similar type publication.) • If the special use application involves less than 11 adjacent properties (§202(3), M.C.L. 125.3202(3)), then send the notice by mail or personal delivery to owners of property(ies) for the land which is the subject of the notice/hearing/special use application (§103(2), M.C.L. 125.3103(2)). • If the special use application involves less than 11 adjacent properties (§202(3), M.C.L. 125.3202(3)), then send the notice 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 notice/hearing/special use application regardless of whether the owner and property are located in the zoning jurisdiction or not. (§103(2), M.C.L. 125.3103(2)) • If the special use application involves less than 11 adjacent properties (§202(3), M.C.L. 125.3202(3)), then send the notice by mail or personal delivery to one person occupying each structure, unit or spatial area within 300 feet of the property(ies) which is the subject of the notice/hearing/special use application regardless of whether the structure and occupant are located in the zoning jurisdiction or not. If a structure contains more than four dwelling units, notice shall only be sent to the manager to be posted near the main entrance. (§103(2), M.C.L. 125.3103(2)) <p>See also §202(2) and 202(3), M.C.L. 125.3202(2) and 125.3202(3).</p>	<p>Copy of notices of hearing,</p> <p>affidavit notices were delivered,</p> <p>affidavit of publication,</p> <p>list of who notices were sent to.</p>		
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<table border="1"> <tr> <td data-bbox="383 1165 792 1751"> <p>Step 6b. If a public hearing is to be held and for PUD:</p> <p>The “A statement of when and where the issue will be considered” (§103(4)(c), M.C.L. 125.3103(4)(c) (in step 6a) shall announce when and where the hearing will be held.</p> <p>Go to step 7.</p> </td> <td data-bbox="805 1165 1198 1751"> <p>Step 6b. If a public hearing is not held: (Note: A hearing on a PUD must be held (§503(5), M.C.L. 125.3503(5)))</p> <p>In addition to the material in step 6a, the notice shall:</p> <ul style="list-style-type: none"> • The notice shall also indicate that a public hearing on the special use permit may be requested by any property owner or occupant of any structure located within 300 feet of the property being considered for the special use. (§502(2), M.C.L. 125.3502(2)) <p>If a public hearing is to be held, as a result of such a request, go back to step 5.</p> </td> </tr> </table>	<p>Step 6b. If a public hearing is to be held and for PUD:</p> <p>The “A statement of when and where the issue will be considered” (§103(4)(c), M.C.L. 125.3103(4)(c) (in step 6a) shall announce when and where the hearing will be held.</p> <p>Go to step 7.</p>	<p>Step 6b. If a public hearing is not held: (Note: A hearing on a PUD must be held (§503(5), M.C.L. 125.3503(5)))</p> <p>In addition to the material in step 6a, the notice shall:</p> <ul style="list-style-type: none"> • The notice shall also indicate that a public hearing on the special use permit may be requested by any property owner or occupant of any structure located within 300 feet of the property being considered for the special use. (§502(2), M.C.L. 125.3502(2)) <p>If a public hearing is to be held, as a result of such a request, go back to step 5.</p>	<p>ditto</p> <p>The request for the hearing.</p>
<p>Step 6b. If a public hearing is to be held and for PUD:</p> <p>The “A statement of when and where the issue will be considered” (§103(4)(c), M.C.L. 125.3103(4)(c) (in step 6a) shall announce when and where the hearing will be held.</p> <p>Go to step 7.</p>	<p>Step 6b. If a public hearing is not held: (Note: A hearing on a PUD must be held (§503(5), M.C.L. 125.3503(5)))</p> <p>In addition to the material in step 6a, the notice shall:</p> <ul style="list-style-type: none"> • The notice shall also indicate that a public hearing on the special use permit may be requested by any property owner or occupant of any structure located within 300 feet of the property being considered for the special use. (§502(2), M.C.L. 125.3502(2)) <p>If a public hearing is to be held, as a result of such a request, go back to step 5.</p>			

Check when task is done	Step, or Task		Copy in the permanent file
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 6c. If a public hearing is to be held and for PUD:</p> <p>Go to step 7.</p>	<p>Step 6c. If a public hearing is not held: (Note: A hearing on a PUD must be held (§503(5), M.C.L. 125.3503(5)))</p> <p>The body or official who decides, or recommends action on the special use permit may, at its own initiative, decide to hold a public hearing. (§502(3), M.C.L. 125.3502(3))</p> <p>If a public hearing is to be held, go back to step 5.</p>	<p>The decision to hold the hearing (minutes or report)</p>
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 7. A public hearing is held.</p>		<p>Minutes of public hearing</p>
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 8a. After the hearing the body or official who decides, or recommends action on the special use permit deliberates on the proposed special use permit. The deliberation is based on standards for considering special uses (§502(1)(b), M.C.L. 125.3502(1)(b)). Those standards are often found in four places in the zoning ordinance:</p> <ul style="list-style-type: none"> • The section of the ordinance on special uses, where there is often found general standards which apply to all special uses; • The same section of the ordinance on special uses (or a section specifically for this purpose) where standards which are specific for specified special uses are found; • General provisions of the zoning ordinance (including sections on signs, parking, major new developments, etc.); and • The requirements for the zoning district where the special use permit is proposed (parcel size, setbacks, etc.). <p>The focus of the deliberation should be to review each standard and determine if the proposed special use meets that standard or not. (If it does not, then the question becomes, “are there conditions which can be imposed on the special use which result in the project meeting the standard?” There are other purposes for requiring conditions. See §504(4), M.C.L. 125.3504(4).)</p> <p>If each standard is found to be met, then the special use permit shall be approved.</p>		<p>Minutes or written report.</p>
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 8b. When the planning commission or zoning administrator acts on the special use permit. (Note: the zoning ordinance shall specify who reviews and approves special use permits (§502(1), M.C.L. 125.3502(1)).)</p> <p>Then the:</p> <ul style="list-style-type: none"> • <input type="checkbox"/> Planning Commission • <input type="checkbox"/> Zoning Administrator <p>[check which one your zoning ordinance specifies]</p> <p>Makes a motion:</p>	<p>Step 8b. When the legislative body acts on the special use permit. (Note: the zoning ordinance shall specify who reviews and approves special use permits (§502(1), M.C.L. 125.3502(1)).)</p> <p>Then the:</p> <ul style="list-style-type: none"> • <input type="checkbox"/> Planning Commission • <input type="checkbox"/> Zoning Administrator <p>[check which one your zoning ordinance specifies]</p> <p>Prepares a recommendation for the legislative body in the form of a motion:</p>	<p>Minutes of the commission meeting which contains this motion.</p> <p>OR</p> <p>Written report/ruling by the zoning administrator</p>

Check when task is done	Step, or Task		Copy in the permanent file
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 8c. The motion, or minutes of the meeting where the case was decided shall include:</p> <ul style="list-style-type: none"> • The decision (to approve, not approve, approve with conditions); • Reasons (conclusions) for the decision; • A findings of fact upon which the reasons are based; • (optional) conditions of approval. <p>(§502(4), M.C.L. 125.3502(4)) (NOTE: If all standards are met in the zoning ordinance for the special use, the special use shall be approved (§504(2), M.C.L. 125.3504(2)).) (NOTE: In the case of a PUD, approval may be granted on each phase of a multi-phased PUD (§503(9), M.C.L. 125.3503(9)).)</p>		<p>Minutes of the commission meeting which contains this motion. OR Written report/ruling by the zoning administrator</p>
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 8d. When the planning commission or zoning administrator acts on the special use permit.</p> <p>Go to step 9.</p>	<p>Step 8d. When the legislative body acts on the special use permit.</p> <p>The legislative body takes up the issue at its meeting, and acts on the case. The motion, or minutes of the meeting where the case was decided shall include:</p> <ul style="list-style-type: none"> • The decision (to approve, not approve, approve with conditions); • Reasons for the decision; • A findings of fact upon which the reasons are based; • (optional) conditions of approval. <p>(NOTE: If all standards are met in the zoning ordinance for the special use, the special use shall be approved (§504(2), M.C.L. 125.3504(2)).) (NOTE: In the case of a PUD, approval may be granted on each phase of a multi-phased PUD (§503(9), M.C.L. 125.3503(9)).)</p>	<p>Legislative body minutes.</p>
<input type="checkbox"/> Task is done	<p>Step 9a. If the site plan review is handled concurrently with the special use permit or a site plan is not required.</p> <p>Go to step 10.</p>	<p>Step 9a. If the site plan review is handled separately from the initial review of a special use permit.</p> <p>In addition to the material in step 8d or 8c, one of the conditions of approval shall include:</p> <ul style="list-style-type: none"> • The subsequent approval of the site plan for the special use. 	

Check when task is done	Step, or Task		Copy in the permanent file
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 9b. If the site plan review is handled concurrently with the special use permit or a site plan is not required.</p> <p>Go to step 10.</p>	<p>Step 9b. If the site plan review is handled separately from the initial review of a special use permit.</p> <p>The site plan is submitted. The zoning administrator reviews to make sure the site plan is complete. If complete, a review of the site plan is scheduled. If not complete, it is sent back to the applicant with a list of deficiencies.</p>	<p>The site plan</p> <p>Copy of finding the site plan is complete or a list of deficiencies.</p>
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 9c. If the site plan review is handled concurrently with the special use permit or a site plan is not required.</p> <p>Go to step 10.</p>	<p>Step 9c. If the site plan review is handled separately from the initial review of a special use permit.</p> <p>The body or official who decides, or recommends action on the site plan reviews it. The review is based on standards for considering site plans (§501(3), M.C.L. 125.3501(3)). Those standards are often found in four places in the zoning ordinance:</p> <ul style="list-style-type: none"> • The section of the ordinance on special uses, where there is often found general standards which apply to all special uses; • The same section of the ordinance on special uses (or a section specifically for this purpose) where standards which are specific for specified special uses are found; • General provisions of the zoning ordinance (including sections on signs, parking, major new developments, etc.); and • The requirements for the zoning district where the special use permit is proposed (parcel size, setbacks, etc.). <p>The focus of the deliberation should be to review each standard and determine if the proposed special use meets that standard or not. (If it does not then the question becomes: are conditions which can be imposed on the special use which result in the project meeting the standard? There are other purposes for requiring conditions. See §504(4), M.C.L. 125.3504(4).)</p> <p>If each standard is found to be met, then the special use permit shall be approved.</p>	<p>Minutes OR Official's report.</p>

Check when task is done	Step, or Task	Copy in the permanent file
<input type="checkbox"/> Task is done	<p>Step 9d. If the site plan review is handled concurrently with the special use permit or a site plan is not required.</p> <p>Go to step 10.</p>	
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 9e. If the site plan review is handled concurrently with the special use permit or a site plan is not required.</p> <p>Go to step 10.</p>	<p>Minutes of the commission meeting which contains this motion. OR Written report/ruling by the zoning administrator</p>
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 10. If the special use permit is approved, arrangements should be made for a performance guarantee (cash deposit, certified check, irrevocable letter of credit, or surety bond acceptable to the local unit of government) which covers the estimated costs of the required improvements for the special use.</p> <p>The performance guarantee is deposited with the clerk of the legislative body.</p> <p>There shall be procedures for rebate of any cash deposits in proportion to the ratio of work completed. (§505(1), M.C.L. 125.3505(1))</p>	<p>Copy of performance guarantee, or record of deposit.</p>
<input type="checkbox"/> Task is done <input type="checkbox"/> In the file	<p>Step 11. Issue the special use permit.</p>	<p>The special use permit.</p>

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