

**HAYES TOWNSHIP
PLANNING COMMISSION
AGENDA
October 16, 2018**

- ☐ Call to Order
- ☐ Pledge of Allegiance
- ☐ Review Agenda
- ☐ Declaration of Conflict of Interest (if any)
- ☐ Public Comments Unrelated to Agenda Items
- ☐ Report of Township Board Representative to the Planning Commission
- ☐ Report of Planning Commission Representative to the Zoning Board of Appeals
- ☐ Zoning Administrator Report
- ☐ New Business
 - ☐ Review chapters 1-4. Please bring a list of items to discuss.
 - ☐ Waterfront Development Review subcommittee of the Planning Commission discussion. Update. Mailings.
 - ☐ BOT funds for survey \$4,659.00
 - ☐ PC education, Rules and procedures
 - ☐ Approval of Minutes
- ☐ Old Business
- ☐ Set Public Hearing Dates
- ☐ Set/Confirm Date of Next PC Meeting
- ☐ Planning Commission Comment
- ☐ Public Comment
- ☐ Adjournment

HAYES TOWNSHIP ZONING BOARD OF APPEALS

RULES OF PROCEDURE

Section 1.0 Purpose

The following rules of procedure are hereby adopted by the Hayes Township Zoning Board of Appeals to facilitate the performance of its duties as outlined in Hayes Township Zoning Ordinance.

Section 2.0 Officers

2.1 Selection. At the regular meeting in January of each year, the Zoning Board of Appeals shall select from its regular membership a Chair~~man~~ and Vice-Chair~~man~~. All officers are eligible for reelection. The Township Board member and the Planning Commission member may not serve as Chair~~man~~ or Vice-Chair~~man~~.

2.2 Tenure. The Chair~~man~~ and Vice-Chair~~man~~ shall take office ~~the same meeting of~~ upon their selection and shall hold office for a term of one year or until their successors are selected and assume office.

2.3 Duties of Officers. The Chair~~man~~ shall preside at all meetings and perform such other duties as may be ordered by the Zoning Board of Appeals. The Vice-Chair~~man~~ shall act in the capacity of Chair~~man~~ in his/her absence and in the event the office of Chair~~man~~ becomes vacant, the Vice-Chair~~man~~ shall succeed to this office for the unexpired term and the Zoning Board of Appeals shall select a successor to the office of Vice-Chair~~man~~ for the unexpired term. The ~~Clerk~~ Secretary or designate shall execute documents in the name of the Zoning Board of Appeals, perform the duties hereinafter listed. The ~~Clerk~~ Secretary or designate shall be responsible for the record and minutes of each meeting.

2.4 Duties of all members. Members shall avoid *Ex Parte* contact (any conversation about the case between board members, or between board member(s) and the applicant) about cases where an administrative decision is before the Appeals Board whenever possible.

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.

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

2.6 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. Failure to meet the training requirements should be grounds for the Township Board to not reappoint the member 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, and Michigan Municipal League, continuing education programs of Michigan State University, University of Michigan, Northern Michigan University, Central Michigan University, or Wayne State University.

Section 3.0 Notice of Appeal

3.1 Filing. Any interested person, or the person's authorized agent, may appeal or seek a variance in writing on an application form provided by the Zoning Administrator upon payment of a fee, established from time to time by the Township Board. Such notice shall be filed with the Zoning Administrator not more than 30 days from the date of the decision being appealed.

3.2 Notification. Within 10 days from the date of the receipt of the completed application form or Notice of Appeal, the Zoning Administrator shall contact the ~~Clerk~~ Secretary or designate, who with the approval of the Chair, will set up a date and time for the Zoning Board of Appeals to meet to hold a hearing to consider and act on the case in question. Notice of hearing shall be made by the ~~Clerk~~ Secretary or designate to the ~~other~~ members of the Zoning Board of Appeals. The notice sent to the members shall include copies of the application form for a variance; including all additional material submitted by the applicant, all relevant content of the Zoning Administrator's file, and/or other files on the case; other relevant correspondence, permits by other applicable enforcement agencies; and any other information that is relevant. In addition to the above the ~~Clerk~~ Secretary or designate will give notice as required in Section ~~7.06~~ 8.06 of the Hayes Township Ordinance.

3.3 Deadline for Action. The above notwithstanding, the Zoning Board of Appeals shall hear the case within forty five (45) days and file its decision with the Zoning Administrator not more than forty five (45) days after hearing the case, unless a longer period of time is mutually agreed upon by the petitioner and the Zoning Board of Appeals.

3.4 Site Inspection. Members of the Zoning Board of Appeals are ~~encouraged~~ required to visit the site in question. This shall be done at their own expense and on an individual and separate basis. Members are not to discuss or deliberate a variance request except during posted open hearings.

3.5 Notice of Decision. The ~~Clerk~~ Secretary or designate shall cause to have a Decision and Order of the Zoning Board of Appeal's decision delivered to the

Zoning Administrator; to the petitioner, or his/her agent; and to anyone else requesting a copy in writing.

Section 4.0 Meetings

4.1 Regular Meetings. The Zoning Board of Appeals shall meet at least once each year during the month of January. Any other meeting shall be called as needed in response to an appeal for a variance or Notice of Appeal. Meetings for the Zoning Board of Appeals are to be held on Wednesdays. The meeting will be called by the ~~Clerk~~ Chair.

4.2 Attendance.

a. If any member of the Zoning Board of Appeals is absent from more than one meeting in a row, then that member may be considered delinquent and may be removed from the board by the Township Board, for nonperformance of duty. The ~~Clerk~~ Secretary or designate shall keep attendance records and notify the Township Board when the problem exists.

b. When a petitioner fails to appear at a properly scheduled meeting, the ~~Chairman~~ may entertain a motion from the Board to dismiss the case for want of prosecution. In such cases, the petitioner shall be notified, in writing, by the ~~Clerk~~ Secretary or designate, and the petitioner shall have seven (7) days from the date of notice to apply for reinstatement of the case. The applicant must file a written request for reinstatement to the ~~Clerk~~ Secretary or designate, and upon approval by the Chairman for good cause shown; pay the fee as set by the Township Board. In all reinstated cases, a new hearing must be scheduled and all prescribed actions performed.

4.3 Conflict of Interest and Incompatibility of Office. Each member of the Appeals Board shall avoid situations that are conflicts of interest, and/or incompatibility of office. 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:

1. Declare a conflict exists.
2. 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.
3. Leave the meeting room during deliberation of the item before the Appeals Board.

4.4 Other Meetings. Meetings shall be called by notifying, all members of the Zoning Board of Appeals at least 48 hours in advance. The notice shall state the purpose, time, location and shall be posted at the Township Hall at least 18 hours prior to the date of the meeting.

4.5 Public Meetings. All meetings, hearings, records and accounts shall be open to the public and posted in compliance with the Michigan Open Meetings Act.

4.6 Quorum. Half the total membership of the Zoning Board of Appeals shall constitute a quorum for the transaction of business and the taking of official action for all matters.

4.7 Order of Business.

1. Chairman declares Hearing open.
2. Pledge of Allegiance
3. Introduction of Zoning Board of Appeals Members
4. Zoning Administrator introduces case and presents exhibits.
5. Petitioner is recognized and he, or his agent, puts forth his case.
6. Board members report on their site inspections, if any, and ask questions they may have for the petitioner or his agent.
7. Discussion may take place between the petitioner and board members.
8. Members of the public, present, may speak.
9. Any correspondence received about the variance, is read or has been included in member's packets.
10. Anyone can ask the board questions regarding the petitioner's presentation or speeches that were given. The board will attempt to obtain the answers. (Answers will be directed to the board chairman. No discussion, questioning or answering, shall take place between any two or more persons except between board members and whoever has the floor.
11. Close the public comment portion of the hearing. (At this point, all public participation on the issue ends).
12. The Board reviews applicable Section of the Hayes Township Ordinance.
13. The board reviews the facts as known and discussion takes place gathering findings of fact until a member puts forth a motion including the findings of fact. Voting shall be by roll call and shall be recorded.
14. The hearing is over and the board may take up any further business it may have pending, prior to adjournment.

Motions dealing with an Appeal or a Variance shall be stated with the following parts:

1. The list of exhibits which is the printed information presented by the applicant and/or the Zoning Administrator.
2. The list of facts which is the information pertinent to making a decision structured as a "Finding of Fact" on the case.
3. The conclusion, decision, of the Zoning Board of Appeals. This motion, or part of a motion, shall include the rationale and/or reason, for why the conclusion was made.

The rationale, reasons, shall at a minimum contain a review of the applicable Section of the Hayes Township ordinance.

Motions dealing with an ordinance interpretation, or an appeal of an

administration decision, shall be stated with the following parts:

1. The list of exhibits which is the printed information presented by the applicant and/or the Zoning Administrator.
2. The list of facts which is the information pertinent to making a decision structured as a "Finding of Fact" on the case.
3. The conclusion, decision, of the Zoning Board of Appeals. This motion, or part of a motion, shall include the rationale and/or reason, for why the conclusion was made.

4.8 Voting. Voting shall be by roll call vote and shall be recorded. Members must be present to cast a vote. A motion is only adopted if over half the total membership of the Zoning Board of Appeals casts their votes in favor of the motion.

4.9 Not Voting On the Same Issue Twice. 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 such as decisions of the Township Board or the Planning Commission.

4.10 Alternates. If an alternate is involved in a deliberation on a case the alternate will remain a member of the Zoning Board of Appeals in all deliberations on that case until its conclusion.

Section 5.0 Minute Approval. Copies of the Minutes and Decision and Order shall be distributed to each member of the Zoning Board of Appeals within 15 days of the meeting. ~~Clerk~~ Secretary or designate will give notice to the members, in writing, of the scheduled date for minute approval.

Section 6.0 Adoption and Repeal. Upon adoption of these rules of procedure of the Hayes Township Zoning Board of Appeals, dated ~~January 28, 2015~~ they shall become effective and all previous rules of procedure, as amended, shall be repealed.

Section 7.0 Amendments. These rules may be amended at any regular or special meeting by a majority vote of the total members of the Zoning Board of Appeals, so long as such amendment does not result in a conflict with state law, zoning ordinance, or court decision.

Adopted on

DATE



Michigan State University Extension

Land Use Series

#8: Sample Planning Commission and Zoning Board of Appeals Code of Conduct

Original version: May 1, 2008

Last revised: May 1, 2008

The following represents a sample Code of Conduct for a zoning board of appeals and a Planning Commission in Michigan. Reference to a Code of Conduct appears in *Land Use Series*: “Sample #1E: Bylaws for a Planning Commission” and *Land Use Series*: “Rules of Procedure for a Zoning Board of Appeals” (both available at www.msue.msu.edu/lu) and this is one example of what a Code of Conduct might look like. This Code is written in attempt to cover most needs that may occur. Before adoption they should be reviewed, and parts which are not pertinent omitted.

For any step in the process of reviewing a code of conduct and facilitating the discussion and decisions about how your code of conduct is written, your county Michigan State University Extension can assist. Contact through your county MSU Extension office or go to [http://www.canr.msu.edu/land use education services/](http://www.canr.msu.edu/land_use_education_services/) and find a list of contacts toward the bottom of this web page.

This pamphlet is not a substitute for legal advice or for professional planner services. This is not designed as a substitute for reading and understanding the Michigan Zoning Enabling Act (M.C.L. 125.3101 *et seq.*) and the Michigan Planning Enabling Act (M.C.L. 125.3801 *et seq.*). This outline is not a substitute for legal advice.

The following represents one sample set of a code of conduct for a planning commission and zoning board of appeals in Michigan. These are written in an attempt to cover most needs that may occur. Before adoption they should be reviewed, and sections which are not pertinent omitted. In the sample code of conduct, below, text which appears in brackets ([like this]) should be replaced with the specific name, number, or date as indicated. Commentary in a box, includes additional discussion and alternatives to consider.

The following is offered as sample code of conduct. It is intended as a starting point for a community to use when considering this issue.

*“Thirty seven million acres is
all the Michigan we will ever have”*
William G. Milliken

Michigan State University Extension Land Use Series

This is a fact sheet developed by experts on the topic(s) covered within MSU Extension. Its intent and use is to assist Michigan communities making public policy decisions on these issues. This work refers to university-based peer reviewed research, when available and conclusive, and based on the parameters of the law as it relates to the topic(s) in Michigan. This document is written for use in Michigan and is based only on Michigan law and statute. One should not assume the concepts and rules for zoning or other regulation by Michigan municipalities and counties apply in other states. In most cases they do not. This is not original research or a study proposing new findings or conclusions.

This is a sample, meaning that it is not a definitive recommendation by the authors or MSU Extension. A sample is a starting point for discussion and development of a code of conduct that is appropriate for a particular community. Conversely a model, would be presented as the ideal or utopia intended as a recommended approach. This is not a model code of conduct. That means any numerical requirement offered in the sample by laws is just a starting point for discussion. Often there is already discussion about it in the commentary which is intended to provide a community with information to decide what it would wish to have.

This document is written for use in Michigan and is based only on Michigan law and statute. One should not assume the concepts and rules for planning commission by laws for Michigan municipalities and counties apply in other states. In most cases they do not.

SAMPLE _____ [PLANNING COMMISSION / ZONING BOARD OF APPEALS]

CODE OF CONDUCT and OATH OF OFFICE

The Appointed Member of the _____ [Planning Commission / Zoning Board of Appeals] agree to abide by this Code of Conduct

As a member I will:

1. Accept responsibility to represent the [Planning Commission / Zoning Board of Appeals] which I am appointed to with dignity and pride by being a positive role model
2. Conduct myself in a businesslike manner, respecting the rights and opinions of other members and of the public. Abusive, insulting, profane or excessively argumentative language or conduct should not be tolerated.
3. Abstain from, and not tolerate, physical or verbal abuse.
4. Accept the responsibility to promote and support [Planning Commission / Zoning Board of Appeals] to develop an effective planning and zoning program.
5. Attend the meetings of the [Planning Commission / Zoning Board of Appeals] on a regular basis and provide prior notification of any necessary absences.
6. Read the plan, zoning ordinance, other ordinance, rules of procedure, bylaws, and other pertinent documents which pertain to the business of the [Planning Commission / Zoning Board of Appeals] and continue to gain knowledge (and understanding) through self-study, inquiries and attending appropriate training.
7. Attend training programs on planning and zoning in order to stay current on issues of concern for my community and in planning and zoning law.

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8. Respect, adhere to, and help enforce the rules, policies, and guidelines established by the [Planning Commission / Zoning Board of Appeals].
 9. Read meeting packet materials ahead of time and otherwise be prepared for the meetings.
 10. Refrain from deciding cases before the meeting discussion.
 11. Participate in the [Planning Commission / Zoning Board of Appeals] deliberation at the meetings when appropriate.
 12. Do not engage in criminal activities, and other activities including but not limited to situations of conflict of interest, incompatible office, *ex parte* contact, not voting on the same issue twice by virtue of serving on two different bodies, or accepting gifts as a form of influencing your vote.
 13. In public forums, after a vote by the [Planning Commission / Zoning Board of Appeals] has been taken, I will represent the adopted majority position of the [Planning Commission / Zoning Board of Appeals] when speaking on behalf of the [Planning Commission / Zoning Board of Appeals].
 14. I will follow, and will help my community follow the Community Planning Principles established by the Michigan Association of Planning (MAP), the Michigan Chapter of the American Planning Association. (For a copy: <http://www.planningmi.org/resources4560087.asp> or Michigan Association of Planning, 219 South Main Street – Suite 300, Ann Arbor, Michigan 48104, phone (734)913-2000, fax: (734)913-2061.)
- It is important that all appointees comply with this Code of Conduct.

OATH OF OFFICE:

I, _____ solemnly swear that I will support the Constitution of the United States and the Constitution of the State of Michigan, and that I will discharge the duties of the office of a member of [Planning Commission / Zoning Board of Appeals] in and for _____ [name of municipality] to the best of my ability.

Signed:

Name:

Date:

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Appendix A - 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.

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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).

Appendix B – 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*: #1O; Sample joint Planning Commission Ordinance and Agreement”
- *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.”
- *Land Use Series*, “#7: Sample Zoning Board of Appeals Rules of Procedure”
- *Land Use Series*, “#8: Sample Planning Commission and Zoning Board of Appeals Code of Conduct”

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

Zoning Administrator Report

September 2018

Zoning Permits/Actions for September 2018				
Permit #	Parcel #	Owner Name	Address	Improvement
18-09-01	114-012-10	Kent & Linda Larsen	09491 Burnett Road	Storage Building
18-09-02	540-008-00	Charles Schilling	11810 Stone Bridge Drive	Construct Attached Garage
18-09-03	134-003-40	Michael Beachy	06395 Maple Grove Road	Storage Building
18-09-04	400-008-00	Helga Strey	07333 Nine Mile Point Drive	Construct Attached Garage

Zoning Trends

Last month (September) four zoning permits were issued, two of which were for the construction of storage or pole type buildings. In the month of August, eight zoning permits were issued, of which six were for storage buildings. Four of the six were for buildings in the North Star Development just off of US-31. I would like to point out that there appears to be an emerging trend toward the construction of storage buildings in Hayes Township. I am not certain if this trend is unique to Hayes Township or is being experienced in other townships as well. This is a trend that I believe bears monitoring into the future.

Land Divisions

One land division application was received in July but was not acted upon due to the need for both property owners party to the agreement needing to sign off on the boundary line adjustment. I am still awaiting the signature from the second party. A property line adjustment application was received in August involving two property owners and three parcels. I am awaiting legal descriptions, surveys and the permit application fee. Since these three parcels are located in a recorded subdivision, I am checking to determine whether or not surveys would be required. The intent of the realignment is to split the middle parcel of the three parcels such that the resulting two parcels would each have an equal lot width.

These two applications are still awaiting complete information submittal prior to being processed.

Nuisance Complaints

A complaint was received from a property owner regarding two properties on Nine Mile Point Drive. This complaint was received during September and the complaint is being looked into to verify whether or not they are in fact violations. Should they be found to be violations, notices of violation will be sent to the respective property owners.

A complaint was also received regard two waterfront parcels on Lake Charlevoix, one of which involved activity within the Shoreline Protection Strip and the other in regards to a dwelling being constructed. I have been actively working with both property owners and/or their agents to ensure that the activities taking place are in compliance with the Zoning Ordinance provisions

Zoning Violations

I was contacted by an agent of the “Mondry’s” regarding their effort to develop a Shoreline Protection Strip renovation. I am awaiting plans outlining how they intend to comply with the Zoning Ordinance provisions.

Short Term Rental Licenses

No applications have been received for short term rental licenses during the month. I have had numerous conversations with representatives of the Catt Family regarding their property located on Indian Trails Drive. I believe we may be close to resolving the issues that have prevented the short term rental license from being issued.

Secretarial Work on behalf of the Planning Commission

The packet was copied and mailed out for the September Planning Commission meeting. This included the materials relevant to the Special Use Permit and Site Plan for the Elliot Falls proposed rental storage units off of US-31.

Zoning Board of Appeals

A meeting of the Zoning Board of Appeals was held on September 26th, at which meeting, the Zoning Board Appeals granted approval for the request to construct an attached garage to the a dwelling owned by Helga Strey on Nine Mile Point Drive. The ZBA had granted their approval in the past but due to the passage of time and the plans having changed, a new approval was necessary.

Meetings Attended

I have attended the September Township Board, Planning Commission, and Zoning Board of Appeals meetings. I also attended the dedication and ribbon cutting of phase two of the Charlevoix to Boyne City Non-Motorized Trail.