

**CHARTER TOWNSHIP OF VAN BUREN
BOARD OF ZONING APPEALS AGENDA
FEBRUARY 13, 2018 7:00 PM
VAN BUREN TOWNSHIP HALL
Board of Trustees Room
46425 Tyler Road**

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL

Chair Robert McKenna	_____	Vice-Chair Amos Grissett	_____
Secretary Joe Barnabei	_____	Vacant	_____
PC Representative Bryon Kelley	_____	David Senters	_____
Trustee Kevin Martin	_____	Director Ron Akers	_____
Alternate Aaron Sellers	_____	Deputy Director Matthew R. Best	_____
Recording Secretary Anna Halsted	_____		

ACCEPTANCE OF AGENDA

MINUTES: Approval of minutes from January 16, 2017

CORRESPONDENCE

PUBLIC COMMENT

UNFINISHED BUSINESS

NEW BUSINESS

1. Rules of Procedures Revisions

ANNOUNCEMENTS, COMMENTS, AND OPEN DISCUSSION

ADJOURNMENT

CHARTER TOWNSHIP OF VAN BUREN
BOARD OF ZONING APPEALS
Tuesday - January 16, 2018
Draft Minutes

The Meeting was called to order at 7:02pm in the Board of Trustees room by Chairperson McKenna.

PLEDGE OF ALLEGIANCE

ROLL CALL:

Present: McKenna, Barnabei, Kelley, Martin, Sellers, Grissett, Senters

Absent Excused:

Staff: Akers, Halstead

Audience: 1

ACCEPTANCE OF AGENDA:

Motion to accept agenda as presented Kelley, Seconded by Grissett.

Motion Carried

APPROVAL OF MINUTES: Motion to approve minutes from July 11, 2017 Kelley, Seconded by Grissett. Motion Carried

CORRESPONDENCE: None

PUBLIC COMMENT: Sellers will be put before the board for acceptance to be a permanent member of the BZA.

UNFINISHED BUSINESS: None

NEW BUSINESS

1.) Election of Officers for 2018

Motion to open nominations Kelley, Seconded by Senters. Motion Carried.

Barnabei was nominated for secretary. McKenna was nominated for Vice-Chair. Senters was nominated for Chairman.

Motion to elect Barnabei for secretary, McKenna for vice-chair and Senters for Chairman Kelley, Seconded by Grissett. Motion Carried.

2.) 2018 Meeting Schedule

The only deviation on the schedule was this current meeting due to the New Year holiday. All other regularly scheduled meetings will fall on the second Tuesday of the month.

Motion to approve the 2018 Meeting Schedule Kelley, Seconded by Sellers. Motion Carried.

3.) BZA Orientation Packets

The Planning Department's intern, Chris, put together a BZA Packet that goes over rules of procedure, member contact information, Roberts rules of order cheat sheets, meetings act requirements, and some training guides.

The zoning ordinance will be printed, and a copy will be given to each BZA Member.

ANNOUNCEMENTS, COMMENTS, AND OPEN DISCUSSION:

1.) Training

Director Akers put together a training for the BZA Members. He went over how the board is put together, the meeting structure, and membership of the board. The role of

Motion McKenna, seconded by Kelley to adjourn at 8:15 p.m.

Motion Carried

Respectfully submitted,

Anna Halstead, Recording Secretary

**CHARTER TOWNSHIP OF VAN BUREN
BOARD OF ZONING APPEALS
RULES OF PROCEDURE**

The following rules of procedure are hereby adopted by the Charter Township of Van Buren Board of Zoning Appeals (hereinafter known as BZA) to facilitate the performance of its duties as outlined in the Charter Township of Van Buren Zoning Ordinance.

SECTION 1.0 OFFICERS.

- 1.1 SELECTION.** At the first regular meeting in December of each year, the BZA shall select from its membership a Chairperson, Vice-Chairperson, and Corresponding Secretary. An elected officer of the Township shall not serve as the Chairperson. All officers are eligible for re-election. No officer shall hold the same office for more than two (2) consecutive terms.
- 1.2 TENURE.** The Chairperson, Vice-Chairperson and Corresponding Secretary shall take office immediately following their selection and shall hold office for a term of one year. The BZA may create and fill such other offices or committees as it may deem advisable. It may appoint advisory committees outside of its membership.
- 1.3 DUTIES.** The Chairperson shall preside at all meetings, and perform such other duties as may be ordered by the BZA. The Chairperson, or in his/her absence, the Vice-Chairperson, shall have the power to require the attendance of witnesses, administer oaths, and compel testimony. The Vice-Chairperson shall act in the capacity of Chairperson in his/her absence, and in the event the office of the Chairperson becomes vacant, the Vice-Chairperson shall succeed to this office for the unexpired term, and the BZA shall select a successor to the office of Vice-Chairperson for the unexpired term. The senior member, who is not the Planning Commission or Township Board member, should act in the capacity of Chairperson in the absence of the Chairperson, and the Vice-Chairperson. The Corresponding Secretary shall perform all duties normally devolving around such office. A Recording Secretary, whose position shall be a non-voting one in order to record accurate minutes of the proceedings, shall be provided by the Township for all regular and special Board of Zoning Appeals meetings.

SECTION 2.0 MINUTES AND RETENTION.

- 2.1 MINUTES.** Every meeting's proceedings shall be recorded by the Recording Secretary, who will have the minutes available for public review within 8 business days after the meeting, and for approval at the next meeting of the BZA. Approved copies must be available within 5 business days after approval.
- 2.2 RETENTION.** The record of each meeting shall be permanently kept on file with the Township Clerk. All the pertinent documents and minutes for each case before the BZA shall be copied and filed with the Zoning Administrator's office.

SECTION 3.0 MEETINGS.

- 3.1 REGULAR MEETINGS.** The Appeals Board shall meet on the second Tuesday of each month at 7:00 p.m. in the Township Hall at 46425 Tyler Road, Belleville, MI, except in absence of an agenda. The Township Board of Trustees may from time-to-time amend by resolution the meeting time and place of the BZA. Any other meetings of the BZA shall be called as needed in response to receipt of a Notice of Appeal, so long as the meeting is scheduled within 20 days of the Notice of Appeal. The meeting can be called by the Zoning Administrator of the Charter Township of Van Buren. When the regular hearing day falls on a legal holiday or holiday eve, the Chairperson may select a suitable alternate day in the same month. Publication of all meetings shall comply with the Open Meetings Act as amended.
- 3.2 SPECIAL MEETINGS.** Special Meetings may be called by the Chairperson, on the written request to two (2) BZA members, or someone seeking an interpretation of the Zoning Ordinance text or map. A prior notice of not less than 72 hours must be given to each member of the BZA and to the interested parties. Notice of Special meeting must also comply with the "Open Meetings Act" which requires 18 hours posted notice at the principal office of the Township and any other places deemed appropriate. Special Meetings can be called if the applicant is requesting a variance, then the requirements of the Township Zoning Ordinance and the Township Rural Zoning Act, Act 184 of 1942, as amended shall be followed and appropriate fees paid.
- 3.3 PUBLIC.** All regular and special hearing, meetings, records and

accounts shall be open to the public.

3.4 QUORUM. A Township Board of Zoning Appeals shall not conduct business unless a majority of the members of the board is present. If the Board of Zoning Appeals consists of 7 members, then four (4) members present would constitute a quorum.

3.5 ALTERNATES. Alternates shall fill in for regularly appointed BZA members when a conflict of interest arises or when a regular member is absent from or unable to attend a meeting.

A regular member of the BZA will be considered absent if he/she is not present when the meeting is called to order.

3.6 ORDER OF BUSINESS. The order of business at the BZA meetings shall be as follows:

1. Call the Meeting to Order
2. Pledge of Allegiance (Include on the Agenda)
3. Roll Call
4. Acceptance of Agenda
5. Minutes of the previous meeting, approved or corrected.
6. Correspondence
7. Unfinished Business
8. New Business
9. Announcements, comments, and open discussion.
10. Adjournment

3.7 HEARING PROCEDURE. The order of procedure of hearings shall be:

1. Applicant's presentation.
2. Township representatives' presentation.
3. Interested parties statements and presentations.

3.8 MOTIONS. Motions shall be restated upon request before a vote is taken. The name of the maker and supporter of a motion shall be recorded.

3.9 VOTING. All proceedings of the Board of Zoning Appeals shall be initiated by motion, and voted upon by all board members present and shall be recorded by yeas and nays. In the event one or more of the board members abstains from voting on a particular matter, that

abstention shall not be counted as a vote either in favor of or opposed to the issue to be decided. Permission for such abstention must be granted by a majority of the other board members present. Failure of a member to disqualify himself or herself from a vote in which the member has a conflict of interest shall constitute misconduct in office. Roll call votes will be recorded when: (1) dealing with requests for variances; (2) administrative and enforcement actions are requested; (3) deciding zoning district boundaries when they are not clear; and (4) interpreting the text of the ordinance when the ordinance does not address an issue precisely or clearly. The concurring vote of a majority of the TOTAL membership of the BZA shall be necessary to reverse any order, requirement, decision or determination of the administrative official or body, or to decide in favor of the applicant a matter upon which they are required to pass under an ordinance, or to effect a variation in an ordinance.

- 3.10 BZA ACTION.** The BZA will act upon all questions regarding the Zoning Ordinance and any other matters permitted by law. Reasons for each determination must be stated. The BZA's jurisdiction is defined in the Township Rural Zoning Act, 184 PA 1943, as amended.
- 3.11 PARLIAMENTARY PROCEDURE.** BZA meetings shall be conducted in a formal manner, and parliamentary procedure shall be governed by Roberts Rules of Order, Newly Revised Edition, if not specifically dealt with in these rules of procedure.
- 3.12 COMMENTS OUT OF ORDER.** The Chairperson 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.

SECTION 4.0 DISPOSITION OF APPEAL.

- 4.1 FINAL DECISION.** The final decision shall be in writing and provided to the applicant by the Clerk's Office after the meeting minutes have been approved by the BZA. The final decision shall include a general statement or resolution citing the conditions, facts and findings of the BZA; reasons for each determination will be stated.

- 4.2 TABLED ITEMS.** Items tabled to be brought back from the table at the request of the petitioner must adhere to the same notification deadlines that are required of new applicants.
- 4.3 WITHDRAWAL.** Any applicant may withdraw his/her application at any time prior to an official decision of the BZA.
- 4.4 APPLICANT'S FURTHER APPEAL.** The decision of the BZA shall be final. However, a person having an interest affected by the Zoning Ordinance may appeal to Circuit Court. Upon appeal, the court shall review the record and decision of the BZA to insure that the decision complies with the constitution and laws of the state, is based upon proper procedure, is supported by competent material and substantial evidence on the record, and represents the reasonable exercise of discretion granted by law to the BZA. As a result of this review required by this section, the court may affirm, reverse, or modify the decision of the BZA.
- 4.5 VALIDITY OF FAVORABLE DECISION.** In addition to the approval periods as prescribed by the Zoning Ordinance, any decision of the BZA favorable to the applicant shall remain valid only as long as the information or data relating thereto are found to be correct, and the conditions upon which the resolution was based are maintained.

SECTION 5.0 NON-PERFORMANCE AND MISCONDUCT

- 5.1** Members of the Board of Appeals shall be removable by the Township Board of Trustees for non-performance of duty or misconduct in office upon written charges and a public hearing.
- 5.2 NON-PERFORMANCE**
- A.** If any member of the BZA is absent from more than one meeting in a row, then that member shall be considered delinquent. Delinquency shall be grounds for the Township Board to remove any member for non-performance of duty upon public hearing from the Township Board. The Recording Secretary shall keep attendance records and shall notify the Township Supervisor whenever any member of the BZA is absent from more than one meeting in a row, so the Township Board can consider further action allowed under law. When a BZA Member needs to be excused he/she must call as soon as possible to the Township Zoning Secretary or the Zoning

Administrator and request an excused absence. This allows the Secretary enough time to call an alternate.

B. When a petitioner fails to appear at a properly scheduled meeting of the BZA, The Chairperson may entertain a motion from the Board to dismiss the case for want of prosecution. In the absence of a motion by the Board, the Chairperson shall rule. In cases which are dismissed for want of prosecution, the petitioner will be furnished written notice of the action by the Recording Secretary of the BZA. The applicant shall have seven (7) days from the date of notice of dismissal to apply for reinstatement of the case. In such cases, applicant must file a written request with the Recording Secretary for reinstatement. Reinstatement shall be at the discretion of the Chairperson for good cause shown, and upon payment of a fee set from time to time by the Township Board. In all cases reinstated in the above described manner, the case will be docketed and readvertised in the usual manner prescribed for new cases.

SECTION 6.0 REHEARING

6.1 REHEARING. The BZA is without general authority to reconsider a matter it has decided and from reversing its previous decision unless the facts and circumstances which actuated the decision have so changed as to invalidate or materially affect the reason which produced and supported it, and no vested rights have intervened.

SECTION 7.0 AMENDMENTS

7.1 SUSPENSION OF RULES OF PROCEDURE. A resolution supported by a majority of the total members may temporarily suspend any rule of procedure.

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

SECTION 8.0 SEVERABILITY.

If any section, subsection, sentence, clause, phrase or portion of these rules of procedure is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 9.0 ADOPTION AND REPEAL.

Upon adoption of these rules of procedure August 14, 1990, they shall become effective and all previous rules of procedure, as amended, shall be repealed.

SECTION 10.0 CONTENTS.

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I HEREBY CERTIFY that the foregoing is a true and correct copy of the Rules of Procedure adopted at the Charter Township of Van Buren Board of Zoning Appeals, at a Regular Meeting held August 14, 1990.

Cheryl D. Fain

Cheryl D. Fain, Clerk
Charter Township of Van Buren





Michigan State University Extension Land Use Series

#7: Sample Zoning Board of Appeals Rules of Procedure

Original version: May 2008
Last revised: January 21, 2014

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 in the process of reviewing rules of procedure and facilitating the discussion and decisions about how your rules of procedure are 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 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.

The following represents one sample set of rules of procedure for a 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 rules of procedure, 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.

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

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.

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

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 rules of procedure 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 set of rules of procedures. That means any numerical requirement offered in the sample rules of procedure 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 zoning board of appeals rules of procedure for Michigan municipalities and counties apply in other states. In most cases they do not.

[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.

Commentary, 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. [End of Commentary]

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).
- 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.

Commentary, 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. [End of Commentary]

- 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, or Wayne State University.

Commentary, Liaison Members: This section should be reviewed carefully. Review the list to insure there are not any additions or deletions. [End of Commentary]

- 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:

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.

Commentary, 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). [End of Commentary]

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:

1. Issuing, deliberating on, voting on, or reviewing a case concerning him or her.
2. 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.
3. 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.
4. Issuing, deliberating on, voting on, or reviewing a case which is an action which results in a pecuniary benefit to him or her.
5. 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.
6. Issuing, deliberating on, voting on, or reviewing a case where his or her employee or employer is:
 - a. an applicant or agent for an applicant, or
 - b. has a direct interest in the outcome.

Commentary, 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.
[End of Commentary]

- B. 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 at the next meeting of the Appeals Board:
 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, and
 3. 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.
- C. 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.

Commentary, 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. [End of Commentary]

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.

Commentary, 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. [End of Commentary]

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.

Commentary, 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. [End of Commentary]

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.

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.

Commentary, 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.[End of Commentary]

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);

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.

Commentary, 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. [End of Commentary]

- 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.

Commentary, Notice of Decision: There are two ways a notice of decision can be handled:

- 1. The decision is certified (and one has up to 30 days after that to file an appeal in circuit court), or
- 2. The decision is final after the ZBA minutes, containing the decision, has been approved by the ZBA at their next meeting (and one has up to 21 days after that to file an appeal in circuit court).

The ZBA rules of procedure should specify, here (§6.I.), which option is used. [End of Commentary]

If option 1 is used the certified decision signature(s) can be any of the following:

1. Signed by the chairperson of the zoning board of appeals, or
2. Signed by the members of the zoning board of appeals [all, or all of those present at that meeting].

Which option your township uses should be specified here, (§6.I.). With the certification option it may be wise to wait until the final draft of the minutes are done (eight business days under the meeting) and then the certification is prepared from the draft minutes. Then it is signed and sent. [End of Commentary]

- 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.

Commentary, 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. [End of Commentary]

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.
 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.*

Michigan State University Extension Land Use Series

(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.

Commentary, 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. [End of Commentary]

- J. Parliamentary Procedure. Appeals Board meetings shall then be governed by *Roberts Rules of Order Newly Revised*, (11th Edition, Perseus Publishing, New York, 2000) 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.

Commentary, 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 $\frac{2}{3}$ vote of the total membership. [End of Commentary]

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.
 - 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:
 - i. Who testified and a summary of what was said..
 - ii. A statement of what is being approved (e.g. special use permit, variance, conditional use permit, subdivision, land division, etc.)
 - iii. The location of the property involved (tax parcel number and description, legal description is best).
 - iv. What exhibits were submitted (list each one, describe each, number or letter each and refer to the letter or number in the minutes).
 - v. What evidence was considered (summary of discussion by members at the meeting).
 - vi. The administrative body's findings of fact.
 - vii. 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.)
 - viii. The decision (e.g. approve, deny, approve with modification).
 - ix. 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.
 - x. 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.)
 - xi. 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.

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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.

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/.

**GENOA CHARTER TOWNSHIP
ZONING BOARD OF APPEALS RULES OF PROCEDURE**

Effective January 14, 2014

Amended July 21, 2015

ARTICLE 1: AUTHORITY

These rules of procedure are adopted by the Genoa Charter Township Zoning Board of Appeals (hereinafter referred to as the “ZBA”), to facilitate the duties of the ZBA as outlined in Public Act 110 of 2006, as amended, being the Michigan Zoning Enabling Act, (M.C.L. 125.3101 et. seq.) and the Genoa Charter Township Zoning Ordinance.

ARTICLE 2: MEMBERSHIP

Section 1. The ZBA shall consist of five (5) members as follows:

- A. Planning Commission Member.** The first member shall be a member of the Township Planning Commission.
- B. Other Members.** The remaining members shall be selected and appointed by the Township Board from among electors residing in the unincorporated area of the Township.
- C. Township Trustee.** Only one member may be from the Township Board and their membership term shall be limited to the time they are a member of the Township Board.
- D. Alternates.** The Township Board may appoint not more than two (2) alternate members for the same term as regular members to the ZBA.
- E. Terms.** Terms shall be for three (3) years, except for members serving because of their membership on the Planning Commission or Township Board, whose terms shall be limited to the time they are members of those respective boards. Any vacancies shall be filled within one (1) month after the vacancy occurs. Vacancies for unexpired terms shall be filled by the Township Board for the remainder of the unexpired term.
- F. Removal.** Members of the ZBA shall be removable by the Township Board for misfeasance, malfeasance or nonfeasance, upon filing of written charges and after a public hearing before the Township Board.
- G. Resignation.** A member may resign from the ZBA by sending a letter of resignation to the Township Supervisor or the Township Board.

Section 2. Members of the ZBA shall be subject to the following membership requirements.

- A. Attendance.** If any member of the ZBA is absent from three (3) consecutive meetings then that member shall be considered delinquent. Delinquency can be grounds for the

Township Board to remove a member of the ZBA for nonperformance of duty or misconduct after holding a public hearing on the matter.

- B. Training.** Members of the ZBA should participate in training opportunities when they are available. Participating in training is not mandatory for membership, but it is strongly encouraged.
- C. Staff Support.** Township staff will have the ability to participate in discussion with the ZBA and nothing else. Township staff cannot vote, introduce motions, initiate any other parliamentary action, be counted for a quorum or be expected to comply with attendance requirements in these rules of procedure. Township staff includes employees, agents and consultants of Genoa Charter Township. Other individuals may be allowed to participate in discussion at the discretion of the chairperson.

ARTICLE 3: OFFICERS

Section 1. The Officers of the ZBA shall be a chairperson and a vice-chairperson. The Township Board representative shall not serve as an officer.

- A. Duties of the Chairperson.** The chairperson shall preside at all meetings and hearings of the ZBA, shall have the duties normally conferred by parliamentary usage on such officers and shall serve as the liaison between the ZBA and Township Staff.
- B. Duties of the Vice-Chairperson.** The vice-chairperson shall preside and exercise all of the duties of the chairperson in his/her absence. Should neither the chairperson nor the vice-chairperson be present at a meeting, a temporary chairperson shall be elected by a majority vote of the members present.

Section 2. The duties of the Planning Commission representative and Township Board representative shall be as follows:

- A. Duties of the Township Board Representative.** The Township Board representative shall report the actions of the ZBA to the Township Board and shall update the ZBA on the actions of the Township Board.
- B. Duties of the Planning Commission Representative.** The Planning Commission representative shall report the actions of the ZBA to the Planning Commission and shall update the ZBA on the actions of the Planning Commission.

Section 3. The election of officers shall be carried out in the following manner.

- A. Elections.** At the first meeting of the calendar year, the ZBA shall select from its membership a chairperson and a vice-chairperson who shall serve for a twelve-month period and who shall be eligible for re-election. A candidate receiving a majority vote of the membership present shall be declared elected. Newly elected officers will assume their office at the next meeting.

B. Vacancies. Vacancies in office shall be filled by regular election procedure and shall only serve the remainder of the term.

ARTICLE 4: ADMINISTRATIVE DUTIES

Section 1. Duties of Township Staff. Township Staff is responsible for the execution of documents in the name of the ZBA and shall perform the duties hereinafter listed below, and other such duties as the ZBA may determine.

- A. Minutes.** ZBA minutes shall be prepared by Township Staff. The minutes shall contain a brief synopsis of the meeting, complete statement of the conditions or recommendations made on any action; and recording of attendance.
- B. Correspondence.** Township Staff shall be responsible for the issuance of formal written correspondence with other groups or persons, as directed by the ZBA.
- C. Attendance.** Township Staff shall be responsible for maintaining an attendance record for each member of the ZBA.
- D. Notices/Agenda.** Township Staff shall issue such notices and prepare the agendas for all meetings.

ARTICLE 5: MEETINGS

Section 1. Regular Meetings. Regular meetings of the ZBA shall be held the third Tuesday of every month. The dates and times shall be posted at the Township Hall in accordance with the Open Meetings Act. Any changes in the date or time of the regular meetings shall be posted in the same manner as originally established. When a regular meeting falls on or near a legal holiday, suitable alternate dates in the same month shall be selected in accordance with the Open Meetings Act.

Section 2. Meeting Notices. All meetings shall be posted at the Township Hall according to the Open Meetings Act. The notice shall include the date, time and place of the meeting.

Section 3. Special Meetings. A special meeting may be called by three members of the ZBA upon written request to the chairperson or by the chairperson himself/herself. The business which the ZBA may perform shall be conducted at a public meeting held in compliance with the Open Meetings Act. Public notice of the time, date, and place of the special meeting shall be given in a manner as required by the Open Meetings Act, and Township Staff shall send notice of a special meeting to ZBA members.

Section 4. Open Meetings. All meetings of the ZBA shall be opened to the public and held in a place available to the general public. A person shall be permitted to address the ZBA during call to the public. A person shall not be excluded from a meeting of the ZBA except for breach of the peace, committed at the meeting.

Section 5. Public Record. All meetings, minutes, records, documents, correspondence, and other materials of the ZBA shall be open to public inspection in accordance with the Freedom of Information Act, except as may otherwise be provided by law.

Section 6. Quorum. In order for the ZBA to conduct business or take any official action, a quorum consisting of the majority of the voting members of the ZBA shall be present. When a quorum is not present, no official action, except for closing of the meeting shall occur. The members of the ZBA may discuss matters of interest, but can take no action until the next regular or special meeting. All public hearings without a quorum shall be scheduled for the next regular or special meeting.

Section 7. Voting. Any decision made by the ZBA shall require a majority vote of the membership of the Zoning ZBA with the exception of a use variance, which will require a 2/3 vote of the membership. Voting shall ordinarily be voice vote; provided however that a roll call vote shall be required if requested by any ZBA member or directed by the chairperson. All ZBA members shall vote on every motion placed on the floor unless there is an impermissible conflict of interest, as established in ARTICLE 6 or is otherwise prohibited.

Any member of the ZBA 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 the Planning Commission, and the member of the ZBA sits both on the Planning Commission and ZBA.
- B. When the appeal is of an administrative or other decision by the Township Board, and the member of the ZBA sits both on the Township Board and ZBA.
- C. When the appeal is of an administrative or other decision by any committee of the Planning Commission, Township Board, other committee, and the member of the ZBA sits both on that committee and the ZBA.

Any member abstaining from a vote shall indicate their intention to abstain prior to any discussion on that item and shall not participate in the discussion of that item.

Section 8. Agenda. A written agenda for all regular meetings shall be prepared as follows:

The required agenda items for all regular meetings shall be:

- A. Call to order
- B. Pledge of Allegiance
- C. Introduction
- D. Approval of Agenda
- E. Call to the Public
- F. Administrative Business
- G. Adjournment

Section 9. Rules of Order. All meetings of the ZBA shall be conducted in accordance with generally accepted parliamentary procedure, as governed by “Robert’s Rules of Order”.

Section 10. Public Hearings. Hearings shall be scheduled and due notice given in accordance with the Genoa Township Zoning Ordinance and the Michigan Zoning Enabling Act. Public hearings conducted by the ZBA shall be run in an orderly and timely fashion. This shall be accomplished by the established hearing procedures as follows.

- A. Prior to holding a public hearing for any variance request, interpretation or appeal of administrative decision, the chairperson shall explain to the public the criteria in the zoning ordinance for how that decision is made.
- B. Announce Subject. The chairperson announces each agenda item and describes the subject to be considered.
- C. Open Public Hearing. The chairperson summarizes the hearing rules and then opens the hearing to the floor.
- D. Close Public Hearing. The chairperson should give ample opportunity for comment, including a “last call” for comments. The chairperson will then close the hearing.
- E. Deliberation. Any action of the ZBA must be supported by reasonable findings and conclusions, which will become part of the record through minutes, resolutions, staff reports, etc. All motions shall summarize these findings, or provide reasons for the suggested action. If a matter is tabled to a specific meeting date, it is not necessary to re-advertise the hearing so long as the public hearing was opened and closed and proper notice as specified in the zoning ordinance and Zoning Enabling Act was given.
- F. Action. After deliberation, the ZBA may take any of the following actions:
 - 1. In the event of a variance request, the ZBA may table the request, approve the request, deny the request or approve the request with conditions.
 - 2. In the event of an administrative appeal, the ZBA may decide in favor of the Zoning Administrator or may reverse any order, requirements, decision, or determination of the Zoning Administrator.
 - 3. In the event of a request to make an interpretation of the zoning ordinance, the ZBA may take action explaining the interpretation.

Section 11. Postponement of a Decision on a Variance Request. The ZBA may postpone a decision on a variance request until the next regular meeting provided that the date and time of the meeting is provided in the motion. The ZBA shall not authorize more than two (2) requests to postpone a variance decision. If additional time is needed by the applicant that would require a decision to be postponed more than twice, the ZBA may, after written request from the applicant, remove the item from the agenda and allow the applicant to reapply at a later date. If the applicant reapplies then the variance request shall be treated as a new request with a new case number, a new public hearing notice as required by the Michigan Zoning Enabling Act, (M.C.L. 125.3101 et. seq.), and a new application fee shall be paid.

ARTICLE 6: CONFLICT OF INTEREST

Section 1. Declaration of Conflict. No ZBA member shall participate in any matter where they have an impermissible conflict of interest. ZBA members shall declare a conflict of interest when any one (1) or more of the following occur:

- A.** A relative or other family member of a ZBA member has a business or financial interest in the property involved in the request, or has a business or financial interest in the applicant's company, agency, or association.
- B.** The ZBA member has a business or financial interest in the property involved in the request, or has a business or financial interest in the applicant's company, agency, or association.
- C.** The ZBA member or a relative or other family member of a ZBA member owns or has a financial interest in neighboring property. For purposes of this Section, a neighboring property shall include any property falling within the notification radius for the request, as required by the Zoning Ordinance and Michigan Zoning Enabling Act.
- D.** There is a reasonable appearance of a conflict of interest, as determined by the ZBA member declaring such conflict.

Section 2. Requirements. Prior to discussion on a request, the ZBA member shall do all of the following to declare a conflict:

- A.** Announce a conflict of interest and state its general nature.
- B.** Abstain from any discussion or votes relative to the matter which is the subject of an impermissible conflict.
- C.** Absent himself/herself from the room in which the discussion and voting take place.

ARTICLE 7: POWERS OF THE ZBA

Section 1. The ZBA shall have the following powers/duties as granted by the Michigan Zoning Enabling Act and the Genoa Township Zoning Ordinance:

- A. Appeal of Administrative Decisions.** To hear and decide appeals where it is alleged by an appellant that there is an error in any order, requirement, permit, decision, or refusal made by the Planning Commission or any administrative official charged with administration or enforcement of the zoning ordinance.
- B. Variances (Dimensional and Use).** To authorize, upon a variance from the strict application of the provisions of the zoning ordinance, where by reason of exceptional narrowness, shallowness, shape or area of a specific piece of property at the time of enactment of the zoning ordinance or by reason of exceptional topographic conditions or other extraordinary or exceptional conditions of such property, the strict application of the regulations enacted

would result in peculiar or exceptional practical difficulties to, or exceptional undue hardship upon the owner of such property, provided such relief may be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning ordinance.

- C. Interpretation.** Upon request of the Planning Commission or any administrative or enforcement officer charged with administration or enforcement of the zoning ordinance, the ZBA may interpret and clarify the meaning of zoning ordinance text. The ZBA may also be requested to interpret boundaries of zoning districts where the zoning district classification cannot be clearly discerned on the Official Zoning Map.

ARTICLE 8: OTHER DUTIES

Section 1. Duties. The following are duties which are expected of the individual members of the ZBA.

- A. Ex Parte Contact.** Members shall avoid Ex Parte contact with the Zoning Administrator in cases where an administrative decision is before the ZBA, whenever possible. Sometimes it is not possible to avoid Ex Parte contact. When this occurs the member should take detailed notes about what was discussed and make every member or other interested parties aware of what was said.
- B. Site Inspections.** Members may perform site inspections, however, no more than two (2) members may perform site inspections at the same time. Members should avoid discussing the merits of the request with the applicant, family member of the applicant or agent of the applicant.
- C. Accepting Gifts.** Gifts shall not be accepted by a member of the ZBA or liaisons from anyone connected with an agenda item before the ZBA. As used here, gifts shall mean cash, any tangible item or service, regardless of value and food valued over \$10.
- D. Spokesperson for the ZBA.** The ZBA may appoint a spokesperson for the ZBA for all matters which occur outside of the meetings.

ARTICLE 9: AMENDMENTS

These rules may be amended by the ZBA by a concurring vote during any meeting, provided that all members have received an advance copy of the proposed amendments at least 3 days prior to the meeting at which such amendments are to be considered.