

# HOUSE BILL No. 6084

May 16, 2002, Introduced by Reps. Pappageorge, Gosselin, Palmer, Pumford, Koetje, George, Ehardt, Hager, Godchaux, Faunce, Vander Veen, Jelinek, Rivet, Jacobs, Tabor, Clarke, O'Neil, Lockwood, Neumann, Plakas, Pestka, McConico, Phillips, Basham, Mortimer, Woronchak, Bishop, Schermesser, Kolb and Jansen and referred to the Committee on Local Government and Urban Policy.

A bill to amend 1921 PA 207, entitled "City and village zoning act," by amending sections 4a, 5, 11, and 20 (MCL 125.584a, 125.585, 125.591, and 125.600), section 5 as amended by 2000 PA 20, section 11 as amended by 1986 PA 191, and section 20 as amended by 2001 PA 179, and by adding section 9a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 4a. (1) A city or village may provide in a zoning  
2 ordinance for special land uses which shall be permitted in a  
3 zoning district only after review and approval by the commission  
4 appointed to formulate and subsequently administer the zoning  
5 ordinance, an official charged with administering the ordinance,  
6 or the legislative body. The ordinance shall specify the  
7 following:

1 (a) The special land uses and activities eligible for  
2 approval consideration and the body or official charged with  
3 reviewing special land uses and granting approval.

4 (b) The requirements and standards upon which decisions on  
5 requests for special land use approval shall be based.

6 (c) The procedures and supporting materials required for  
7 application, review, and approval.

8 (2) Upon receipt of an application for a special land use  
9 ~~which~~ THAT requires a decision on discretionary grounds, 1  
10 notice that a request for special land use approval has been  
11 received shall be published in a newspaper of general circulation  
12 in the city or village and shall be sent by mail or personal  
13 delivery to ALL OF the FOLLOWING:

14 (A) THE owners of ~~property for which approval is being con-~~  
15 ~~sidered, to all persons~~ THE PROPERTY THAT IS THE SUBJECT OF THE  
16 SPECIAL LAND USE REQUEST.

17 (B) EACH PERSON to whom IS ASSESSED real property ~~is~~  
18 ~~assessed~~ within 300 feet of the boundary of the property ~~in~~  
19 ~~question, and to the~~ THAT IS THE SUBJECT OF THE REQUEST.

20 (C) THE occupants of all structures within 300 feet ~~,~~  
21 ~~except that the~~ OF THE PROPERTY THAT IS THE SUBJECT OF THE  
22 REQUEST.

23 (D) IF THE REQUEST CONCERNS A SIGN OR SIGN STRUCTURE, TO THE  
24 LEGISLATIVE BODY OF ANY OTHER CITY OR VILLAGE, OR OF A TOWNSHIP,  
25 WITH A BOUNDARY WITHIN 1,500 FEET OF THE BOUNDARY OF THE PROPERTY  
26 THAT IS THE SUBJECT OF THE REQUEST.

1 (3) THE notice PROVIDED FOR IN SUBSECTION (2) shall be given  
2 not less than 5 and not more than 15 days before the application  
3 will be considered. If the name of the occupant is not known,  
4 the term "occupant" may be used in making notification.  
5 Notification need not be given to more than 1 occupant of a  
6 structure, except that if a structure contains more than 1 dwell-  
7 ing unit or spatial area owned or leased by different individu-  
8 als, partnerships, businesses or organizations, 1 occupant of  
9 each unit or spatial area shall receive notice. In the case of a  
10 single structure containing more than 4 dwelling units or other  
11 distinct spatial areas owned or leased by different individuals,  
12 partnerships, businesses, or organizations, notice may be given  
13 to the manager or owner of the structure who shall be requested  
14 to post the notice at the primary entrance to the structure. The  
15 notice shall DO ALL OF THE FOLLOWING:

16 (a) Describe the nature of the special land use request.

17 (b) Indicate the property ~~which~~ THAT is the subject of the  
18 special land use request.

19 (c) State when and where the special land use request will  
20 be considered.

21 (d) Indicate when and where written comments will be  
22 received concerning the request.

23 (e) Indicate that a public hearing on the special land use  
24 request may be requested by ~~a property owner~~ AN OWNER OF  
25 PROPERTY or the occupant of a structure located within 300 feet  
26 of the boundary of the property ~~being considered for a special~~  
27 ~~use~~ THAT IS THE SUBJECT OF THE REQUEST OR BY THE LEGISLATIVE

1 BODY OF ANY OTHER CITY OR VILLAGE, OR OF A TOWNSHIP, WITH A  
2 BOUNDARY WITHIN 1,500 FEET OF THE BOUNDARY OF THAT PROPERTY.

3 (4) ~~(3)~~ At the initiative of the body or official respon-  
4 sible for approving special land uses, or upon the request of the  
5 applicant for special land use authorization, or a ~~property~~  
6 ~~owner or the occupant of a structure located within 300 feet of~~  
7 ~~the boundary of the property being considered for a special land~~  
8 ~~use~~ PERSON DESCRIBED IN SUBSECTION (3)(E), a public hearing  
9 ~~with notification as required for a notice of a request for spe-~~  
10 ~~cial land use approval as provided in subsection (2)~~ shall be  
11 held before a decision on the special land use request which is  
12 based on discretionary grounds. NOTICE OF THE PUBLIC HEARING  
13 SHALL BE GIVEN IN THE SAME MANNER AS REQUIRED FOR NOTICE OF A  
14 REQUEST FOR SPECIAL LAND USE APPROVAL UNDER SUBSECTION (3). If  
15 the applicant or the body or official responsible for approving  
16 special land uses requests a public hearing, only notification of  
17 the public hearing need be made.

18 (5) A decision on a special land use request ~~which~~ THAT is  
19 based on discretionary grounds shall not be made unless notifica-  
20 tion of the request for special land use approval, or notifica-  
21 tion of a public hearing on a special land use request is given  
22 as required by this section.

23 (6) ~~(4)~~ The body or official designated in the zoning  
24 ordinance to review and approve special land uses may deny,  
25 approve, or approve with conditions, requests for special land  
26 use approval. The decision on a special land use shall be  
27 incorporated in a statement of conclusions relative to the

1 special land use under consideration. The decision shall specify  
2 the basis for the decision, and any conditions imposed.

3       Sec. 5. (1) The legislative body of a city or village may  
4 act as a board of appeals upon questions arising under a zoning  
5 ordinance. The legislative body may establish rules to govern  
6 its procedure as a board of appeals. In the alternative, the  
7 legislative body may appoint a board of appeals consisting of not  
8 less than 5 members, each to be appointed for a term of 3 years.  
9 Appointments of the first members shall be for terms of 1, 2, and  
10 3 years, respectively, so as nearly as possible to provide for  
11 the subsequent appointment of an equal number of members each  
12 year. After the initial appointments, each member shall hold  
13 office for the full 3-year term.

14       (2) Under procedures specified in the zoning ordinance, the  
15 legislative body of a city or village may appoint not more than 2  
16 alternate members for the same term as regular members of the  
17 board of appeals. The alternate members may be called on a  
18 rotating basis as specified in the zoning ordinance to ~~sit as~~  
19 ~~regular members of the board of appeals~~ SERVE in the absence of  
20 a regular member. An alternate member may also be called to  
21 serve ~~in the place of a regular member~~ for the purpose of  
22 reaching a decision on a case in which ~~the~~ A regular member has  
23 abstained for reasons of conflict of interest. The alternate  
24 member called shall serve in the case until a final decision is  
25 made. The alternate member has the same voting rights as a regu-  
26 lar member of the board of appeals.

1           (3) THE LEGISLATIVE BODY OF A CITY OR VILLAGE MAY AUTHORIZE  
2 THE REMUNERATION OF THE MEMBERS OF THE BOARD FOR ATTENDANCE AT  
3 EACH MEETING.

4           (4) ~~-(3)-~~ The board of appeals shall hear and decide appeals  
5 from and review any order, ~~requirements~~ REQUIREMENT, decision,  
6 or determination made by an administrative official or body  
7 charged with the enforcement of an ordinance adopted under this  
8 act. The board of appeals shall also hear and decide matters  
9 referred to the board or upon which the board is required to pass  
10 under an ordinance adopted under this act. For special land use  
11 and planned unit development decisions, an appeal may be taken to  
12 the board of appeals only if provided for in the zoning  
13 ordinance.

14           (5) ~~-(4)-~~ In a city or village having a population of less  
15 than 1,000,000, the concurring vote of a majority of the members  
16 of the board is necessary to reverse an order, requirement, deci-  
17 sion, or determination of an administrative official or body, or  
18 to decide in favor of the applicant a matter upon which the board  
19 is required to pass under an ordinance, or to effect a variation  
20 in an ordinance except that a concurring vote of 2/3 of the mem-  
21 bers of the board is necessary to grant a variance from uses of  
22 land permitted in an ordinance. In a city having a population of  
23 1,000,000 or more, the concurring vote of 2/3 of the members of  
24 the board is necessary to reverse an order, requirement, deci-  
25 sion, or determination of an administrative official or body, or  
26 to decide in favor of the applicant a matter upon which the board

1 is required to pass under an ordinance, or to grant a variance in  
2 an ordinance.

3 (6) ~~-(5)-~~ An appeal may be taken by a person aggrieved, or  
4 by an officer, department, board, or bureau of the city or  
5 village. In addition, a variance in an ordinance may be applied  
6 for and granted pursuant to section 4 of the uniform condemnation  
7 procedures act, 1980 PA 87, MCL 213.54, and this act. A board of  
8 rules or board of building appeals of a city or village may be  
9 enlarged to consist of not less than 5 members, and these may be  
10 appointed as the board of appeals as provided in this section.

11 (7) ~~-(6)-~~ An appeal under this section shall be taken,  
12 within a time prescribed by the board of appeals by general rule,  
13 by filing, with the officer or body from whom the appeal is taken  
14 and with the board of appeals, a notice of appeal specifying the  
15 grounds for the appeal. The officer or body from whom the appeal  
16 is taken shall immediately transmit to the board all the papers  
17 constituting the record upon which the action appealed from was  
18 taken.

19 (8) ~~-(7)-~~ An appeal under this section stays all proceedings  
20 in furtherance of the action appealed from unless the officer or  
21 body from whom the appeal is taken certifies to the board of  
22 appeals, after the notice of appeal is filed, that by reason of  
23 facts stated in the certificate, a stay would in the opinion of  
24 the officer or body cause imminent peril to life or property. If  
25 such a certification is filed, the proceedings shall only be  
26 stayed by a restraining order. A restraining order may be  
27 granted by the board of appeals or by the circuit court, on

1 application, on notice to the officer or body from whom the  
2 appeal is taken and on due cause shown.

3 (9) ~~-(8)-~~ The board of appeals shall fix a reasonable time  
4 for the hearing of the appeal and give notice of the appeal to  
5 the persons to whom real property within 300 feet of the premises  
6 in question is assessed, ~~and~~ to the occupants of single and  
7 2-family dwellings within 300 feet, AND, IF THE APPEAL IS FROM A  
8 DECISION ON A SPECIAL LAND USE REQUEST CONCERNING A SIGN OR SIGN  
9 STRUCTURE, TO THE LEGISLATIVE BODY OF ANY OTHER CITY OR VILLAGE,  
10 OR TOWNSHIP, WITH A BOUNDARY WITHIN 1,500 FEET OF THE BOUNDARY OF  
11 THE PROPERTY THAT IS THE SUBJECT OF THE APPEAL. The notice shall  
12 be delivered personally or by mail. NOTICE TO PROPERTY OWNERS  
13 AND OCCUPANTS SHALL BE addressed to the respective owners and  
14 ~~tenants~~ OCCUPANTS at the address given in the last assessment  
15 roll. If ~~a tenant's~~ AN OCCUPANT'S name is not known, the term  
16 "occupant" may be used. Upon the hearing, a party may appear in  
17 person or by agent or by attorney.

18 (10) ~~-(9)-~~ The board of appeals shall decide the appeal  
19 within a reasonable time. The board of appeals may reverse or  
20 affirm, wholly or partly, or may modify the order, requirement,  
21 decision, or determination appealed from and shall make an order,  
22 requirement, decision, or determination as in the board's opinion  
23 ought to be made in the premises, and to that end shall have all  
24 the powers of the officer or body from whom the appeal is taken.  
25 If there are practical difficulties or unnecessary hardship in  
26 carrying out the strict letter of the ordinance, the board of  
27 appeals may in passing upon appeals grant a variance in any of



1 its rules or provisions relating to the construction, or  
2 structural changes in, equipment, or alteration of buildings or  
3 structures, or the use of land, buildings, or structures, so that  
4 the spirit of the ordinance shall be observed, public safety  
5 secured, and substantial justice done.

6 (11) ~~(10)~~ The board of appeals may impose conditions upon  
7 an affirmative decision, as provided in section 4c(2). ~~The leg-~~  
8 ~~islative body of a city or village may authorize the remuneration~~  
9 ~~of the members of the board for attendance at each meeting.~~

10 (12) ~~(11)~~ The decision of the board of appeals is final.  
11 However, a person having an interest affected by the zoning ordi-  
12 nance may appeal to the circuit court. Upon appeal, the circuit  
13 court shall review the record and decision of the board of  
14 appeals to ensure that the decision meets all of the following  
15 requirements:

16 (a) Complies with the constitution and laws of this state.

17 (b) Is based upon proper procedure.

18 (c) Is supported by competent, material, and substantial  
19 evidence on the record.

20 (d) Represents the reasonable exercise of discretion granted  
21 by law to the board of appeals.

22 (13) ~~(12)~~ If the court finds the record of the board of  
23 appeals inadequate to make the review required by this section,  
24 or that additional material evidence exists that with good reason  
25 was not presented to the board of appeals, the court shall order  
26 further proceedings before the board of appeals on conditions  
27 that the court considers proper. The board of appeals may modify

1 its findings and decision as a result of the new proceedings, or  
 2 may affirm the original decision. The supplementary record and  
 3 decision shall be filed with the court.

4 (14) ~~(13)~~ As a result of the review required by this sec-  
 5 tion, the court may affirm, reverse, or modify the decision of  
 6 the board of appeals.

7 SEC. 9A. IF A CITY OR VILLAGE IS A PARTY IN A JUDICIAL  
 8 ACTION ARISING FROM A DECISION ON A SPECIAL LAND USE REQUEST CON-  
 9 CERNING A SIGN OR SIGN STRUCTURE, ANY OTHER CITY OR VILLAGE, OR  
 10 TOWNSHIP, WITH A BOUNDARY WITHIN 1,500 FEET OF THE BOUNDARY OF  
 11 THE PROPERTY THAT IS THE SUBJECT OF THE ACTION MAY INTERVENE IN  
 12 THE ACTION WITH THE APPROVAL OF THE LEGISLATIVE BODY OF THE CITY  
 13 OR VILLAGE THAT IS A PARTY TO THE ACTION OR UNDER ANY OTHER CIR-  
 14 CUMSTANCES PROVIDED BY LAW OR THE MICHIGAN COURT RULES.

15 Sec. 11. Any person required to be given notice under sec-  
 16 tion ~~5(8)~~, 5(9) shall be a proper and necessary party to any  
 17 action for review instituted under section 10 and shall be given  
 18 notice personally or by registered or certified mail of proceed-  
 19 ings under section 10 in the same manner as provided in section  
 20 ~~5(8)~~ 5(9). If any person receiving notice under this section  
 21 fails within 20 days of receiving that notice to enter an appear-  
 22 ance in the court in which the proceedings were instituted, fur-  
 23 ther notice to that person of subsequent proceedings is not  
 24 required and the court may proceed to determine the issues.

25 Sec. 20. (1) As used in this act:

26 (a) "Agricultural land" means substantially undeveloped land  
 27 devoted to the production of plants and animals useful to humans,

1 including forage and sod crops; grains, feed crops, and field  
2 crops; dairy products; poultry and poultry products; livestock,  
3 including breeding and grazing of cattle, swine, and similar ani-  
4 mals; berries; herbs; flowers; seeds; grasses; nursery stock;  
5 fruits; vegetables; Christmas trees; and other similar uses and  
6 activities.

7 (b) "Airport" means an airport licensed by the Michigan  
8 department of transportation, bureau of aeronautics under section  
9 86 of the aeronautics code of the state of Michigan, 1945 PA 327,  
10 MCL 259.86.

11 (c) "Airport approach plan" means a plan, or an amendment to  
12 a plan, adopted under section 12 of the airport zoning act, 1950  
13 (Ex Sess) PA 23, MCL 259.442, and filed with the commission  
14 appointed to recommend zoning regulations for the city or village  
15 under section 151 of the aeronautics code of the state of  
16 Michigan, 1945 PA 327, MCL 259.151.

17 (d) "Airport layout plan" means a plan, or an amendment to a  
18 plan, that shows current or proposed layout of an airport, that  
19 is approved by the Michigan aeronautics commission, and that is  
20 filed with the commission appointed to recommend zoning regula-  
21 tions for the city or village under section 151 of the aeronau-  
22 tics code of the state of Michigan, 1945 PA 327, MCL 259.151.

23 (e) "Airport manager" means that term as defined in section  
24 10 of the aeronautics code of the state of Michigan, 1945 PA 327,  
25 MCL 259.10.

26 (f) "Airport zoning regulations" means airport zoning  
27 regulations under the airport zoning act, 1950 (Ex Sess) PA 23,

1 MCL 259.431 to 259.465, for an airport hazard area that lies in  
2 whole or part in the area affected by a zoning ordinance under  
3 this act.

4 (g) "Conservation easement" means that term as defined in  
5 section 2140 of the natural resources and environmental protec-  
6 tion act, 1994 PA 451, MCL 324.2140.

7 (h) "Development rights" means the rights to develop land to  
8 the maximum intensity of development authorized by law.

9 (i) "Development rights ordinance" means an ordinance, which  
10 may comprise part of a zoning ordinance, adopted under  
11 section 13.

12 (j) "Greenway" means a contiguous or linear open space,  
13 including habitats, wildlife corridors, and trails, that link  
14 parks, nature reserves, cultural features, or historic sites with  
15 each other, for recreation and conservation purposes.

16 (k) "Intensity of development" means the height, bulk, area,  
17 density, setback, use, and other similar characteristics of  
18 development.

19 (l) "Other eligible land" means land that has a common prop-  
20 erty line with agricultural land from which development rights  
21 have been purchased and that is not divided from that agricul-  
22 tural land by a state or federal limited access highway.

23 (m) "PDR program" means a program under section 14 for the  
24 purchase of development rights by a city or village.

25 (N) "SIGN" AND "SIGN STRUCTURE" MEAN THOSE TERMS AS DEFINED  
26 IN SECTION 2 OF THE HIGHWAY ADVERTISING ACT OF 1972, 1972 PA 106,  
27 MCL 252.302.

1           (0) ~~(n)~~ "Undeveloped state" means a natural state  
2 preserving natural resources, natural features, or scenic or  
3 wooded conditions; agricultural use; open space; or a similar use  
4 or condition. Land in an undeveloped state does not include a  
5 golf course but may include a recreational trail, picnic area,  
6 children's play area, greenway, or linear park. Land in an unde-  
7 veloped state may be, but is not required to be, dedicated to the  
8 use of the public.

9           (2) This act shall be known and may be cited as the "city  
10 and village zoning act".