

## The Role of Fiscal Officers in Township and County Zoning

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### I. **What is zoning**

- (A). **Zoning** is the division of a political subdivision (municipality, county or township) into districts, and the regulation of land, buildings and structures according to their nature and use.
- (B). A “**comprehensive zoning ordinance**” is one which effectively provides for that variety and quantity of land uses deemed necessary to the orderly development of the entire territory of the legislative authority enacting it. *Greenhills Home Owners Corp. v. Greenhills* (1966), 5 Ohio St.2d 207, cert. denied 385 U.S. 836, 17 L. Ed. 2d 70, 87 S. Ct. 82.
- (C). **Constitutional Powers and Statutory Limitations** – Zoning regulations are a valid exercise of governmental police power. The Ohio Constitution grants police powers to the General Assembly and municipalities. *Section 1, Article 2 and Section 3, Article 18, Ohio Constitution.*
  - (1). Township police power is derived exclusively from the laws enacted by the General Assembly and is limited to the powers expressly granted to townships by statute. Townships have no inherent or constitutional police power. *See Ohio Revised Code Chapter 519.* While the General Assembly has created a statutory process to allow for ‘limited home rule’ townships in certain circumstances, home rule townships do not have any constitutional police powers or other powers beyond those granted by statute. R.C. Chapter 504.
  - (2). Generally, as a police power, zoning must have a reasonable relationship to public health, safety, morals, convenience, comfort, prosperity or general welfare. The validity of the purpose may vary depending upon the political subdivision exercising the power and the use being regulated.

### II. **The adoption and implementation of zoning by local governments**

- (A). **Generally** the initial adoption of a zoning resolution and zoning map by a township is a legislative act. Subsequent amendments to the zoning resolution and zoning map are also legislative acts. However, the implementation of the

zoning, or stated another way, the application and enforcement of the established zoning resolution and zoning map classification to a particular piece of property are administrative acts and proceedings. The test for determining whether the action of a legislative body is legislative or administrative is whether the action taken is one enacting a law, ordinance or regulation, or executing or administering a law, ordinance or regulation already in existence. *Donnelly v. Fairview Park* (1968), 13 Ohio St.2d 1. Legislative action can only be taken by the legislative authority (township trustees) and cannot be delegated to any other board or commission. Administrative acts can be delegated, with established standards, to local boards and commissions, but they may also be taken by the legislative authority under some circumstances. Sometimes certain zoning actions are also referred to as quasi-judicial because they decide rights with respect to individual properties – such as conditional use permits or variances.

(B). **The Legislative/Administrative Distinction and Why It Matters.** The nature of the proceedings, rights of the participants, discretion of the decision maker and remedies available to challenge the government vary depending upon whether the township is acting in a legislative or administrative capacity.

(1). Legislative Decisions. Generally, legislative decisions in zoning are made in public meetings following public hearings and comment upon the proposed action. The township trustees have broader discretion that is limited by the constitution and applicable statutes. Legislative determinations are given a strong presumption of validity and are subject to less judicial scrutiny than administrative or quasi-judicial decisions. There is no appeal of a legislative determination, though it may be subject to referendum (a vote on legislation adopted by the local legislative body) or legal challenge upon constitutional, municipal charter or other grounds.

(2). Administrative Determinations. Administrative decisions are made based upon the facts and “evidence” presented at a “hearing.” The applicant has certain due process rights at the hearing and any decision made by a local government acting in an administrative capacity may be subject to administrative appeal. (See R.C. Chapter 2506). If an appeal is taken, the clerk may be required to assemble the “record” of the administrative proceedings and file it with the court.

### III. **Zoning bodies and their respective roles**

(A). **Legislative Authorities – Township Trustees.**

The legislative actions of a board of trustees on zoning issues are subject to the vote of the residents of the unincorporated portion of the township. The initial township zoning resolution adopted by a board of trustees must be approved by a majority of the votes cast in favor of the proposed plan of zoning in the township. R.C. 519.11. Thereafter, any amendment to the zoning resolution is subject to referendum (placement on the ballot for approval by the qualified electorate). R.C. 519.12. When a valid referendum petition is timely filed, the zoning

amendment approved by the trustees does not become effective unless it is approved by a majority of the votes cast at the election when it is on the ballot. R.C. 519.12.

(B). **Administrative Authorities:**

(1). **Boards of Township Trustees** – the trustees may act in an administrative capacity if they are implementing their existing zoning resolution and map, not amending them. Preliminary and/or final development plans in planned unit development zoning classifications may constitute administrative determinations, depending upon the zoning resolution or ordinance and plan process.

(2). **Township Planning and Zoning Commissions – General Duties.**

The general charge of the township planning commission includes the formulation of comprehensive and functional plans and studies, recommendations on the adoption of zoning and subsequent zoning map and text changes and other development proposals. Planning commissions and zoning commissions act in an administrative capacity and typically make recommendations to their respective legislative authorities for the adoption of or proposed legislative changes to zoning. The recommendations of planning commissions can carry great weight and sometimes require a supermajority of the legislative authority to materially amend or overturn. Occasionally zoning or planning commissions make independent administrative determinations that may be subject to appeal.

(a) **Township Zoning Commission – Makeup**

A township zoning commission is comprised of five members who reside in the unincorporated portion of the township and are appointed by the Board of Trustees and serve up to five year terms. R.C. 519.04. A township trustee may not be a member of a township zoning commission. R.C. 519.05. The township zoning commission oversees the development of the initial zoning map and text, and its subsequent amendments, including part of the public hearing and notification process, prior to adoption by the legislative body and a vote by the electors of the township. R.C. 519.004 - R.C. 519.122. The zoning commission must consult with the regional or county planning commission. R.C. 519.12(E). The zoning commission must keep records of its actions and determinations which may be made its members or a secretary or assistants within the limits of monies appropriated by the Board of Trustees. R.C. 519.05.

(3). **Boards of Zoning Appeals (BZA) – General Duties**

Boards of zoning appeals are administrative bodies whose administrative or quasi-judicial function is to hear and decide appeals from administrative determinations regarding a zoning code's enforcement and to authorize minor departures for uses and areas from the strict and literal

interpretation of the zoning resolution or zoning code when certain criteria are met (known as variances or special exceptions). They may also grant “conditional zoning certificates” or “conditional uses” for uses, buildings and structures that are provided for under specific “conditions” under the zoning resolution or zoning code. R.C. 519.14. Municipalities may delegate these administrative functions to the municipal planning commission rather than creating a separate board. R.C. 713.11. Decisions of a township BZA are not reviewed by or forwarded to the township trustees.

(a) **Township Board of Zoning Appeals (BZA) – Makeup, Responsibilities.**

A board of township trustees is required to appoint a board of zoning appeals composed of five members who are residents of the unincorporated territory of the township that has adopted a zoning resolution. R.C. 519.13. Board members may be paid for their expenses or compensated and may employ such executive, professional, technical and other assistants as it considers necessary as approved and provided by the board of trustees. R.C. 519.13. A township BZA must adopt rules, have meetings open to the public, keep minutes of its proceedings and keep records of its examinations and other official actions. It has the power to administer oaths and compel the attendance of witnesses. R.C. 519.15. There are also time limits for appeals and notice requirements it must follow.

A township BZA may (R.C. 519.14):

(A) Hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of sections 519.02 to 519.25 of the Revised Code, or of any resolution adopted pursuant thereto;

(B) Authorize, upon appeal, in specific cases, such variance from the terms of the zoning resolution as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the resolution will result in unnecessary hardship, and so that the spirit of the resolution shall be observed and substantial justice done;

(C) Grant conditional zoning certificates for the use of land, buildings, or other structures if such certificates for specific uses are provided for in the zoning resolution. If the board considers conditional zoning certificates for activities that are permitted and regulated under Chapter 1514. of the Revised Code or activities that are related to making finished aggregate products, the board shall proceed in accordance with section 519.141 of the Revised Code.

(D) Revoke an authorized variance or conditional zoning certificate granted for the extraction of minerals, if any condition of the variance or certificate is violated.

- (4). **County Planning Commission/Regional Planning Commission** – The formation and composition of county planning commissions and regional planning commissions are beyond the scope of this material. They have identical powers and duties. Generally, as their name applies, their primary funding is ‘planning.’ They are authorized to make studies, maps, plans, recommendations, and reports concerning the physical, environmental, social, economic, and governmental characteristics, functions, services, and other aspects of the county or region. They can contract with and provide planning assistance to townships to review, evaluate and comment on various plans including comprehensive land use, open space, transportation and public facilities plans, and undertake various studies, experimental and demonstration projects in their respective jurisdictions. R.C. 713.21 - 713.23. Generally, a township is required to submit legislative acts relating to zoning to the planning commission or regional planning commission for its review and recommendation to the township trustees if such a commission exists. R.C. 519.05, 519.07 and 519.12. Township zoning resolutions are required to be filed with the county recorder and the County or Regional Planning Commission. R.C. 519.11 and 519.12(A).

#### IV. **Legislative Zoning Procedure – the Adoption of Zoning and Zoning Amendments**

The creation of local zoning is the exercise of the legislative power of a township to establish zones and classify property. Township zoning must be based upon a comprehensive plan, and the regulations must be uniform for each class or use in any district but may differ between districts or zones.

- (A). **The Initial Creation of Township Zoning.** The creation of township zoning can be initiated either by adoption of a ‘resolution of intent to proceed’ by the board of trustees or by a board resolution following its receipt of a petition “signed by a number of qualified voters residing in the unincorporated area of the township or part thereof to be included in the zoning plan equal to not less than eight per cent of the total vote cast for all candidates for governor in such area at the most recent general election at which a governor was elected, requesting the board to proceed with township zoning under such sections.” R.C. 519.03. Alternatively a township may become subject to a county zoning plan when the county follows the procedures for the creation of a county zoning resolution and when the issue of the adoption of zoning is placed on the ballot in the township, a majority of the vote cast on the issue in that township is in favor of the proposed county plan of zoning. See R.C. 313.03 to 303.11.

- (1). **Township Zoning Commission.** Following its adoption of a resolution to proceed with zoning, the board of trustees creates the township zoning commission, who is formulates the zoning plan, including both text and maps, “in accordance with a comprehensive plan.” R.C. 519.02, 519.04,

519.05. The scope of the zoning regulations is defined by statute. *See* R.C. 519.02. The zoning plan may include regulations for “planned-unit developments” (PUD) that allow for developments which are “planned to integrate residential, commercial, industrial, or any other use” into a single zoning classification. R.C. 519.021. The statute defines three PUD procedures that may be used in township zoning resolutions. R.C. 519.021(A), (B) and (C).

- (a) **Public Hearing.** The township zoning commission is required to hold at least one public hearing on the proposed zoning text and map. Notice of the hearing must be published in one or more newspapers of general circulation in the township at least thirty days before the date of such hearing. The notice shall state the place and time at which the text and maps of the proposed zoning resolution may be examined. R.C. 519.06.
  - (b) **Submission of Proposal to County or Regional Planning Commission.** Following the public hearing, the zoning commission must refer the text and maps to the county or regional planning commission, where there is one, for approval, disapproval or suggestions. R.C. 519.07. The statute does not provide a time in which the matter must be referred. Approval of the county or regional planning commission is presumed by statute unless it “notifies the [township] zoning commission to the contrary within twenty days after receiving the proposed zoning resolution.” R.C. 519.07.
    - (i) **Township Zoning Commission Second Public Hearing.** If the county or regional planning commission disapproves the proposed zoning resolution or suggests any material change, the zoning commission shall hold a second public hearing on the zoning resolution, providing notice in the same manner as the first hearing. R.C. 519.07.
  - (c) **Certification of Recommendations to the Board of Township Trustees.** Following the public hearing(s), the zoning commission must certify its recommendations of a zoning plan to the board of township trustees. R.C. 519.06, 519.07.
- (2). **Township Trustees.** The board of trustees must consider the recommendation of the township zoning commission, hold its own public hearing, consider legislation to adopt a township zoning resolution and map and submit its adoption of any zoning resolution to the township electorate for a vote.
- (a) **Public Hearing.** After receiving the certification of a zoning plan from the township zoning commission, and before adoption of any zoning resolution, the board of township trustees shall hold a public hearing on the resolution, at least thirty days' notice of the time and place of which shall be given by one publication in a newspaper of

general circulation in the township. R.C. 519.08. If the board of trustees makes any “change in or departure from the text or maps, as certified by the township zoning commission” the board must resubmit the proposed changes to the zoning commission for approval, disapproval, or suggestions. R.C. 519.09.

- (i) **Resubmission to Zoning Commission upon Change or Departure from its Recommendation.** The zoning commission must consider the board of trustees proposed changes at a public meeting, should hold a public hearing thereon, and must certify a recommendation to the board upon the proposed changes. R.C. 519.09.
  - (ii) **Second Hearing by Board of Township Trustees.** Upon receipt of the recommendations of the township rural zoning commission regarding the proposed changes, the board of township trustees shall hold a second public hearing, at least ten days notice of the time and place of which shall be given by one publication in one or more newspapers of general circulation in the township affected.
- (b) **Board of Trustees’ Vote Upon Adoption of Zoning Resolution.** After receiving the final recommendations for the zoning plan from the township zoning commission and holding the required public hearing(s) the board of township trustees “shall consider such recommendations and vote upon the adoption of the zoning resolution.” R.C. 519.10. If the zoning commission disapproved any proposed changes by the board of trustees, the provisions so disapproved must receive the favorable vote of the entire membership of the board of township trustees in order to be adopted. R.C. 519.09.
- (3). **Submission to Electorate.** If the zoning resolution is adopted by the board of township trustees, the board “shall cause the question of whether or not the proposed plan of zoning shall be put into effect to be submitted to the electors residing in the unincorporated area of the township included in the proposed plan of zoning for their approval or rejection at the next primary or general election, or a special election may be called for this purpose. Such resolution shall be filed with the board of elections not later than four p.m. of the seventy-fifth day before the day of the election. No zoning regulations shall be put into effect unless a majority of the vote cast on the issue is in favor of the proposed plan of zoning. Upon certification by the board of elections the resolution shall take immediate effect, if the plan was so approved.” R.C. 519.11.
  - (4). **Filing of Township Zoning Resolution with the County Recorder.** Within five working days after the resolution's effective date, the board of township trustees shall file the resolution, including text and maps, in the office of the county recorder. R.C. 519.11.
  - (5). **Filing of Township Zoning Resolution with the County or Regional Planning Commission.** Within five working days after the resolution's

effective date, the board of township trustees shall file duplicates of the resolution, including text and maps, in the office of the regional or county planning commission, if one exists. R.C. 519.11.

- (6). **Consequences of Failure to File the Township Zoning Resolution.** The failure to file a resolution, or any text and maps, or duplicates of any of these documents, with the office of the county recorder or the county or regional planning commission as required by statute does not invalidate the resolution and is not grounds for an appeal of any decision of the board of zoning appeals. R.C. 519.11.

- (B). **Amendments to Township Zoning Resolutions or Maps.** The procedure for amendments to the township zoning resolution or map are similar to those followed in the initial adoption of zoning, except that there is no 'automatic' referendum or submission to the township electorate for a vote. When a township zoning resolution is amended, referendum only occurs upon timely submission of a valid petition for referendum by the requisite number of voters in the unincorporated township. The board of township trustees may require that the owner or lessee of property filing an application to amend the zoning resolution pay a fee to defray the cost of advertising, mailing, filing with the county recorder, and other expenses. If the board of township trustees requires such a fee, it shall be required generally, for each application. The board of township trustees, upon the passage of such a resolution, shall certify it to the township zoning commission. R.C. 519.12(A)(1).

- (1). **Initiation of Amendments to the Zoning Resolution.** Zoning amendments may be initiated in one of three ways: (1) by motion of the township zoning commission; (2) by the passage of a resolution by the board of township trustees; or (3) or by the filing of an application by one or more of the owners or lessees of property within the area proposed to be changed or affected by the proposed amendment with the township zoning commission. R.C. 519.12(A).

- (2). **Township Zoning Commission.** An amendment to a zoning resolution is initiated by one of these three statutory methods proceeds first to the zoning commission for review and recommendation to the trustees.

- (a) **Public Hearing.** The commission must set a date for a public hearing, not less than twenty nor more than forty days from the date the zoning amendment is initiated (the date of certification of a resolution by the board, the date of adoption of a motion by the commission, or the date of the filing of such an application).

- (b) **Notice of the Hearing.** The commission must give notice of the hearing by one publication in one or more newspapers of general circulation in the township at least ten days before the date of the hearing. R.C. 519.12(A)(2). The contents of the notice are established by statute and vary depending upon the number of parcels being rezoned.

(i) **Contents of Notices for the Amendment to Rezone or Redistrict Ten or Fewer Parcels of Land as Listed on the County Auditor's Current Tax List.** This notice must be both published and mailed. R.C. 519.12(B) and (C). The statute requires that the published and mailed notices “shall set forth the time, date, and place of the public hearing and include all of the following” (R.C. 519.12(C)):

- (1) The name of the township zoning commission that will be conducting the hearing;
- (2) A statement indicating that the motion, resolution, or application is an amendment to the zoning resolution;
- (3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of owners of those properties, as they appear on the county auditor's current tax list;
- (4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of that property;
- (5) The time and place where the motion, resolution, or application proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the hearing;
- (6) The name of the person responsible for giving notice of the hearing by publication, by mail, or by both publication and mail;
- (7) A statement that, after the conclusion of the hearing, the matter will be submitted to the board of township trustees for its action;
- (8) Any other information requested by the commission.

(ii) **Mailing of Notice to Property Owners for the Amendment to Rezone or Redistrict Ten or Fewer Parcels of Land as Listed on the County Auditor's Current Tax List.** If the proposed amendment intends to rezone or redistrict ten or fewer parcels of land, as listed on the county auditor's current tax list, written notice of the hearing shall be mailed by the township zoning commission, by first class mail, at least ten days before the date of the public hearing to all owners of property within and contiguous to and directly across the street from the area proposed to be rezoned or redistricted to the addresses of those owners appearing on the county auditor's current

tax list. The failure of delivery of that notice shall not invalidate any such amendment. R.C. 519.12(B).

(iii) **Contents of Published Notice for the Amendment to Rezone or Redistrict More than Ten Parcels of Land as Listed on the County Auditor's Current Tax List.** The published notice shall set forth the time, date, and place of the public hearing and include all of the following (R.C. 519.12(D)):

(1) The name of the township zoning commission that will be conducting the hearing on the proposed amendment;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the hearing;

(4) The name of the person responsible for giving notice of the hearing by publication;

(5) A statement that, after the conclusion of the hearing, the matter will be submitted to the board of township trustees for its action;

(6) Any other information requested by the commission.

(c) **Referral to County or Regional Planning Commission.** The township zoning commission must transmit a copy of the proposed zoning amendment, together with text and map pertaining to it, to the county or regional planning commission, if there is such a commission, within five days after the initiation of the zoning amendment. R.C. 519.12(E).

(d) **Recommendation to the Board of Trustees.** The zoning commission is required to recommend the approval or denial of the proposed amendment, or the approval of some modification of it to the board of trustees within thirty days after public hearing. The zoning commission must timely submit that recommendation together with the motion, application, or resolution involved, the text and map pertaining to the proposed amendment, and the recommendation of the county or regional planning commission on it to the board of township trustees. R.C. 519.12(E).

(3). **County or Regional Planning Commission.** The county or regional planning commission shall recommend the approval or denial of the proposed amendment or the approval of some modification of it and shall submit its recommendation to the township zoning commission. The recommendation shall be considered at the public hearing held by the township zoning commission on the proposed amendment. R.C. 519.12.

This time frame can be difficult to meet given the statutory time frames for public hearings and the frequency of the meetings of the county or regional planning commission and may require coordination of the various entities and parties involved. R.C. 519.12.

(4). **Township Trustees.**

(a) **Public Hearing.** The board of trustees must set a time for a public hearing on the proposed amendment not more than thirty days from the date of the receipt of the recommendation of the zoning commission. R.C. 519.12(E).

(b) **Notice of the Hearing.** Notice of the hearing shall be given by the board by one publication in one or more newspapers of general circulation in the township, at least ten days before the date of the hearing. R.C. 519.12(E).

(i) **Contents of Notices for the Amendment to Rezone or Redistrict Ten or Fewer Parcels of Land as Listed on the County Auditor's Current Tax List.** In these circumstance, notice must be both published and mailed and shall set forth the time, date, and place of the public hearing and include all of the following (R.C. 519.12(F)):

(1) The name of the board of township trustees that will be conducting the hearing;

(2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;

(3) A list of the addresses of all properties to be rezoned or redistricted by the proposed amendment and of the names of owners of those properties, as they appear on the county auditor's current tax list;

(4) The present zoning classification of property named in the proposed amendment and the proposed zoning classification of that property;

(5) The time and place where the motion, application, or resolution proposing to amend the zoning resolution will be available for examination for a period of at least ten days prior to the hearing;

(6) The name of the person responsible for giving notice of the hearing by publication, by mail, or by both publication and mail;

(7) Any other information requested by the board.

- (ii) **Notices for a Proposed Amendment that Alters the Text of the Zoning Resolution, or Rezones or Redistricts More than Ten Parcels of Land as Listed on the County Auditor's Current Tax List.** Notices in these circumstances are only published and shall set forth the time, date, and place of the public hearing and include all of the following (R.C. 519.12(G)):
      - (1) The name of the board of township trustees that will be conducting the hearing on the proposed amendment;
      - (2) A statement indicating that the motion, application, or resolution is an amendment to the zoning resolution;
      - (3) The time and place where the text and maps of the proposed amendment will be available for examination for a period of at least ten days prior to the hearing;
      - (4) The name of the person responsible for giving notice of the hearing by publication;
      - (5) Any other information requested by the board.
    - (c) **Resolution on the Proposed Amendment.** The board of township trustees shall either adopt or deny the recommendations of the township zoning commission or adopt some modification of them within twenty days after its public hearing. If the board denies or modifies the commission's recommendations, a majority vote of the board shall be required. R.C. 519.12(H).
      - (i) **Effective Date.** A zoning amendment adopted by the board becomes effective thirty days after the date of its adoption, unless, within that thirty days the board of township trustees receives a referendum petition on the zoning amendment. If a referendum petition is received, the amendment will not become effective until the electorate approves the amendment or the referendum petition is determined invalid. R.C. 519.12(H).
- (5). **Referendum on Zoning Amendment.** Any legislative amendment to a zoning resolution is subject to approval by the township electorate upon the filing of a valid referendum petition within thirty days of the resolution of the board of trustees adopting the amendment. If a PUD is involved, a determination must be made on whether the actions taken were legislative or administrative. Planned unit developments often involve a series of actions on the same property, some actions are legislative and subject to referendum while others may be administrative and not subject to a referendum petition. The form and requirements for a petition to refer a zoning amendment to the electorate for a vote are prescribed by statute. R.C. 519.12(H). Generally, the petition must be "signed by a number of registered electors residing in the unincorporated area of the township or part of that unincorporated area included in the zoning plan equal to not

less than eight per cent of the total vote cast for all candidates for governor in that area at the most recent general election at which a governor was elected” and must request the board of township trustees to submit the amendment to the electors of that area for approval or rejection at a special election to be held on the day of the next primary or general election that occurs at least seventy-five days after the petition is filed. R.C. 519.12(H). Each part of this petition shall contain the number and the full and correct title, if any, of the zoning amendment resolution, motion, or application, furnishing the name by which the amendment is known and a brief summary of its contents along with an appropriate map of the area affected by the zoning proposal. R.C. 519.12(H).

- (a) **Certification to the Board of Elections.** Within two weeks after receiving a petition filed under this section, the board of township trustees shall certify the petition to the board of elections not less than seventy-five days prior to the election at which the question is to be voted upon. R.C. 519.12(H).
  - (b) **Action by the Board of Elections.** The board of elections shall determine the sufficiency and validity of each petition certified to it by a board of township trustees under this section. If the board of elections determines that a petition is sufficient and valid, the question shall be voted upon at a special election to be held on the day of the next primary or general election that occurs at least seventy-five days after the date the petition is filed with the board of township trustees, regardless of whether any election will be held to nominate or elect candidates on that day. The amendment will only be valid if approved by the electorate. Upon certification by the board of elections that the amendment has been approved by the voters, it shall take immediate effect. R.C. 519.12(H).
- (6). **Filing of Zoning Amendment with Recorder and County or Regional Planning Commission.** Within five working days after an amendment's effective date, the board of township trustees shall file the text and maps of the amendment in the office of the county recorder and with the county or regional planning commission, if one exists. R.C. 519.12(H).
- (a) The failure to file any amendment, or any text and maps, or duplicates of any of these documents, with the office of the county recorder or the county or regional planning commission as required by this section does not invalidate the amendment and is not grounds for an appeal of any decision of the board of zoning appeals. R.C. 519.12.
- (C). **Repeal of Township Zoning.** There are two methods of repealing a township zoning resolution (R.C. 519.25):
- (1). The board of township trustees may adopt a resolution repealing the township zoning plan on its own initiative.

- (2). The board of township trustees must adopt a resolution causing the question to be submitted to a vote if it is presented with a petition signed by eight percent of the electors residing in the zoned township who voted in the last gubernatorial election and submit the resolution to the board of elections at least seventy-five days prior to the day of the next primary or general election.
  - (a) In the event a majority of the vote cast on such question in the township is in favor of repeal of zoning, then such regulations shall no longer be of any effect. Not more than one such election shall be held in any two calendar years.

## V. **Administrative Zoning Procedure.**

- (A). **Administrative Hearings Generally.** Administrative hearings determine the legal rights and interests of the applicant or appellant and are separate and distinct from legislative hearings. The applicant has a due process right to present their case and be heard. Any infringement on that right may permit a de novo hearing in court. There is often confusion in conduct and substance of legislative and administrative proceedings. That confusion was discussed by the Tenth District Court of Appeals in *In re Rocky Point Plaza Corp.* (1993), 86 Ohio App.3d 486, in its consideration of an adjudicatory hearing on a conditional use permit (an administrative act), and its distinction from a public hearing on a legislative act (rezoning). The court stated, *id.* at 491-492:

There seems to be a blurring of applications for rezoning, applications for variances, and applications for conditional use permits, each of which requires a separate and distinct procedure and approach. **Applications for rezoning are legislative in nature and are subject to a public hearing** before a planning commission in most communities, with a recommendation of approval or disapproval based upon governmental, political and policy considerations. On the other hand, both applications for variances and applications for permits, such as conditional use permits, require adjudication hearings, not legislative hearings.

In other words, **there is no public hearing upon an application for a variance or an application for a conditional use permit but, instead, an adjudication hearing, which is open to the public.** *A public hearing* is one where members of the general public may speak and express their views on the question of governmental, political and policy considerations as to whether certain legislation should be adopted. *Adjudication hearings*, however, are not subject to such public comment but, instead, involve the determination of rights of specific persons and whether such rights should be granted based upon evidence (not public opinion) presented at the hearing. Therefore, different procedures are necessary and different rules apply. Only variances and

conditional use permits (and some other permits) come before a board of zoning appeals in the ordinary situation.

- (B). **Character of Administrative Hearings.** Administrative hearings are adjudicatory hearings, which require notice, hearing, and the opportunity to introduce evidence. *Lakota Local School Dist. Bd. of Education v. Brickner* (1996), 108 Ohio App.3d 637. Testimony should be given under oath and subject to cross-examination. *Adelman Real Estate Co. v. Gabanic* (1996), 109 Ohio App.3d 689.
- (C). **Procedural Safeguards - Analogous Statutory Criteria.** The statutes establishing administrative boards and commissions in zoning provide little guidance on the notice and hearing requirements of the board. However, an examination of the statutes on the record on appeal of an administrative decision gives guidance on the minimum procedural requirements in an administrative zoning hearing. Where an appeal is taken to the court of common pleas under R.C. Chapter 2506, the hearing before the court is confined to the transcript of the administrative body unless one of the conditions specified in R.C. 2506.03 or R.C. 2506.07 appears on the face of the transcript or by affidavit of the appellant. R.C. 2506.03 identifies the following defects:
- 1) The transcript does not contain a report of all evidence admitted or proffered by the appellant.
  - 2) The appellant was not permitted to appear and be heard in person, or by the appellant's attorney, in opposition to the final order, adjudication, or decision, and to do any of the following:
    - (a) Present the appellant's position, arguments, and contentions;
    - (b) Offer and examine witnesses and present evidence in support;
    - (c) Cross-examine witnesses purporting to refute the appellant's position, arguments, and contentions;
    - (d) Offer evidence to refute evidence and testimony offered in opposition to the appellant's position, arguments, and contentions;
    - (e) Proffer any such evidence into the record, if the admission of it is denied by the officer or body appealed from.
  - 3) The testimony adduced was not given under oath.
  - 4) The appellant was unable to present evidence by reason of a lack of the power of subpoena by the officer or body appealed from, or the refusal, after request, of that officer or body to afford the appellant opportunity to use the power of subpoena when possessed by the officer or body.
  - 5) The officer or body failed to file with the transcript conclusions of fact supporting the final order, adjudication, or decision.

- (D). **Administrative proceedings before a Township Board of Zoning Appeals.** While Township BZA's are granted the authority to hear and decide appeals of administrative officers and enforcement, authorize and revoke variances, and grant and revoke conditional zoning certificates, with the exception of their power to revoke a variance, generally the statutory BZA notice and hearing requirements in R.C. 519.15 relate only to appeals. The general hearing requirements discussed above should be followed in all administrative hearing where no other process is prescribed.
- (1). **Appeals to the Township Board of Zoning Appeals.** There are minimal statutory notice and hearing requirements for an appeal to a township BZA. For an appeal from the decision of any officer of the township (such as a zoning inspector), R.C. 519.15 requires:
- (a) **Time for Appeal.** An appeal shall be taken within twenty days after the decision.
  - (b) **How an Appeal is Perfected.** An appeal is made by filing, with the officer from whom the appeal is taken and with the board of zoning appeals, a notice of appeal specifying the grounds.
  - (c) **The Record on Appeal.** The officer from whom the appeal is taken shall transmit to the board of zoning appeals all the papers constituting the record upon which the action appealed from was taken.
  - (d) **Hearing on Appeal.** The board of zoning appeals shall fix a reasonable time for the public hearing of the appeal.
    - (i) Any person may appear in person or by attorney.
    - (ii) Record must be made of the proceedings.
    - (iii) The BZA may administer oaths.
    - (iv) The BZA may compel the attendance of witnesses.
  - (e) **Notice of Hearing.** The board of zoning appeals shall give at least ten days' notice in writing to the "parties in interest" and shall give notice of such public hearing by one publication in one or more newspapers of general circulation in the county at least ten days before the date of such hearing.
  - (f) **Decision of the BZA.** The BZA must decide the appeal "within a reasonable time" after it is submitted.
- (E). **Appeals to Court.** The final administrative order or decision of the local government board, commission, or legislative authority acting in administrative capacity, may be appealed to and reviewed by the court of common pleas of the county in which the principal office of the political subdivision is located. R.C. 2506.01.

- (1). **Time for Appeal.** An appeal shall be taken within thirty days after the decision. R.C. 2505.07.
- (2). **Perfection of Appeal is Perfected.** An administrative appeal is perfected by the timely filing of a notice of appeal with the administrative officer, agency, board, department, tribunal, commission or other instrumentality involved. R.C. 2505.04 and R.C. 2505.07. In other words, the notice of appeal must be filed with the BZA, Zoning or Planning Commission, or legislative authority acting in an administrative capacity.
- (3). **The Record on Appeal.** The officer or body from which the appeal is taken must prepare and file in the court to which the appeal is taken, a complete transcript of all the original papers, testimony, and evidence within forty (40) days after filing a notice of appeal in relation to a final order, adjudication, or decision. The Appellant must file a praecipe or request asking for the transcript to be prepared and filed.
  - (a) The costs of the transcript shall be taxed as a part of the costs of the appeal.
- (4). **Hearing on an Appeal.** The court proceeds as in the trial of a civil action but is confined to the transcript or record filed unless it appears on the face of that transcript or by affidavit filed by the appellant that certain minimum substantive and procedural safeguards set forth in R.C. 2506.03 have not been met. R.C. 2506.03.
- (5). **Determination by the Trial Court.** “The court may find that the order, adjudication, or decision is unconstitutional, illegal, arbitrary, capricious, unreasonable, or unsupported by the preponderance of substantial, reliable, and probative evidence on the whole record. Consistent with its findings, the court may affirm, reverse, vacate, or modify the order, adjudication, or decision, or remand the cause to the officer or body appealed from with instructions to enter an order, adjudication, or decision consistent with the findings or opinion of the court.” R.C. 2506.04.
- (6). **Appeal to the Court of Appeals.** The decision of the common pleas court in an administrative appeal may be appealed to the court of appeals. R.C. 2506.04.

## VI. The Flow Of Information Between Zoning Bodies.

- (A). **Legislative Actions.** Typically, legislative amendments to a zoning resolution and map require a three step process. Initially there is a hearing and review by the township zoning commission who makes a recommendation to the township trustees. The township planning commission then refers the matter to the county or regional planning commission for its independent review and recommendation to the township. When the township trustees receive the recommendation of the planning commission(s), it conducts its own public hearing and review and takes legislation.

- (B). **Administrative Actions.** Typically administrative determinations are made solely by the administrative body tasked with responsibility for the decision and are not forwarded to the legislative authority for review or decision. Some municipalities allow for the appeal of the decisions of administrative boards to village council for review and determination in a quasi-judicial proceeding.

VII. **Statutory Limitations on Township and County Zoning Authority.**

- (A). **Overall Limitations of Zoning Authority.** As was mentioned earlier, counties and townships are creatures of statutes and therefore exercise only those powers that are given to them by the Ohio General Assembly. In the area of zoning, the zoning authority of the township is embodied in R.C. 519.12, while that for counties is embodied in R.C. 303.02. For purposes of looking at the limitations, townships will be utilized because the limitations are essentially the same. The scope of the township authority, whether it is for public health, safety and welfare or only for public health and safety depends on what is to be regulated.

- (1). **Limitations on Zoning Power.** In the interest of public convenience, comfort, prosperity or general welfare, the board, by resolution and in accordance with the comprehensive plan, may regulate the location and setback lines for and the uses of buildings and other structures including tents, cabins and trailer coaches and the uses of land for trade, industry, residence, recreation or other purposes in the unincorporated territory in the township and may establish reasonable landscaping standards and architectural standards, excluding exterior building materials in the unincorporated territory in the township. While this seems all encompassing, it has limitations.

As for the trade industry, residents and recreation, the township can set landscaping and architectural standards but cannot dictate exterior building materials.

In the interest of public convenience, comfort, prosperity or general welfare and in accordance with the comprehensive plan, on non-residential property only, townships can regulate height, bulk, number of stories and size of buildings and other structures, including tents, cabins and trailer coaches, percentage of lot areas that may otherwise be occupied, sizes of yards, courts and other open spaces, and the density of population in the unincorporated territory of the township.

(All the regulations that are passed for each type of use have to be uniform for each class or kind of building or other structure or use throughout any district or zone. But the regulations in one district may be different from those of others.)

For any activities in R.C. Chapter 1513 or 1514 (Mining and Related Activities), township trustees may regulate it only for the interest of public health or safety. You should note that “welfare” is missing from the regulation of mining. Welfare may be property values, sentiments in the community, etc.

(2). **Limitations on Certain Uses.**

(a) **Agricultural Uses.** Zoning authority of the township (similar to those of counties) is further restricted. A township, for example, **cannot prohibit the use of any land for agricultural purposes** or for the construction or use of buildings or structures incident to agricultural purposes of land. R.C. 519.21(A). Where there is a platted subdivision, a township can regulate agriculture on lots of one acre or less and buildings or structures incident to the uses of land for agricultural purposes on lots greater than one acre, but not greater than five acres. Dairying and animal and poultry husbandry are subject to similar limitations. There is no authority in a township to regulate agricultural buildings or structures and dairying and animal or poultry husbandry on lots greater than five acres.

(b) The power of townships is also limited as it relates to zoning over:

1. Cell communication towers. R.C. 519.211.
2. Permanently sited manufactured homes - R.C. 519.212.
3. Small wind farms R.C. 519.213.

(c) **Utilities.** Finally, the township does not have power to apply zoning with regard to the location, erection, construction, reconstruction, change, alteration, maintenance removal, use or enlargement of any buildings or structures of a public utility engaged in the business of transporting persons or property. R.C. 519.21.1(B) Motor Transport Company.

(d) **Alcoholic Beverages.** A township also cannot prohibit the sale or use of any alcoholic beverages where the establishment and operation of any retail business, hotel, lunchroom, and restaurant is permitted.

VIII. **Planned Unit Developments.** R.C. 6519.01

While townships can set and establish planned unit developments, applying planned unit development standards to the property requires consent of the property owner. The standards set out in the resolution must include the standards to be used by the board in determining a planned unit development. The benefit of a planned unit development is that within each area of the planned unit, the rules and regulations applicable to that

section do not have to be “uniform.” Planned unit developments are generally applied to a large piece of property in which a number of different uses are coordinated. A planned unit development may include commercial, residential, multi-family, etc. However, should a board want to include planned unit developments in their zoning, there are several ways they are permitted to do so:

1. Township may adopt development regulations that do not automatically apply to the property, but merely establish the standards that will apply if the property becomes part of a planned unit development on the application of the owners.
2. Township trustees may establish planned unit developments on the application of the property owners and adopt the regulations as part of that same procedure that will apply only to that planned unit development.
3. The township can enact a planned unit development that recognized the underlying zoning on the property and may amend the zoning map to rezone the property as a planned unit development. The underlying zoning remains in place unless and until a property owner applies to activate the planned unit development standards.
4. Lastly, the township could authorize a planned unit development as a conditional use under the zoning resolution pursuant to R.C. 519.14.

As you can see, understanding the process of enacting, implementing and amending a zoning resolution has a number of twists and turns depending on what the township or county intends.

#### IX. **The Role Of The Fiscal Officer In Zoning**

- (A). **General.** Typically the fiscal officer is involved in all of the zoning proceedings before the legislative authority and any referenda filed upon their legislative action. That includes receiving the recommendations of the zoning commission, timely placing the item on the agenda of the board or the trustees, timely advertising, providing notice, keeping minutes and records of the proceedings, and perhaps preparing a resolution for the legislative action taken. The fiscal officer may also be involved in the receipt and handling of application fees and costs associated with the various zoning processes. If there is no fiscal officer or other assistant funded by the legislative authority and appointed by the zoning commission and/or board of zoning appeals, the fiscal officer may also be required to provide similar services to those boards and commissions.
- (B). **Miscellaneous.** The following is a non-exclusive list of various activities of fiscal officers in zoning.
  - (1). Receive recommendations from the zoning commission for consideration and hearing by the legislative authority.
  - (2). Keep records of the proceedings of the legislative authority.

- (3). Provide notices on the zoning proceedings to applicants, surrounding property owners, and the newspapers in all zoning actions before the legislative authority.
- (4). Provide copies of public records upon request.
- (5). Receive and handle filing fees and costs associated with zoning applications and procedures.
- (6). Pay expenses and costs associated with zoning activities as authorized by the legislative authority.
- (7). In addition, the fiscal officer may have responsibilities as the assistant or clerk for the zoning commission, board of zoning appeals or other administrative board, which would include similar activities to those above which would also involve timely forwarding information to the county or regional planning commission for review and recommendation.

#### X. **Common Governmental Mistakes In The Zoning Process**

- (A). **The Sunshine Law Applies.** The activities of the township trustees and the township local boards and commissions in zoning are subject to Ohio's Sunshine Law, including the Ohio Meetings Act (R.C. 121.22) and the Public Records Act. (R.C. 149.43). These laws apply in addition to the specific notice and hearing requirements in any legislative or administrative zoning proceeding.
- (B). **Fees and costs.** The township may impose filing and other fees for the processing of zoning applications and other zoning proceedings. However, the fees must be reasonably related to the actual costs of the zoning process involved. Copies must be timely provided at their actual cost under the Public Records Law.
- (C). **Timely Processing and Notices.** State sunshine and zoning statutes, municipal charters and local zoning resolutions and ordinances all impose certain notice, hearing, advertising and publication requirements for both meetings and zoning activities and the time within which various things must be done and decisions must be made. All of these requirements must be timely met by the local government.
- (D). **Necessity of Comprehensive Plan.** Zoning generally, and township zoning in particular, must be based upon a comprehensive plan. While there is no specific form the plan should take, a plan must be adopted by the legislative authority. Comprehensive plans should be routinely updated.
- (E). **Distinguishing Between Legislative And Administrative Proceedings.** The township trustees, board or commission should identify whether the proceedings before it are administrative or legislative and provide notice and allow for either public comment at a public hearing (legislative) or testimony and the presentation of evidence at a quasi-judicial hearing (administrative). Failure to understand or distinguish the process may lead to errors in the notices, hearings, proceedings and remedies.
- (F). **Assembling the record on an appeal.** If an appeal is taken of an administrative determination made by a local board or commission, upon request of the appellant, the local board or commission "shall prepare and file in the court to

which the appeal is taken, a complete transcript of all the original papers, testimony, and evidence offered, heard, and taken into consideration in issuing the final order, adjudication, or decision” within forty days after the notice of appeal is filed. The costs of the transcript are be taxed as a part of the costs of the appeal. R.C. 2506.02.

- (G). **Understanding and Acting within the Limitations of Statutory and Constitutional Authorities.** Townships can only act within the authority expressly granted to them by the General Assembly and may not be permitted to exercise all of the authority that municipalities have under their constitutional or statutory police powers. Boards and Commissions in administrative proceedings have standards that must be applied to the matter before them. Each local government body, whether legislative or administrative, should understand the limitations upon its authority and act within the bounds of those limitations.
- (H). **Miscellaneous.** Local government can be proactive in their zoning. For example, if the local government recognizes a problem exists, a zoning resolution can, and arguably should, be amended to deal with the problem before the issue comes before it in a zoning application or appeal. Zoning resolutions can be broadly written to allow for flexibility and dealing with many different circumstances. Narrow or limited zoning legislation can create problems or invite mistakes as local governments may exceed their authority in trying to deal with situations not specifically address in the legislation. Local governments should timely review their comprehensive plans, zoning resolutions and zoning maps and update them as necessary. Townships that have adopted their own zoning should stay up to date on changes in the law and significant court decisions that affect their zoning resolutions and authorities.