The Role of Village Clerks In Local Government 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). Municipal police power is derived from the both the Ohio Constitution and the laws enacted by the General Assembly that are not in conflict with municipal home rule powers. Municipal constitutional police power arises upon the adoption of a municipal charter ("home rule" or "charter" municipalities). *Section 3, Article 18, Ohio Constitution.*

(2). Generally, as a police power, zoning must have a reasonable relationship to public health, safety, 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

(A). **Generally** the initial adoption of a zoning ordinance and zoning map by a village is a legislative act. Subsequent amendments to the zoning ordinance 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 ordinance and zoning map classification to a particular piece of property are administrative acts and proceedings.

(1). The test for determining whether the action of a legislative body is legislative or administrative is whether the action taken is one enacting (creating) a law, ordinance or regulation, or executing or administering (enforcing) a law, ordinance or regulation already in existence. *Donnelly v. Fairview Park* (1968), 13 Ohio St.2d 1.

(2). Legislative action can only be taken by the legislative authority (Village Council) and cannot be delegated to any other board or commission.

(3). 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.

(4). 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's action vary depending upon whether the village is acting in a legislative or administrative capacity.

(1). Legislative Determinations. Generally, legislative decisions in zoning are made in public meetings following public hearings and comment upon the proposed action. Village council has 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 village acting in an administrative capacity may be subject to administrative appeal. (*See* R.C. Chapter 2506). If an appeal is taken, the village 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 – Village Council

Village councils may adopt or amend zoning without a vote of the electorate. There are certain requirements for notice and public hearings upon municipal legislative actions generally and zoning legislation specifically. R.C. 731.17 –

731.27, R.C. 731.12. In addition, with limited exception, almost all municipal legislation is subject to referendum, including zoning legislation. *See* Section 1f, Article II, Ohio Constitution, R.C. 731.29 – 731.41.

(B). **Administrative Authorities:**

(1). **Village Council** – Council may act in an administrative capacity if it is implementing its existing zoning resolution or ordinance 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). **Village Planning Commissions** –The general charge of the village 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 the recommendation. Occasionally zoning or planning commissions make independent administrative determinations that may be subject to appeal.

(a) **Village Planning Commission** – a statutory village planning commission is comprised of five members consisting of the mayor, one member of the legislative authority (council) and three citizens of the village appointed by the mayor for terms of six years each. R.C. 713.01. The composition of the planning commission of a charter village may vary. Municipal planning commissions:

(i) have the power to review, recommend, and/or approve plats (subdivisions), proposed capital projects, transportation plans, streets and utilities, public buildings, and historical landmark preservation and public art and structures. R.C. 713.02 *et seq.*

(ii) may appoint a clerk and control, appoint or employ other professionals including architects, engineers, draftsmen and other subordinates as necessary within the amounts appropriated by the legislative authority. R.C. 713.05.

(iii) may accept, receive and expend funds, grants and services from the federal government or its agencies, and instrumentalities of the State of Ohio or other adjoining states including county, regional and municipal planning commissions or from other civic sources. R.C. 713.02.

(3). **Village Board of Zoning Appeals (BZA)** – A board of zoning appeals is an administrative body 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). A BZA 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. 713.11.

A municipality may create administrative zoning boards pursuant to state statute or municipal charter. A municipality may delegate to its administrative board "in accordance with general rules to be set forth in the districting ordinances and regulations, the power to hear and determine appeals from refusal of building permits by building commissioners or other officers, to permit exceptions to and variations from the district regulations in the classes of cases or situations specified in the regulations, and to administer the regulations as specified therein." R.C. 713.11(A). A municipality may either a) create an administrative board to administer its zoning code (e.g. boards of zoning appeals); b) delegate those administrative functions to the planning commission or board (R.C. 713.11(A)) or c) contract with a county to have the county administer the village zoning regulations and permit the county to exercise the village's powers to hear and decide zoning appeals and authorize variances. R.C. 713.11(B).

(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 municipalities 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.

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 municipality to establish zones and classify property.

(A). **The Initial Creation of Village Zoning**. Noncharter or statutory plan municipalities must follow R.C. 713.01 *et seq.* in enacting and amending a zoning

ordinance. Charters may provide different procedures. Generally, the legislative process in adopting municipal zoning is little different than the legislation process adopting any other municipal ordinance except that a municipal planning commission must be created and frame, adopt and certify to the legislative body a plan for dividing the municipality into zones or districts. R.C. 713.06 to 719.07. There is no automatic referendum on the issue. The general constitutional and statutory referendum provisions for all municipal ordinances apply to zoning legislation.

(1). **Village Planning Commission.** The statutes provide general descriptions of the scope of a municipal zoning plan to be created by the planning commission but do not prescribe a particular process.

(a) **Zoning Plan.** R.C. 713.06 describes a municipal zoning plan as follows:

"The planning commission of any municipal corporation may frame and adopt a plan for dividing the municipal corporation or any portion thereof into zones or districts, representing the recommendations of the commission, in the interest of the public health, safety, convenience, comfort, prosperity, or general welfare, for the limitations and regulation of the height, bulk, and location, including percentage of lot occupancy, set back building lines, and area and dimensions of yards, courts, and other open spaces, and the uses of buildings and other structures and of premises in such zones or districts."

(b) **Basis of Districting or Zoning.** Municipal zoning must be based upon any combination of two or more of the purposes described in paragraphs (i) – (iv) below. R.C. 713.10.

(i) **Restrictions in Locations of Buildings and Structures**. Districts may be created and regulations imposed for each of such districts, designating the kinds or classes of trades, industries, residences, or other purposes for which buildings or other structures or premises may be permitted to be erected, altered, or used subject to special regulations. R.C. 713.07.

(ii) **Restrictions on Height of Buildings and Structures**. Districts may be created that regulate and limit the height of buildings and other structures thereafter erected or altered. R.C. 713.08.

(iii) **Small Wind Farms**. Recently, the General Assembly granted municipalities statutory authority "with respect to the location, erection, construction, reconstruction, change, alteration, maintenance, removal, use, or enlargement of any small wind farm as a public utility, whether publicly or privately owned, or the use of land for that purpose, which

regulations may be more strict than the regulations prescribed in rules adopted under division (B)(2) of section 4906.20 of the Revised Code." R.C. 731.081.

(iv) **Restrictions on bulk and location of buildings and structures, percentage of lot occupancy, and set back building lines.** Villages may regulate the bulk and location of buildings and other structures erected or altered in the municipality, including the percentage of lot occupancy, set back building lines, and the area of yards, courts and other open spaces. R.C. 713.09.

(c) **Classification of buildings and structures.** "Buildings and other structures may be classified on the basis of the nature or character of trade, industry, profession, or other activity conducted or to be conducted therein, the number of persons, families, or other group units to reside in or use them, the public, quasi-public, or private nature of the use thereof, or upon any other basis relevant to the promotion of the public safety, health, morals, convenience, prosperity, or welfare." R.C. 713.10

(d) **Public Hearing; Notice Requirements.** There is no statutory requirement that the village planning commission advertise or hold a public hearing on the proposed zoning legislation. Any meeting held or action taken is subject to the Ohio Sunshine Law.

(e) **Recommendation to Village Council.** After the zoning commission prepares and adopts an initial zoning plan or amendment, it must certify it to the legislative body, which may enact it following a public hearing. *See* R.C. 713.02-713.12.

(2). **Village Council.**

(a) **Public Hearing.** A municipal legislative authority must hold a public hearing before any zoning ordinance, measure, regulation, or amendments thereto is adopted. R.C. 713.12. Arguably a village must also follow the general notice, hearing and publication requirements that apply to general municipal ordinances. *See* R.C. 731.17, 731.21 and 731.22.

(b) **Notice Requirements.** Notice of every zoning hearing must be published and notice of some hearings must also be mailed. The content of the notice is not prescribed by statute.

(i) **Published Notice.** A municipal legislative authority must give at least thirty days' notice of the time and place of a hearing on zoning legislation in a newspaper of general circulation in the municipal corporation. R.C. 731.12. The legislative authority should also follow the general publication and notice requirements for municipal ordinances. R.C. 733.21 and 731.22.

(ii) **Mailed, Written Notice.** If the ordinance, measure, or regulation intends to re-zone or re-district ten or less parcels of land, as listed on the tax duplicate, written notice of the hearing shall be mailed by the clerk of the legislative authority, by first class mail, at least twenty days before the date of the public hearing to the owners of property within and contiguous to and directly across the street from such parcel or parcels, to the addresses of such owners appearing on the county auditor's current tax list or the treasurer's mailing list and to such other list or lists that may be specified by the legislative authority.

(a) The failure of delivery of such notice shall not invalidate any such ordinance, measure, or regulation.

(c) **Availability and Inspection of Records.** During the thirty day advertising period, the text or copy of the text of the proposed ordinance, measure, or regulation, together with the maps or plans, or copies thereof, forming part of or referred to in such ordinance, measure, or regulation and the maps, plans, and reports submitted by the planning commission, board, or officer shall be on file, for public examination, in the office of the clerk of the legislative authority or in such other office as is designated by the legislative authority. R.C. 731.12. See also the general ordinance requirements. R.C. 733.21 and 731.22.

(d) **Adoption of Zoning Ordinance.** Generally, a zoning ordinance must be adopted by a majority of the members (not a majority of the quorum) of a village council, unless it materially deviates from the recommendation of the planning commission, which requires a supermajority. R.C. 731.12.

(i) **Adoption of the Zoning Ordinance Recommended by the Planning Commission.** "No ordinance, measure, or regulation which is in accordance with the recommendations, plan, or report submitted by the commission, board, or officer shall be deemed to pass or take effect without the concurrence of at least a <u>majority of the members elected</u> to the legislative authority." R.C. 731.12.

(ii) **Adoption of an Ordinance that Deviates From the Recommendation of the Planning Commission.** "No ordinance, measure, or regulation which violates, differs from, or departs from the plan or report submitted by the commission, board, or officer shall take effect unless passed or approved by not less than <u>three fourths of the membership</u> of the legislative authority." R.C. 731.12.

(e) **Publication**. There is no specific requirement in the zoning statutes that requires the publication of any ordinance or resolution relating to zoning. Once adopted, the municipality should treat a zoning ordinance as a general municipal ordinance and follow the statutory (or charter) publication requirements that apply to all municipal ordinances and resolutions. *See* R.C. 731.21 and 731.22.

(3). **Referendum**. An initial municipal zoning ordinance and any legislative amendments are subject to the same referendum procedures for all municipal ordinances. R.C. 731.29 to 731.41. If the zoning involves a Planned Unit Development, there should be a careful examination of the action being taken to determine if it is a legislative act subject to referendum or an administrative act implementing a previously approved plan.

(B). **Amendments to Village Zoning Resolutions or Maps**. Amendments to the village zoning resolutions or maps follow the same procedure as the adoption of the initial zoning plan and ordinance. R.C. 713.10 provides "[t]he legislative authority of such municipal corporation may amend or change the number, shape, area, or regulations of or within any district, but no such amendment or change shall become effective unless the ordinance proposing it is first submitted to the planning commission, board, or officer for approval, disapproval, or suggestions and the commission, board, or officer is allowed a reasonable time, not less than thirty days, for consideration and report."

(C). **Zoning by Initiative**. Municipal electors have the right to initiate or propose legislation to be voted upon by the municipal electorate. Zoning ordinances can be proposed and changed by initiative petition. The steps, manner and form of these proposed ordinances are provided by statute. *See* Section 1f, Article II, Ohio Constitution and R.C. 731.28 and R.C. 731.31 to 731.41. Generally, initiative petitions are required to be filed with the city auditor or village clerk, must be signed by ten per cent of the number of electors who voted for governor at the most recent general election for the office of governor in the municipal corporation, timely transmitted to the board of elections by the auditor or clerk, timely placed upon the ballot if they are valid and are only effective upon approval by a majority of the electors voting upon the measure in the municipal corporation. No ordinance adopted by initiative is subject to a mayor's veto.

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.
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> 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. Chapter 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). **Appeals to Village Administrative Board of Zoning Appeals**. While state statutes provide for the creation of a board of zoning appeals, it does not prescribe any particular notice or hearing requirements for the board. The Sunshine Law and due process require that the meeting be public and procedures and rules be established that allow the appellant or applicant to receive notice and the opportunity to be heard. R.C. 713.11.

(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 <u>with the administrative officer, agency, board, department, tribunal, commission or other instrumentality involved</u>. 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 or ordinance and map require a two step process. Initially there is a hearing and review by the village planning commission who makes a recommendation to village council. When the legislative authority receives the recommendation of the planning commission(s), it conducts its own public hearing and review and enacts 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. The Role Of The Village Clerk or Fiscal Officer In Zoning

(A). **General**. Typically the village clerk or fiscal officer is involved in all of the zoning proceedings before the village council and any referenda filed upon their legislative action. That includes receiving the recommendations of the planning commission, timely placing the item on the agenda of council, timely advertising, providing notice, keeping minutes and records of the proceedings, and perhaps preparing a resolution or ordinance for the legislative action taken. The clerk may also be involved in the receipt and handling of application fees and costs associated with the various zoning processes. If there is no clerk or other assistant

funded by the village and appointed by the planning commission and/or board of zoning appeals, the village clerk 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 and clerks in zoning.

(1). Receive recommendations from the zoning commission or planning 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 initiative or referendum petitions on zoning.

(6). Receive and handle filing fees and costs associated with zoning applications and procedures.

(7). Pay expenses and costs associated with zoning activities as authorized by council.

(8). In addition, the clerk may have responsibilities as the assistant or clerk for the zoning commission, planning commission, board of zoning appeals or other administrative board, which would include similar activities to those above.

VIII. Common Governmental Mistakes In The Zoning Process

(A). **The Sunshine Law Applies**. The activities of the village council and village 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 <u>in addition</u> to the specific notice and hearing requirements in any legislative or administrative zoning proceeding.

(B). **Fees and costs**. The village 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 is generally based upon a comprehensive plan. While there is no specific form the plan must take, a plan should be adopted by village council. Comprehensive plans should be routinely updated.

(E). **Distinguishing Between Legislative And Administrative Proceedings**. A village council, 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.** There are constitutional limitations upon the authority of a municipality to restrict the use of land. 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 or ordinance 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 and ordinances 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. Municipalities 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, ordinances and authorities.