

THE ROLE OF FISCAL OFFICERS AND CLERKS IN ZONING

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What is zoning?

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.

In townships it must be based on a comprehensive plan.

Four Major Areas of Zoning

1. Creating and adopting a zoning code (resolution or ordinance) and map.
2. Amending a zoning code and/or map.
3. Variances (special exceptions) and/or conditional uses.
4. Enforcement.

Legislative/Administrative Distinction and why it matters

- **Legislative action** – action enacting or creating a law, ordinance or regulation taken by the legislative authority (council or board of trustees).
 - Initial Adoption of Zoning Code and Zoning Map.
 - Amendments to the Zoning Code and Zoning Map.
 - May only be taken by the legislative authority. Cannot be delegated.
 - Broader discretion than administrative actions.
 - Subject to referendum.

Legislative/Administrative Distinction and why it matters

- **Administrative action** – action executing or administering (enforcing) a law, ordinance, or regulation that is already in existence taken by an administrative authority (board of zoning appeals or zoning commission) or a legislative authority acting in an administrative capacity.
 - Conditional or Special Use Permits.
 - Variances.
 - Decision subject to more stringent standards.
 - Subject to appeal to common pleas court.

Legislative and Administrative Authorities

Legislative Authorities

- Village Council
- Board of Township Trustees

Administrative Authorities

- Zoning or Planning Commissions
- Boards of Zoning Appeals
- County Planning Commission/Regional Planning Commission
- Village Council acting in an administrative capacity

Initial Adoption of Zoning and Zoning Amendments

Municipalities

- Council creates a Planning Commission to frame, adopt and certify to council a plan for dividing the municipality into zones or districts.
- Adoption of zoning legislation essentially follows typical municipal legislative process.
- Zoning is a police power and municipalities may exercise based upon statutory authority or constitutional home rule powers.

Townships

- Board of Township Trustees adopts a 'resolution of intent to proceed' and forms a Township Zoning Commission.
- 8% of voters from last gubernatorial election petition the Board for zoning.
- Township may become subject to a county zoning plan if there is no township plan and a majority of the township electors approve a proposed county plan.
- Special statutory procedure for legislative process of adoption of zoning.
- Zoning is a police power and township and may be exercised only as authorized by statute.

Role of Municipal Planning Commissions and Township Zoning Commissions

Municipal Planning Commission

- Create initial Zoning Plan and certify it to Council for consideration.
- Zoning Plan must be based upon two or more of the following purposes
 - Restrictions in Locations of Buildings and Structures.
 - Restrictions on Height of Buildings and Structures.
 - Small Wind Farms.
 - Restrictions on bulk and location of buildings and structures, percentage of lot occupancy, and set back building lines.
- No specific requirements for public hearings. Ohio Sunshine Law Applies.

Township Zoning Commission

- Create initial Zoning Plan following statutory process that includes one or more public hearings, review by County or Regional Planning Commission ("RPC").
- RPC reviews and makes non-binding recommendations to Zoning Commission on legislative zoning matters.
- Zoning Plan must be "in accordance with a comprehensive plan."
- Recommend Zoning Plan to Board of Township Trustees.

Initial Adoption of Zoning by Legislative Authority

Municipal Council

- Council must hold a public hearing following receipt of Planning Commission certification.
- Notice must be published at least 30 days in advance of the hearing.
 - If 10 or less parcels of land are involved, written notice must also be mailed to property owners contiguous and directly across the street.
- Proposed legislation must be on file for public examination.
- Zoning ordinance must be adopted by:
 - majority of the members elected to council if it follows the recommendation of Planning Commission.
 - 2/3 of membership of council if it materially deviates from the recommendation of Planning Commission.

Township Board of Trustees

- Board to hold a public hearing on Zoning Commission Recommendation.
 - Any change or departure from the zoning text or map recommended by Zoning Commission requires re-submission to the zoning commission for new hearing and recommendations.
- Notice must be published at least 30 days in advance of hearing.
- Initial Zoning Resolution adopted by:
 - Majority of Board if it follows recommendation of Zoning Commission.
 - Unanimous if Zoning Commission Disapproved.

Initial Adoption of Zoning by Legislative Authority (continued)

Municipal Council

- An initial municipal zoning ordinance and any legislative amendments are subject to the same initiative and referendum procedures for all municipal ordinances.
- Municipal attorney should be contacted immediately when a petition for initiative or referendum is filed.

Township Board of Trustees

- Initial Zoning Resolution must be approved by the electorate.
- Township Zoning Resolution must be filed with the County Recorder and County or Regional Planning Commission within 5 working days after the resolution's effective date.

Amendments to Zoning

Municipalities

- Follows same procedure as adoption of initial zoning plan and ordinance.
 - May also be initiated by application of property owner.
- Zoning amendments must first be submitted to Planning Commission for recommendation, even when initiated by council.
- Vote same as initial zoning: majority of members if recommendation is followed; 3/4 of Council if material deviation from Planning Commission recommendation.

Townships

- Amendments may be initiated by:
 - Motion of the Zoning Commission.
 - Resolution of the Trustees.
 - Application by one or more of the owners or lessees of the property.
- Follows similar procedure to initial zoning.
 - Referral to County or Regional Planning Commission for recommendation to Zoning Commission.
 - Zoning Commission provides notice and holds public hearing and makes recommendation to Trustees.
 - Trustees provide notice and hold public hearing on proposed amendment.

Amendments to Zoning (continued)

Municipalities

- Annexed territory remains subject to township zoning and enforcement until it is zoned in the municipality.
- Legislation on zoning amendments is treated like any other municipal legislation.
 - May be accomplished through initiative petition.
 - Is subject to referendum.

Townships

- Trustees may adopt, deny or modify the Zoning Commission recommendation within 20 days after the public hearing.
- Majority vote of the Board is required.
- Zoning Amendments are subject to referendum.
- Zoning may be repealed by:
 - Resolution of the Board repealing the township zoning resolution.
 - Vote of the electorate after filing petition signed by 8% of the township electors voting in the last gubernatorial election.

Administrative Zoning Proceedings

- Determine the legal rights and interests of the applicant or appellant.
- Separate and distinct from legislative process.
- Applicant has constitutional and statutory rights.
- Applicant must be afforded due process.

Types of Administrative Proceedings

- Appeal of decision of zoning inspector.
- Conditional Use Permit.
- Special Zoning Certificate.
- Variance or special exception from zoning standards.
 - Use Variance requires showing of substantial hardship.
 - Area Variance requires showing of practical difficulties.

Administrative Hearings

- Administrative hearings are adjudicatory hearings, which require notice, hearing, and the opportunity to introduce evidence.
- Must be procedural safeguards for the applicant and others directly affected at hearing. Some examples include:
 - Testimony under oath
 - Applicant can present witnesses; offer evidence; and cross examine any witnesses in opposition.
 - Decision maker must make findings of fact and conclusions of law.
 - A record of the proceedings must be kept.

Administrative Determinations Subject to Court Appeal

- Appeal of final administrative determination may be taken within 30 days after the decision is made.
- Notice of appeal is filed with the administrative officer, board or commission making the decision.
- Administrative authority 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.
- The court proceeds as in the trial of a civil action but is confined to the transcript or record if it had sufficient procedural safeguards.
- Court may affirm, reverse, vacate, or modify the administrative determination and may remand the cause for further proceedings if it chooses.
- Decision of common pleas court is subject to appeal to court of appeals.

Role of Clerk or Fiscal Officer

- Varies Depending upon whether there is a zoning clerk.
- Often must manage the statutory process for both the administrative authorities and the legislative authorities in the zoning process.
- Timely manage flow of information between zoning bodies and sometimes courts.
 - Legislative actions typically a two step process for municipalities (planning commission and council).
 - Legislative actions typically a three step process for townships (zoning commission, county or regional planning commission and board of trustees).
 - Administrative actions typically one step process unless an appeal is taken.

Typical Activities of Clerks and Fiscal Officers in Zoning Proceedings

- Receive recommendations from the Zoning Commission or Planning Commission for consideration and hearing by the legislative authority.
- Keep records of the proceedings of the legislative authority.
- Provide notices on the zoning proceedings to applicants, surrounding property owners, and by newspaper publication in all zoning actions before the legislative authority.
- Keep on file and open for public examination ordinances or resolutions to rezone certain property during the thirty-day advertising period.
- Receive and process initiative (municipalities only except for repeal of zoning) or referendum petitions on zoning.

Typical Activities of Clerks and Fiscal Officers in Zoning Proceedings *(continued)*

- Receive and handle filing fees and costs associated with zoning applications and procedures.
- Pay expenses and costs associated with zoning activities as authorized by council or the board of trustees.
- 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.
- Timely prepare and file with the common pleas court or environmental court (in Franklin County) a transcript of the administrative proceedings when a court appeal is filed.
- Provide copies of public records upon request.

Common Governmental Mistakes in the Zoning Process

- The Sunshine Law Applies: Ohio's Open Meetings Act and Public Records Act.
- All fees and costs must be reasonably related to the actual costs.
- All required notices should be timely made.
- Zoning should be based upon a comprehensive plan.
- The hearings should be appropriate for the proceeding: administrative or legislative.
- Timely assembly the record when an appeal is taken.
