

Presentation for the Michigan Migrant Labor Housing Program – Dec. 19, 2019



MSU is an affirmative-action, equal-opportunity employer. Michigan State University Extension programs and materials are open to all without regard to race, color, national origin, gender, gender identity, religion, age, height, weight, disability, political beliefs, sexual orientation, marital status, family status or veteran status.

Issued in furtherance of MSU Extension work, acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture. Jeffrey W. Dwyer, Director, MSU Extension, East Lansing, MI 48824.

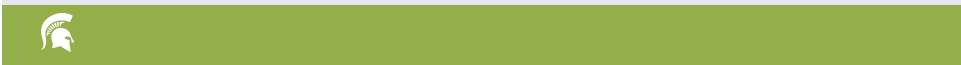
This information is for educational purposes only. Reference to commercial products or trade names does not imply endorsement by MSU Extension or bias against those not mentioned.

This material becomes public property upon publication and may be printed verbatim with credit to MSU Extension. Reprinting cannot be used to endorse or advertise a commercial product or company.



Planning, Zoning, and Right to Farm Law in Michigan

**Interagency Migrant Resource Counsel
December 19, 2019**



Presenter

- **Brad Neumann, AICP**

- MSU Senior Extension Educator
- Government & Community Vitality Team
- Based in Marquette County
- neuman36@msu.edu; 906-315-2661



- With assistance from:

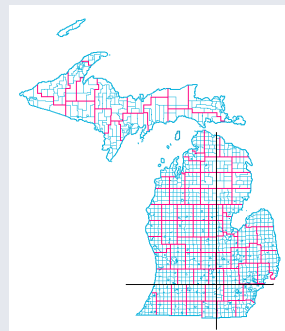
- Mary Reilly, AICP – MSU Extension Educator
- Ryan Coffey – MSU Extension Educator



3

Michigan Planning Enabling Act (MPEA)

- Michigan grants all local general purpose governments the ability to independently develop and adopt master plans.
- Cities, villages, townships and counties: **Michigan Planning Enabling Act**, PA 33 of 2008, as amended, MCL 125.3801 *et seq.*



4

MI Planning Enabling Acts States: A Master Plan Shall...

- Address land use and infrastructure issues and may project 20 years or more into the future.
- Include maps, plats, charts, and descriptive, explanatory, and other related matter and shall show the planning commission's recommendations for the physical development of the planning jurisdiction.

MPEA-PA 33 of 2008 125.3833 Sec. 33. (1)



5

The Master Plan is a Community Blueprint

- What do we want our community to look like and be like in 20 years?
- Where are we going?
- How are we going to get there?
- How will we know that we have achieved our goals?



City of Ironwood

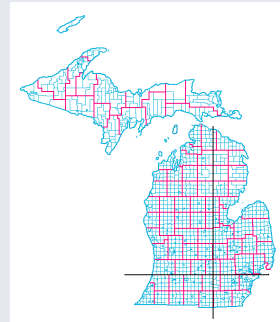
These questions will help guide your master planning process.



6

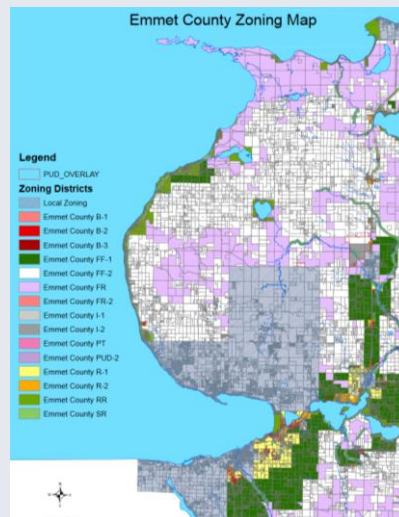
Michigan Zoning Enabling Act (MZEA)

- Michigan grants all local general purpose governments the ability to independently develop and adopt zoning ordinances.
- Cities, villages, townships and counties: **Michigan Zoning Enabling Act**, PA 110 of 2006, as amended, MCL 125.3101 *et seq.*



Michigan Zoning Enabling Act

- Zoning is not required.
- Townships are subject to county zoning, if county zoning exists.
 - Cities/villages are not subject to county zoning.
- Township zoning supersedes county zoning, if both exist.
- County planning commissions provide advisory reviews of township zoning ordinances and municipal plans.



Sources of Planning and Zoning Authority

Village of Euclid (Ohio) v. Ambler Realty Co., 272 U.S. 365 (1926)

- Upheld zoning as a proper exercise of the police power to protect the public welfare
- But warned that zoning ordinances must “find their justification in some (proper) aspect of ... protecting the public welfare.”
 - e.g., child safety and security, fire protection, traffic control, disease prevention, noises, odors, unsightliness, etc.



Intersection of Planning and Zoning

The Michigan Zoning Enabling Act requires that “**a zoning ordinance shall be based upon a plan** designed to promote the public health, safety, and general welfare...” (Sec. 203).



Intersection of Planning and Zoning

Courts are more likely to uphold a zoning decision if it is supported by a **reasonable** master plan that provides support for the decision.

- *Padover v. Twp of Farmington*, 374 Mich. 622 (1965)
- *City of Essexville v. Carrollton Concrete*, 259 Mich. App. 257 (2003)



The Master Plan and Z.O. Connection

The Plan

vs.

Z.O.

- | | |
|--|--|
| <ul style="list-style-type: none"> • The Plan is a policy guide. • Planning Commission* adopts the Plan • Plan shows how land is to be used in future | <ul style="list-style-type: none"> • The Zoning Ordinance is the law • Legislative body adopts ZO • Zoning ordinance is how land is regulated today |
|--|--|

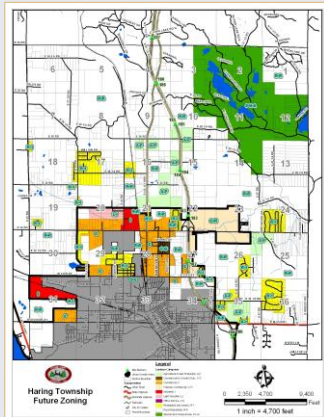
*and, optionally, the legislative body



READING - Changes to Michigan law result in clearer understanding of the "zoning plan" and its requirements

Zoning is the regulation of land use

Zoning Map



Haring Township

Regulations in zoning ordinance text:

- Uses
- Parcel size
- Building location and spacing
- Building size and form

"C1" GENERAL COMMERCIAL ZONING DISTRICT FOR GOODE SUBDIVISION

INTENT AND PURPOSE

To accommodate general commercial activities that serve both local and regional markets. To permit a range of businesses to be conveniently located near each other.

DIMENSIONAL REQUIREMENTS

ZONING DISTRICT	MINIMUM LOT AREA	MINIMUM ROAD FRONTAGE	MINIMUM FRONT YARD	MINIMUM REAR YARD	REQUIREMENTS EACH SIDE
C1 GENERAL COMMERCIAL S.F.	7,500	75'	50'	10'	15'

Only in areas of subdivision served by public sewer.

Other Requirements:

- Maximum height of 35'.
- 6' high obscuring fence required if adjacent to A, R, FR or RL District.

Haring Township



13

Two Types of Uses in a Zoning District

- Permitted uses – allowed by right
- Special land uses – allowed if specified standards are met
 - SLUs typically have nuisance-like characteristics
 - locate with care
 - **Examples:** junkyards, mining, airports, cell towers, etc.



14

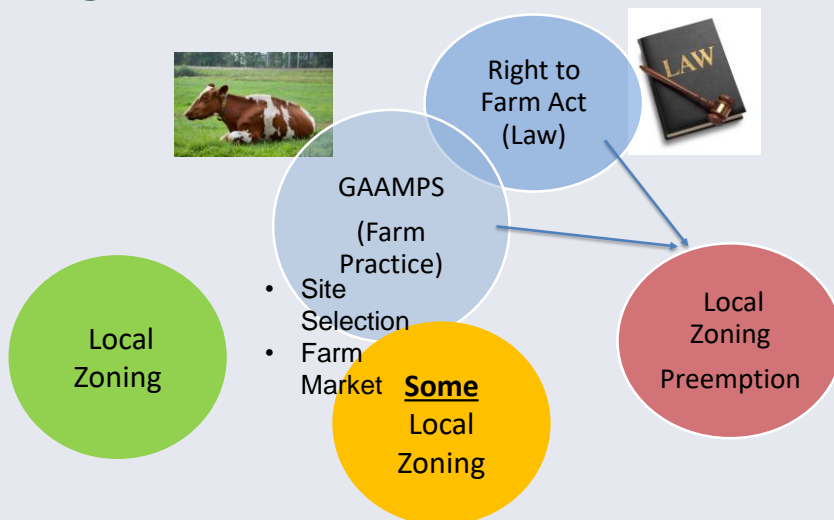
Limits on Planning and Zoning Authority

The state legislature modifies, from time to time, local governments' authority to regulate certain uses:

- Manufactured homes
- Animal agriculture regulations
- Foster care homes
- Group homes
- Daycare centers
- Public schools
- Wetlands
- Mineral resources
- Home fine arts and crafts instruction
- Sanitary landfills
- Hazardous waste facilities
- Gun clubs
- Prisons
- Oil and gas wells
- And more . . .



Right to Farm Act - PA 93 of 1981



RTFA – Two Purposes

- Provides affirmative defense to nuisance lawsuits against farmers
 - **But does not prevent lawsuits**
- Provides conditional preemption of certain parts of local ordinances
 - **MDARD does not interpret or enforce local zoning ordinances**



17

GAAMPs (Generally Accepted Agricultural and Management Practices)

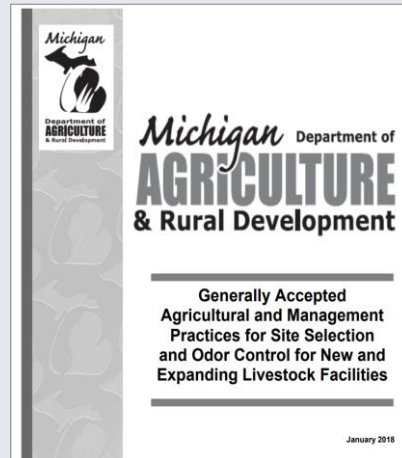
- Manure management and utilization, 1988
- Pesticide utilization and pest control, 1991
- Nutrient utilization, 1993
- Care of farm animals, 1995
- Cranberry production, 1996
- Site selection and odor control for new and expanding livestock production facilities, 2000
- Irrigation water use, 2003
- Farm markets, 2010



18

Right to Farm: Local Government

- **1st:** Establish jurisdiction
- **2nd:** Determine what is covered in RTFA & GAAMPs
- **3rd:** “GAAMP delegate back”



1st: A Four-Part 'Jurisdiction' Test

- Is the activity a “**farm**” or “**farm operation**”?
 - Is it producing a “**farm product**”?
 - Is it engaged in “**commercial production**”?
 - Is it complying with **GAAMPs**?
- Party asserting RTFA as defense bears burden of showing challenged conduct is protected under RTFA.
 - *Lima Twp. v. Bateson* 302 Mich. App. 483 (2013)



2nd: What subjects are off limits for local regulation?

- If it's covered in a **GAAMP**, it's 'off limits' to local regulation
 - type of farm
 - **farm markets**
 - pesticide application
 - manure spreading
 - care of animals
 - acres per animal

AND much, much more!



21

But if the subject is **NOT** in RTFA or a GAAMP, it's fair game to regulate locally

Again, RTFA is a “shield” not a “sword” for the farmer

- *Sena Scholma Trust v. Ottawa Cnty. Rd. Comm'n*, 303 Mich. App. 12 (2013)



22

3rd: Delegate Back (category 4 sites)



Kurt Schindler



Mary Reilly

- “Site Selection and Odor Control for New and Expanding Livestock Facilities GAAMP”
- **Added in 2014** “Category 4 Sites” - Sites **not** acceptable for livestock facilities unless regulated by local ordinance.



3rd: Delegate Back (category 4 Sites)

“Primarily residential”

- More than 13 non-farm residences within 1/8 mile of the site **OR**
- Have any non-farm residence within 250 feet of the livestock facility, including fencing.



Google Maps and MDARD



3rd: Delegate back (farm markets)

- Site plan review required by local jurisdiction
 - Signage, Building Placement, Parking and Drive locations
- Delegates back to local jurisdiction a specific list of associated activities
 - See list in GAAMP



Jill O'Donnell



Kurt Schindler



Substantive Due Process

Protects against arbitrary actions by the government by requiring that a regulation “promote public health, safety or general welfare” by a rational means.



Exclusion of Legitimate Land Uses

The Michigan Zoning Enabling Act says:

“A zoning ordinance or zoning decision **shall not have the effect of totally prohibiting the establishment of a land use** within a local unit of government **in the presence of a demonstrated need** for that land use within either the local unit of government or surrounding area within the state, **unless a location within the local unit of government does not exist where the use may be appropriately located**, or the use is unlawful.” – M.C.L. 125.3207



27

Examples of Exclusionary Zoning

- *English v Augusta Twp*, 204 Mich App 33 (1994)
 - 96 acres designated for mobile home park use
 - in an area undesirable for any residential use
 - not serviced by water or sewer
 - owned mostly by township supervisor, whose family intended to farm it
- *Smookler v Wheatfield*, 394 Mich 574 (1975)
 - created a use district in ordinance text but did not designate any land in the district on the zoning map



28

Public Health Code – PA 368 of 1978

- The approval of plans or the issuance of a permit pursuant to this code which involves the construction, alteration, or renovation of a building, structure, or premises ... does not relieve the person receiving the approval or permit from complying with all consistent applicable provisions of building and construction laws, zoning requirements, and other state and local statutes, charters, ordinances, rules, regulations, and orders (MCL 333.1203).



29

Administrative Rules – Ag Labor Camps

- Rule 325.3605(1): A provision in these rules shall not take precedence over a requirement in an applicable local rule, ordinance, or code when such requirement is more stringent than the provision in these rules.



Mary Reilly



30

Frens Orchards, Inc. v Dayton Township Board,
Mich App, No. 225696, Sept. 24, 2002

- “We conclude. . . the location of agricultural labor camps is not pervasively regulated by the Public Health Code or its associated administrative rules.”
- “...the state's regulation is not so pervasive that it would support a finding of preemption.”
- “...state regulations do not address the subject of the zoning ordinance – the location of a use of land within the township.



31

Not Preempted, but a Demonstrated Need?

- “... it would offend the constitution of the State of Michigan and the United States to put a condition on that agricultural workers cannot live in apartments in the Village of Elberta”
 - Benzie County Circuit Court
Judge James Batzer



32

Not Legal if Not Listed

- Most ordinances are written in a permissive manner.
 - “A permissive format states the permissive uses under the classification [zoning district], and necessarily implies the exclusion of any other non-listed use.” (*Independence Twp. v Skibowski*, 136 Mich App 178 (1984)).



Sample Local Zoning for Ag Labor Housing



- Permitted accessory use
 - Allowed following established setbacks; 1 additional single-family dwelling; Other approaches
- Overlay zoning district
- Special land use



Mary Reilly



Permitted Use (use by-right)

- A use of property and structures in manners consistent with that which is listed as permissible in the zoning district in which the property is located.
 - Aka ‘**Use by Right**’
- Not subject to special review and approval by a local government



Kurt Schindler



35

Permitted Principal Use v. Accessory Use

- Principal uses are primary uses or structures permitted on a property
 - e.g. in a single-family residential district, a residential use is the principal use required prior to any allowed accessory use such as a homebased business



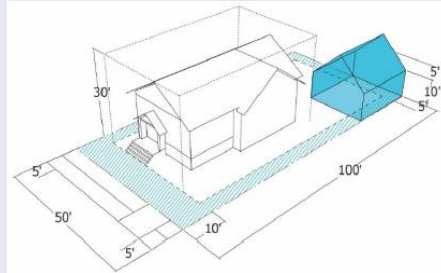
Brad Neumann



36

Permitted Principal Use v. Accessory Use

- Accessory uses are uses or structures that are subordinate and offer an additional benefit to principal use
- Not a use prohibited in the district, but must be located with a principal use, structure.



37

Farm Labor Housing as an Accessory Use

- Farm labor housing is typically accessory to a farm operation.
 - Farm operations are permitted in agriculturally zoned districts, so farm labor housing is limited to the district.
- What about a farmer who purchases a 1 acre home site in an Ag district for farm labor? That home is not 'accessory' to an on-site farm.
 - Is this an agricultural or residential use of the property?



38

Federal Fair Housing Act

- Prohibits local government from making zoning or land use decisions that exclude or otherwise discriminate against protected classes.
- Prohibits discrimination in a “dwelling”
 - Includes vacant land offered for sale or lease for the construction or location of any such building, structure (42 USC § 3602(b))
- Suggests local government must not limit the number of unrelated adults in a household to fewer than 4. *Oxford House, Inc. v. City of Albany*
- In Michigan, cannot limit family definition to persons “related by blood, marriage or adoption” *Delta Charter Two v. Dinolfo, Mich, 1984*



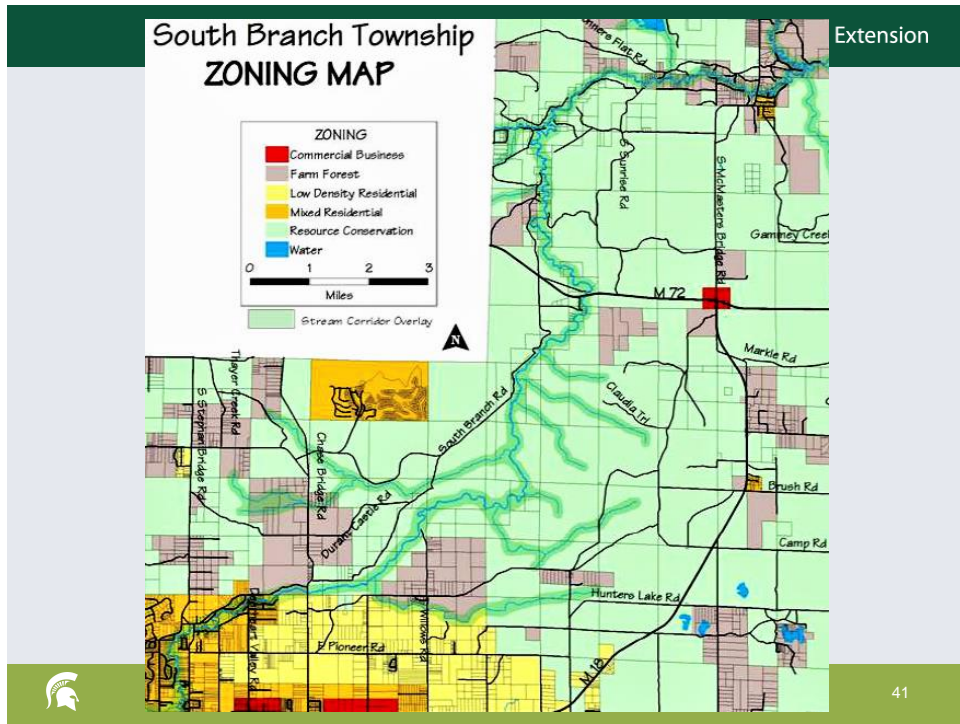
39

Overlay Zoning District

- A zoning ordinance has zoning districts.
- It is possible to put a second layer of districts on top of the zoning district map
- Often done to create a standard set of regulations for protection around some feature that might involve several different traditional zoning districts



40



Special Land Use (SLU)

- Generally compatible with other uses within a zoning district, but may not be appropriate in every location.
- Special land uses are permitted when additional ordinance standards met.



Kurt Schindler

SLU Requirements

Ordinance must specify:

- Specific SLU and district where considered
- Standards that must be met
- Review and site plan approval process(es)
- Body or official who approves:
 - Planning Commission (usually)
 - Zoning Administrator (sometimes, minor SLU)
 - Legislative Body (more rarely)



APPENDIX B
TO THE WATSON TOWNSHIP ZONING ORDINANCE
QUICK REFERENCE TO PERMITTED USES AND SPECIAL USES
 (12-25-07)

	A-1	A-2	R-1	R-2	Lake Residential	C-1 Commercial	I Industrial
Agriculture, Commercial such as:							
Dairy Farms	PU	PU	NP	NP	NP	NP	NP
Green Houses	PU	PU	NP	NP	NP	NP	NP
Poultry Operations	PU	NP	NP	NP	NP	NP	NP
Nursery, Stock Cultivation	PU	PU	NP	NP	NP	PU ¹	NP
Vineyards, Cultivation	PU	PU	NP	NP	NP	PU ¹	NP
Blueberry Cultivation	PU	PU	NP	NP	NP	PU ¹	NP
Orchards, Cultivation	PU	PU	NP	NP	NP	PU ¹	NP
Field crops, Cultivation	PU	PU	NP	NP	NP	PU ¹	NP
Hatcheries	PU	PU	NP	NP	NP	NP	NP
Apiaries	PU	PU	NP	NP	NP	NP	NP
Farm Buildings	PU	PU	NP	NP	NP	NP	NP
Stables, Private and Commercial boarding, breeding and training, stables not involving trail riding or personal riding lessons	PU	PU	NP	NP	NP	NP	NP
Stables, Commercial that include riding and or riding lessons	SUP	SUP	NP	NP	NP	NP	NP
Uses customarily accessory to farm operations	PU	PU	NP	NP	NP	I	NP
Agricultural Labor Housing	SUP	SUP	NP	NP	NP	NP	NP
Multi-family Dwellings	NP	NP	NP	SUP	NP	NP	NP



Sample Ag Labor Housing SLU Standards

- Not used for other residential purposes
- Limited to parcels of a certain size (e.g. > 1 acre)
- Max lot coverage
- Larger setback (e.g. 100')
- Screening and landscaping
- 24/7 communication with property owner
- Site plan or plot plan
- Elevation drawings
- Evidence of well and septic adequacy
- “Decommissioning” and performance guarantee?
- Compliance with Agricultural Labor Camp Rules of the Public Health Code (Part 124 of Act 368 of 1978)



Considerations for Discussion

- An underlying issue is the extent to which a community supports the business of agriculture.
 - Evidenced by supportive master plan goal statements
- Communities might discuss the trade-off between higher density housing (with greater setbacks) vs. one [traditional] house at a time.
- Decision-making bodies must base their decisions on facts, yet the public will want to air their concerns [and fears].



Considerations for Discussion

- A community will want to consider if ag labor housing could be used by a work crew that might be employed at several farms over the season.
 - Asparagus > strawberries > cherries > blueberries > peaches > apples
- Or would these laborers only be allowed as accessory to that one farm on which the housing is located?



47

Questions?

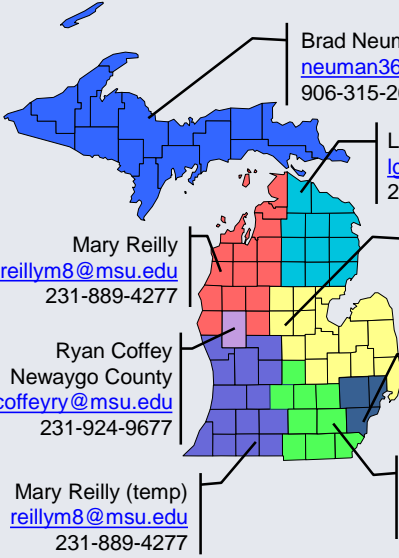
MSU is an affirmative-action, equal-opportunity employer, committed to achieving excellence through a diverse workforce and inclusive culture that encourages all people to reach their full potential. Michigan State University Extension programs and materials are open to all without regard to race, color, national origin, gender, gender identity, religion, age, height, weight, disability, political beliefs, sexual orientation, marital status, family status or veteran status. Issued in furtherance of MSU Extension work, acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture. Jeffrey W. Dwyer, Director, MSU Extension, East Lansing, MI 48824. This information is for educational purposes only. Reference to commercial products or trade names does not imply endorsement by MSU Extension or bias against those not mentioned.



MICHIGAN STATE UNIVERSITY | Extension

Land Use Educators

Contact the MSU Extension land use educator closest to you with your planning and zoning questions.



Brad Neumann
neuman36@msu.edu
906-315-2661

Lindsey Gardner
lgardner@msu.edu
231-627-8815

Mary Reilly
reillym8@msu.edu
231-889-4277

David Rowley
rowleyd2@msu.edu
989-317-4079

Ryan Coffey
Newaygo County
coffeyr@msu.edu
231-924-9677

Harmony Gmazel (temp)
gmazelh@msu.edu
734-222-3832

Mary Reilly (temp)
reillym8@msu.edu
231-889-4277

Harmony Gmazel
gmazelh@msu.edu
734-222-3832

