

HOUSE BILL No. 4265

February 25, 2003, Introduced by Reps. Pappageorge, Meyer, Rocca, Daniels, LaSata, Garfield, Vagnozzi, Vander Veen, Bieda, Woodward, Caul and Stahl and referred to the Committee on Local Government and Urban Policy.

A bill to amend 1943 PA 183, entitled
"County zoning act,"
by amending sections 16b, 16c, 23, and 40 (MCL 125.216b,
125.216c, 125.223, and 125.240), section 16b as amended by 1989
PA 246 and section 40 as amended by 2001 PA 178, and by adding
section 24b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 16b. (1) A county may provide in a zoning ordinance
2 for special land uses which shall be permitted in a zoning
3 district only after review and approval by either the zoning
4 commission, an official charged with administering the ordinance,
5 or the county board of commissioners, **as specified in the**
6 **ordinance.** The ordinance shall specify all of the following:
7 (a) The special land uses and activities eligible for
8 approval consideration and the body or official charged with

1 reviewing special land uses and granting approval.

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

4 (c) The procedures and supporting materials required for
5 application, review, and approval.

6 (2) Upon receipt of an application for a special land use
7 that requires a decision on discretionary grounds, 1 notice that
8 a request for special land use approval has been received shall
9 be published in a newspaper that circulates in the county and
10 sent by mail or personal delivery to ~~the~~ **all of the following:**

11 (a) **The** owners of property for which approval is being
12 considered. ~~—, to all persons~~

13 (b) **Each person** to whom **is assessed** real property ~~is~~
14 ~~assessed~~ within 300 feet of the boundary of the property ~~in~~
15 ~~question, and to the~~ **that is the subject of the request.**

16 (c) **The** occupants of all structures within 300 feet **of the**
17 **boundary of the property that is the subject of the request.**

18 (d) If the request concerns a sign or sign structure, all of
19 the following:

20 (i) The legislative body of the city, village, or township
21 where the property that is the subject of the request is
22 located.

23 (ii) The legislative body of any other city, village, or
24 township with a boundary within 1,500 feet of the boundary of the
25 property that is the subject of the request.

26 (iii) The county board of commissioners of each other county
27 where a city, village, or township described in subparagraph (ii)

1 is located.

2 (3) The notice **provided for in subsection (2)** shall be given
 3 not less than 5 and not more than 45 days before the date the
 4 application will be considered. If the name of the occupant is
 5 not known, the term "occupant" may be used in making
 6 notification. Notification need not be given to more than 1
 7 occupant of a structure, except that if a structure contains more
 8 than 1 dwelling unit or spatial area owned or leased by different
 9 individuals, partnerships, businesses, or organizations, 1
 10 occupant of each unit or spatial area shall receive notice. In
 11 the case of a single structure containing more than 4 dwelling
 12 units or other spatial areas owned or leased by different
 13 individuals, partnerships, businesses, or organizations, notice
 14 may be given to the manager or owner of the structure, who shall
 15 be requested to post the notice at the primary entrance to the
 16 structure. The notice shall do all of the following:

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

18 (b) Indicate the ~~geographic areas that are included in~~
 19 **property that is the subject of** the special land use request.

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

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

24 (e) Indicate that a public hearing on the special land use
 25 request may be requested by ~~a property owner~~ **either or both of**
 26 **the following, as applicable:**

27 (i) **An owner of property** or the occupant of a structure

1 located within 300 feet of the boundary of the property ~~being~~
2 ~~considered for a special use~~ **that is the subject of the**
3 **request.**

4 **(ii) If the request concerns a sign or sign structure, the**
5 **entities listed in subsection (2)(d).**

6 **(4) —(3)—** At the initiative of the body or official
7 responsible for approving special land uses, upon the request of
8 the applicant for special land use authorization ~~—, or upon the~~
9 ~~request of a property owner or the occupant of a structure~~
10 ~~located within 300 feet of the boundary of the property being~~
11 ~~considered for a special land use~~ **or a person described in**
12 **subsection (3)(e),** a public hearing ~~with notification as~~
13 ~~required for a notice of a request for special land use approval~~
14 ~~as provided in subsection (2)—~~ shall be held before a decision is
15 made on a special land use request that is based on discretionary
16 grounds. **Notice of the public hearing shall be given in the same**
17 **manner as required for notice of a request for special land use**
18 **approval under subsections (2) and (3).** If the applicant or the
19 body or official responsible for approving special land uses
20 requests a public hearing, only notification of the public
21 hearing need be made.

22 **(5)** A decision on a special land use that is based on
23 discretionary grounds shall not be made unless notification of
24 the request for special land use approval, or notification of a
25 public hearing on a special land use request, has been made as
26 required by this section.

27 **(6) —(4)—** The body or official designated in the zoning

1 ordinance to review and approve special land uses may deny or
2 approve, or approve with conditions, a request for special land
3 use approval. The decision on a special land use shall be
4 incorporated in a statement of conclusions relative to the
5 special land use under consideration. ~~that specifies~~ **The**
6 **statement shall specify** the basis for the decision and any
7 conditions imposed.

8 Sec. 16c. (1) ~~As used in this section, "planned unit~~
9 ~~development" includes cluster zoning, planned development,~~
10 ~~community unit plan, planned residential development, and other~~
11 ~~zoning requirements which are designed to accomplish the~~
12 ~~objectives of a zoning ordinance through a land development~~
13 ~~project review process based on the application of site planning~~
14 ~~criteria to achieve integration of the proposed land development~~
15 ~~project with the characteristics of the project area. (2) A~~
16 ~~county may establish~~ **A county zoning ordinance may include**
17 planned unit development requirements ~~in a zoning ordinance~~
18 ~~which~~ **that** permit flexibility in the regulation of land
19 development; encourage innovation in land use and variety in
20 design, layout, and type of structures constructed; achieve
21 economy and efficiency in the use of land, natural resources,
22 energy, and the providing of public services and utilities;
23 encourage useful open space; and provide better housing,
24 employment, and shopping opportunities particularly suited to the
25 needs of the residents of the state. The review and approval of
26 a planned unit development shall be made by either the zoning
27 commission, an official charged with administration of the

1 ordinance, or the county board of commissioners, **as specified in**
2 **the zoning ordinance.**

3 (2) ~~—(3)—~~ Within a land development project designated as a
4 planned unit development, regulations relating to the use of
5 land, including, **but not limited to**, permitted uses, lot sizes,
6 setbacks, height limits, required facilities, buffers, open space
7 areas, and land use density shall be determined ~~—in accordance~~
8 ~~with~~ **under** the planned unit development regulations specified in
9 the zoning ordinance. The planned unit development regulations
10 need not be uniform with regard to each type of land use if
11 equitable procedures recognizing due process principles and
12 avoiding arbitrary decisions ~~—have been—~~ **are** followed in making
13 regulatory decisions.

14 (3) ~~—(4)—~~ The planned unit development regulations
15 ~~—established—~~ **adopted** by a county shall specify **all of** the
16 following:

17 (a) The body or official ~~—which—~~ **who** shall review and approve
18 planned unit development requests.

19 (b) The conditions ~~—which—~~ **that** create planned unit
20 development eligibility, the persons and agencies involved in the
21 review process, and the requirements and standards upon which
22 applications ~~—will—~~ **shall** be judged and approval granted.

23 (c) The procedures required for application, review, and
24 approval.

25 (4) ~~—(5)—~~ Following receipt of a request to approve a planned
26 unit development, the body or official charged in the ordinance
27 with the review and approval of planned unit developments shall

1 hold at least 1 public hearing on the request. An ordinance may
2 provide for 1 or more preapplication conferences before
3 submission of a planned unit development request, and **for** the
4 submission of preliminary site plans before the public hearing.
5 Notification of the public hearing shall be given in the same
6 manner as required by section ~~16b(3) for public hearings on~~
7 **16b(2) and (3) for requests for** special land uses. Within a
8 reasonable time following the public hearing, the body or
9 official responsible for approving planned unit developments
10 shall meet for final consideration of the request, and deny,
11 approve, or approve with conditions the request. The body or
12 official shall prepare a report stating its conclusions on the
13 request for a planned unit development, the basis for its
14 decision, the decision, and conditions relating to an affirmative
15 decision. ~~Should the ordinance require~~ **The decision of that**
16 **body or official is final unless the zoning ordinance requires**
17 **that the county board of commissioners amend the zoning ordinance**
18 **to approve or approve with conditions the planned unit**
19 **development request. If the ordinance requires** that the county
20 board of commissioners amend the ordinance to ~~act on~~ **approve or**
21 **approve with conditions** the planned unit development request,
22 ~~the~~ **both of the following apply:**

23 **(a) The** zoning commission shall conduct the hearing as
24 required by section 9, and the report and documents related to
25 the planned unit development request shall be transmitted to the
26 county board of commissioners for consideration in making a final
27 decision. ~~If an amendment of a zoning ordinance is required by~~

1 ~~the planned unit development regulations of a county zoning~~
 2 ~~ordinance, the~~

3 **(b)** The requirements of this act for amendment of a zoning
 4 ordinance shall be followed ~~— However, —~~ **except that** the hearing
 5 and notice required by this subsection ~~shall be regarded as~~
 6 ~~fulfilling~~ **fulfills** the public hearing and notice requirements
 7 of section 9.

8 ~~(6) If the planned unit development regulations of a county~~
 9 ~~zoning ordinance do not require amendment of the ordinance to~~
 10 ~~authorize a planned unit development, the body or official~~
 11 ~~charged in the zoning ordinance with review and approval of~~
 12 ~~planned unit developments may approve, approve with conditions,~~
 13 ~~or deny a request.~~

14 **(5)** ~~—(7)—~~ Final approvals may be granted on each phase of
 15 multiphased planned unit development if each phase contains the
 16 necessary components to ~~insure~~ **ensure** protection of natural
 17 resources and the health, safety, and welfare of the users of the
 18 planned unit development and the residents of the surrounding
 19 area.

20 **(6)** ~~—(8)—~~ In establishing planned unit development
 21 regulations, a county may incorporate by reference other
 22 ~~available and~~ applicable ordinances or statutes ~~which~~ **that**
 23 regulate land development. The planned unit development
 24 regulations contained in zoning ordinances shall encourage
 25 complementary relationships between zoning regulations and other
 26 requirements affecting the development of land.

27 Sec. 23. (1) The county board of zoning appeals shall fix a

1 reasonable time for the hearing of ~~the appeal and give due~~
2 ~~notice of the appeal to the parties,~~ **an appeal under section 20**
3 and decide the appeal within a reasonable time. **The board of**
4 **zoning appeals shall give notice of the appeal to all of the**
5 **following, as applicable:**

6 (a) The parties.

7 (b) If the appeal is from a decision on a special land use
8 request concerning a sign or sign structure, all of the
9 following:

10 (i) The legislative body of the city, village, or township
11 where the property that is the subject of the request is
12 located.

13 (ii) The legislative body of any other city, village, or
14 township with a boundary within 1,500 feet of the boundary of the
15 property that is the subject of the request.

16 (iii) The county board of commissioners of each other county
17 where a city, village, or township described in subparagraph (ii)
18 is located.

19 (2) At the hearing, a party may appear in person or by the
20 agent or by attorney.

21 (3) The county board of zoning appeals may reverse or affirm,
22 wholly or partly, or may modify the order, requirement, decision,
23 or determination ~~as in its opinion ought to be made in the~~
24 ~~premises, and to that end shall have~~ **appealed from. For that**
25 **purpose, the board has** all the powers of the officer or body from
26 whom the appeal was taken and may issue or direct the issuance of
27 a permit.

1 **(4)** If there are practical difficulties or unnecessary
2 hardship in the way of carrying out the strict letter of the
3 zoning ordinance, the county board of zoning appeals, in passing
4 upon appeals, may vary or modify any of its rules or provisions
5 so that the spirit of the ordinance shall be observed, public
6 safety secured, and substantial justice done.

7 **(5)** ~~-(2)-~~ The county board of zoning appeals may impose
8 conditions with an affirmative decision, pursuant to section
9 16d(2). The decision of the county board of zoning appeals
10 ~~shall be~~ **is** final. However, a person having an interest
11 affected by the zoning ordinance has the right to appeal to the
12 circuit court. Upon appeal, the circuit court shall review the
13 record and decision of the county board of zoning appeals to
14 insure that the decision meets the following requirements:

15 (a) Complies with the state constitution of 1963 and the laws
16 of this state.

17 (b) Is based upon proper procedure.

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

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

22 **(6)** ~~-(3)-~~ If the court finds the record of the county board
23 of zoning appeals inadequate to make the review required by this
24 section, or that there is additional evidence ~~which~~ **that** is
25 material and with good reason was not presented to the county
26 board of zoning appeals, the court shall order further
27 proceedings before the county board of zoning appeals on

1 conditions ~~which~~ **that** the court considers proper. The county
2 board of zoning appeals may modify its findings and decision as a
3 result of the new proceedings, or may affirm its original
4 decision. The supplementary record and decision shall be filed
5 with the court.

6 (7) ~~-(4)-~~ As a result of the review required by this section,
7 the court may affirm, reverse, or modify the decision of the
8 county board of zoning appeals.

9 **Sec. 24b. If a county is a party in a judicial action**
10 **arising from its decision on a special land use request**
11 **concerning a sign or sign structure, any of the following may**
12 **intervene in the action with the approval of the county board of**
13 **commissioners of that county or under any other circumstances**
14 **provided by law or the Michigan court rules:**

15 (a) The city, village, or township where the property that is
16 the subject of the action is located.

17 (b) Any other city, village, or township with a boundary
18 within 1,500 feet of the boundary of the property that is the
19 subject of the action.

20 (c) Each other county where a city, village, or township
21 described in subdivision (b) is located.

22 **Sec. 40. (1) As used in this act:**

23 (a) "Agricultural land" means substantially undeveloped land
24 devoted to the production of plants and animals useful to humans,
25 including forage and sod crops; grains, feed crops, and field
26 crops; dairy products; poultry and poultry products; livestock,
27 including breeding and grazing of cattle, swine, and similar

1 animals; berries; herbs; flowers; seeds; grasses; nursery stock;
2 fruits; vegetables; Christmas trees; and other similar uses and
3 activities.

4 (b) "Airport" means an airport licensed by the Michigan
5 department of transportation, bureau of aeronautics under section
6 86 of the aeronautics code of the state of Michigan, 1945 PA 327,
7 MCL 259.86.

8 (c) "Airport approach plan" means a plan, or an amendment to
9 a plan, adopted under section 12 of the airport zoning act, 1950
10 (Ex Sess) PA 23, MCL 259.442, and filed with the county zoning
11 commission under section 151 of the aeronautics code of the state
12 of Michigan, 1945 PA 327, MCL 259.151.

13 (d) "Airport layout plan" means a plan, or an amendment to a
14 plan, that shows current or proposed layout of an airport, that
15 is approved by the Michigan aeronautics commission, and that is
16 filed with the county zoning commission under section 151 of the
17 aeronautics code of the state of Michigan, 1945 PA 327,
18 MCL 259.151.

19 (e) "Airport manager" means that term as defined in section
20 ~~-10-~~ 2 of the aeronautics code of the state of Michigan, 1945
21 PA 327, MCL ~~-259.10-~~ 259.2.

22 (f) "Airport zoning regulations" means airport zoning
23 regulations under the airport zoning act, 1950 (Ex Sess) PA 23,
24 MCL 259.431 to 259.465, for an airport hazard area that lies in
25 whole or part in the area affected by a zoning ordinance under
26 this act.

27 (g) "Conservation easement" means that term as defined in

1 section 2140 of the natural resources and environmental
2 protection act, 1994 PA 451, MCL 324.2140.

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

5 (i) "Development rights ordinance" means an ordinance, which
6 may comprise part of a zoning ordinance, adopted under
7 section 31.

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

12 (k) "Intensity of development" means the height, bulk, area,
13 density, setback, use, and other similar characteristics of
14 development.

15 (l) "Other eligible land" means land that has a common
16 property line with agricultural land from which development
17 rights have been purchased and that is not divided from that
18 agricultural land by a state or federal limited access highway.

19 (m) "PDR program" means a program under section 32 for the
20 purchase of development rights by a county.

21 (n) "Planned unit development" includes cluster zoning,
22 planned development, community unit plan, planned residential
23 development, and other terminology denoting zoning requirements
24 designed to accomplish the objectives of the zoning ordinance
25 through a land development project review process based on the
26 application of site planning criteria to achieve integration of a
27 proposed land development project with the characteristics of the

1 project area.

2 (o) "Sign" and "sign structure" mean those terms as defined
3 in section 2 of the highway advertising act of 1972, 1972 PA 106,
4 MCL 252.302.

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

13 (2) This act shall be known and may be cited as the "county
14 zoning act".