

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, which must be based on a comprehensive plan in a township.

4 Major Areas of Zoning

- Creating and adopting a zoning resolution + map
- Amending a zoning resolution and/or map
- Variances (special exceptions) and/or conditional uses
- Enforcement

Legislative/Administrative Distinction
+ Why it Matters

Legislative action: action enacting or creating a law, ordinance or regulation taken by the legislative authority (board of trustees)

- +Initial Adoption of Zoning Resolution and Zoning Map
- +Amendments to the Zoning Resolution and Zoning Map
- +May only be taken by the legislative authority; cannot be delegated
- +Broader discretion than administrative actions
- +Subject to referendum

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Legislative/Administrative Distinction
+ Why it Matters

Administrative action: action executing or administering (enforcing) a law, resolution, 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

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Legislative + Administrative Authorities

Legislative Authorities	Administrative Authorities
+ Board of Township Trustees	+ Zoning Commissions
	+ Boards of Zoning Appeals
	+ County Planning Commission/Regional Planning Commission

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Initial Adoption of Zoning + Zoning Amendments

- 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



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Role of Township Zoning Commissions

- 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



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Initial Adoption of Zoning by Legislative Authority

- 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



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Initial Adoption of Zoning by Legislative Authority

- + 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

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AMENDMENTS to Zoning

How are Amendments Initiated?

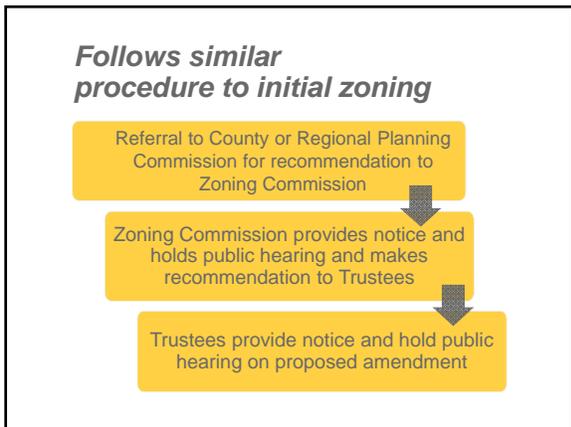
*Motion of
the Zoning
Commission*

*Resolution of
the Trustees*

*Application by
1 or more of
owner/lessee
of the property*

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More on Amendments to Zoning

- + 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

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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

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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

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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

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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 chooses
- + Decision of common pleas court is subject to appeal to court

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Role of 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 **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

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Typical Activities of Fiscal Officers in Zoning Proceedings

- + Receive recommendations from the Zoning 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 resolutions to rezone certain property on file and open for public examination during the thirty-day advertising period
- + Receive and process initiative (repeal of zoning) or referendum petitions on zoning

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Typical Activities of Fiscal Officers in Zoning Proceedings

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

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Common Governmental Mistakes in the Zoning Process

- + **The Sunshine Law Applies:** Ohio's Open Meetings Act and Public Records Act
- + All fees + costs must be reasonably related to 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 assemble the record when an appeal is taken



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Thank You!



Nick Cavalaris
ncavalaris@keglerbrown.com
614.462.5443
keglerbrown.com/cavalaris



Catherine A. Cunningham
ccunningham@keglerbrown.com
614.462.5486
keglerbrown.com/cunningham



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