

This is Part 1 of a two-part article. This article provides an overview of planning and zoning as a water resource protection tool. Part 2 will provide some examples and case studies of Michigan communities that are using planning and zoning to protect their valuable water resources.

HOW LOCAL PLANNING AND ZONING CAN IMPACT YOUR LAKE

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When development occurs around your lake it is strongly influenced by local planning and zoning. Thus, it is helpful for riparian property owners to have a basic understanding of planning and zoning concepts. This article provides an overview of various aspects of zoning and some practical considerations if you live on or near the water.

Land use planning and zoning in Michigan is largely in the hands of local units of government, typically townships. This “home rule” approach to planning and zoning allows many zoning decisions to be made locally. The planning and zoning process usually begins with the drafting of a master plan to guide future development. The master plan provides a basis and justification for decision-making and land use regulation (i.e., zoning). As a community grows and with the passage of time, community master plans and ordinances are periodically updated to reflect changing conditions and emerging issues. Thus, planning and zoning is a repetitive process that evolves over many years.

Recognizing the value and sensitivity of shoreland areas, several states, such as Maine, Vermont, New Hampshire, Minnesota, and Wisconsin have adopted statewide lake shoreland protection ordinances. A key provision of these regulations is the preservation of natural shoreland vegetation. However, in Michigan there are no statewide shoreland development standards for lakes. Land use decisions regarding lakes are generally made by local units of government through Michigan’s Zoning Enabling Act. Local planning and zoning can be an effective tool to preserve natural shoreland areas and to help address other water-related issues such as keyhole or funnel development.

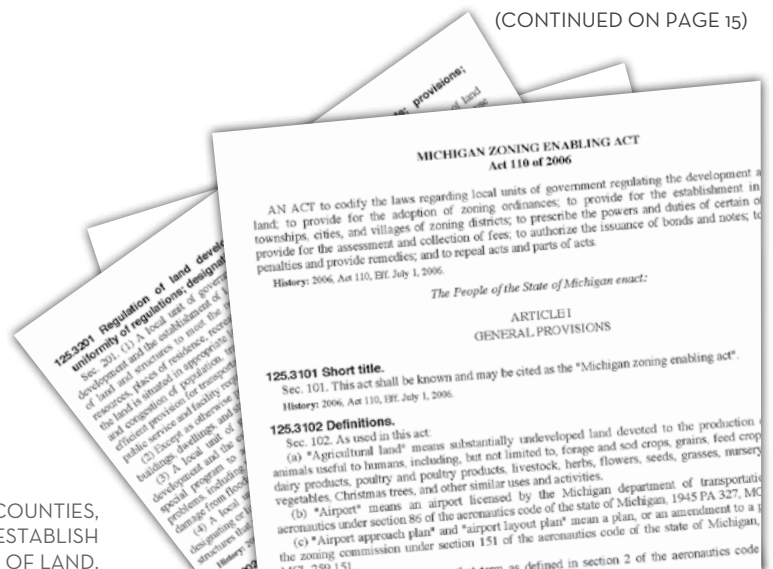
To a large extent, planning and zoning will dictate the type, location, and density of future development in your watershed, so it is important to have an understanding of your local master plan and zoning regulations and how they may impact your lake or stream.

PRACTICAL CONSIDERATIONS FOR RIPARIANS

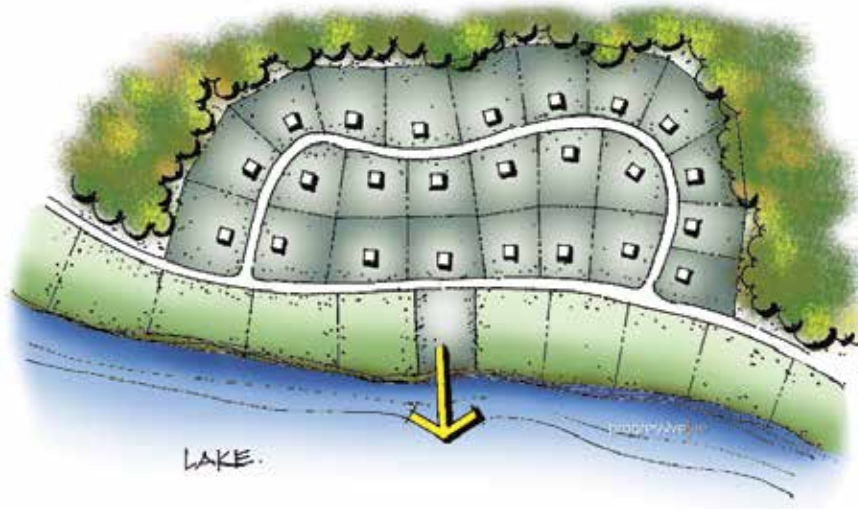
Start by reviewing your community’s master plan and zoning documents to see if and how lake and stream issues are being addressed. Try to be proactive rather than reactive. It is generally better to advocate for a zoning provision before a development proposal is put on the table. If a development meets planning zoning standards, it may well be approved. For example, let’s say a condominium development is proposed near your lake and the developer wants to allow a dozen off-lake condominium owners to have boating and docking privileges. However, the condominium development only has 200-feet of lake frontage. A zoning provision that regulates keyhole or funnel development could limit the number of off-lake condominium owners who have dockage privileges. Absent a keyhole ordinance, unrestricted funnel-type development could easily occur on your lake.

Note that zoning is not retroactive. Pre-existing, non-conforming uses are generally allowed to continue even if zoning regulations change. For example, if a community passes an ordinance that requires a shoreline vegetation buffer, properties that did not have a shoreline buffer at the time the ordinance was adopted would not be required to create one. This would be considered a pre-existing, non-

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THE MICHIGAN ZONING ENABLING ACT (PA 110 OF 2006) PROVIDES COUNTIES, TOWNSHIPS, CITIES, AND VILLAGES WITH THE AUTHORITY TO ESTABLISH ZONING ORDINANCES TO REGULATE THE DEVELOPMENT AND USE OF LAND.



FUNNEL OR KEYHOLE DEVELOPMENT OCCURS WHEN A LAKEFRONT LOT IS USED TO PROVIDE LAKE ACCESS TO A LARGER DEVELOPMENT LOCATED AWAY FROM THE LAKE. FUNNELING ALLOWS MANY INDIVIDUALS TO GAIN ACCESS TO A LAKE THROUGH A SMALL CORRIDOR OF PROPERTY. KEYHOLE ORDINANCES CAN BE USED TO REGULATE UNBRIDLED BACK LOT ACCESS TO LAKES.

conforming use. However, shoreline buffers that existed at the time of ordinance adoption would need to be preserved.

Planning and zoning should not be considered a mechanism for stopping development, rather, a tool for accommodating development with minimal environmental impact. Care must be taken in drafting zoning provisions to ensure the regulations are not overly burdensome or deprive a property owner of the reasonable use of their property. To sustain a legal challenge, zoning can't be confiscatory or constitute a taking. It is also important to note that zoning cannot be arbitrary or capricious. There must be a clear public benefit and proper justification for land use regulation. Finally, zoning provisions must be realistic and enforceable. An ordinance that sounds good on paper but lacks an enforcement mechanism will likely be ineffective.

ADVOCATE EFFECTIVELY

Below are some things to consider when attempting to advocate for a particular cause.

Each community is unique

Each community is unique in terms of the makeup of its decision-making bodies, issues that the community is facing, environmental attributes, and attitudes about the level of environmental protection needed for the community. When approaching a community with suggestions on how best to address a specific area of concern, it is important that research be done to determine what existing policies or regulations are in place to address the issue. It is equally important to get a sense for the "pulse" of the community with respect to the issue. It is a good idea to attend a couple of planning commission or township board meetings and to ask questions about the issue and listen to their responses.

Communicate clearly, consistently, and in a unified way

Effective communication is often the key to success. Make every effort to communicate in a coherent and

unified fashion. Make sure that your group is unified in its desire to advance a certain issue. Attempt to provide resource materials that frame the issues as clearly and concisely as possible. A picture is worth a thousand words. Land use issues are often complicated and difficult to communicate in a succinct way.

Visual tools such as GIS maps and graphic illustrations of various zoning techniques can be very powerful communication tools.

Pay attention to existing social and political networks

Often there may be other groups within the community or region that share similar views and concerns about land use issues. Attempt to interface with these groups and to better utilize often-limited resources. Alliances can be fruitful if properly forged.

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Local officials may have limited time for water-related issues

This is a hard lesson to learn. We are often consumed by our desire to advance a certain issue and may feel issues related to water resources protection are paramount on everyone's mind. This is not necessarily the case. Local government decision-makers must deal with a myriad of problems and concerns on a daily basis. Recognize that local government representatives may not have much time to devote to your specific cause and try to use your time (and their time) as efficiently as possible. Remember, public meeting agendas are often long; use your time wisely.

It is easy to be perceived as a threat

Be careful how you present an issue. Don't be confrontational or accusatory in your presentation. Any land use policy or regulation that you are trying to promote must be perceived by the decision-making body to be enforceable and defensible if challenged.

Many local government officials have lived in the community for a long time and know how to get things done. Be respectful and listen and try to understand their

perspective on an issue. Look for win-win scenarios. For example, Low Impact Development (LID) approaches that promote infiltration of stormwater at its source are gaining acceptance as both a cost-effective and environmentally sound way of managing stormwater. Thus, LID can present a winning scenario for the developer, the home buyer, and the community at large.

Model ordinances may be only marginally helpful

It is rare that a "one size fits all" approach works. Land use and environmental issues are inherently complex. There are often several alternative approaches and combinations of approaches that can be used to achieve a specific end. Be willing to compromise and to look at other alternatives.

Each community is different and will need to have policies and regulations integrated into their planning and zoning documents in a manner that works for them. A model ordinance may be a good starting point for discussion and as a point of comparison to ensure that needed elements are included, but is rarely the end. Each community must make sure the regulation is justified, is supported by its master plan, and that the regulation or policy is properly integrated into their zoning or other ordinances. The planning and zoning process can be complicated and the assistance of a professional community planner or a municipal attorney can be a valuable asset in this regard.

Patience and persistence pay

Land use policies often only evolve after several months of discussion and work. While a year or two may seem like a long time, in the planning and zoning arena, it really isn't. This is especially true if the community is undergoing, or about to undergo, major changes in their master plans and ordinances. While this is an opportune time to introduce water quality issues, those issues must take their place among the several other concerns being addressed. Land use decisions take time, as does the planning process. The process is iterative and adjustments must be made with respect to alternatives and strategies as new legislation is enacted, players change, and issues are redefined. It is not always possible to accomplish everything within a few months' time. R.



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