

Michigan's Maze of Land and Water Management Laws

Mark A. Wyckoff



Michigan has much to celebrate in its sesquicentennial year—above all, its economic recovery, which has decreased unemployment levels and regained population growth. Michigan also is celebrating its diverse natural resources, including 3,288 miles of Great Lakes shoreline, over 11,000 lakes, and 36,350 miles of rivers and streams. This natural heritage has influenced Michigan citizens to support some of the strongest and widest-ranging environmental protection legislation and development control laws in the nation. Through their piecemeal approach, however, well-intended laws have spawned a complex tangle of requirements and procedures that requires a cadre of experts to penetrate. In this, Michigan reflects the situation in many other states, which, unlike the much-publicized few, have not seen fit to pull together a comprehensive and consistent statutory framework for land and water management. And the Michigan courts, with a notable record for contradictory decisions, have not helped. All this makes Michigan a tougher-than-ordinary place in which to develop and to control development. Recent proposals to sort out some of the problems will perhaps be helpful to other states with similar problems.

Many Laws Still Leave Many Gaps

During the 1970s, the Michigan legislature passed a great many statutes to protect

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environmental quality. All sought to achieve important public objectives, but none were enacted with a clear and consistent vision of state and local roles in managing land and water resources. As a result, they vary tremendously in their implementation approaches and their effects on property owners, and are often perceived as complicating the land development process even while protecting legitimate public interests.

Michigan is not alone with this problem; plenty of other states have left gaps in their protective coverage and failed to coordinate administration of the laws. Only a few states such as Hawaii, Oregon, California, and Florida have pioneered programs that tie all the pieces together and clearly define state and local government roles in overseeing land development. Michigan, however, appears to have constructed a particularly fragmented legislative foundation for state and local growth management.

A Surfeit of Local Planning Acts

One key area for improvement is local planning authority for land and water management. Michigan entered the land use regulatory arena early with a city-village zoning enabling act in 1921, five years before the national Standard State Zoning Enabling Act became well known. It took nine statutes and 24 years, however, before a local planning and zoning "system" evolved. The result is three separate, and different, enabling acts: one for the 534 cities and villages, one for the 1,242 townships, and one for the 83 counties in Mich-

igan. (Roughly 900 townships have adopted zoning, which supersedes county zoning, and 28 counties have an ordinance in effect in at least part of them.) As shown in the accompanying box, three other statutes authorize local planning and a fourth authorizes regional planning. While the planning and zoning acts are similar in their requirements (largely due to amendments to zoning enabling acts in 1978), they are not identical, thus forcing planners, developers, and land use attorneys to be familiar with subtle but important differences when working in various communities.

Another problem area is the lack of any state land use planning program to establish statewide goals and guidelines for the exercise of local planning and zoning controls. Coupled with the absence of a broadly based state technical assistance program to help municipalities with planning and zoning problems, this situation allows a wide variance in the quality of local plans and regulatory programs.

Still another problem is the series of erratic state court decisions in land use matters over the years. Michigan is one of the most litigious states in the nation when it comes to zoning. The more than 550 appellate court decisions to date put Michigan in the big leagues with New York, California, New Jersey, and Pennsylvania. Unfortunately, as Norman Williams Jr. wrote in his treatise *American Planning Law* in 1974, Michigan state court decisions in zoning matters are the "most erratic of all," a dubious distinction. For example, Michigan Supreme Courts have pronounced, then rescinded, four different rules in the last 17 years regarding the proper remedy when a zoning classification is held unconstitutional. All but the most recent decision were preceded by the court's statement that it did not want to sit as a superzoning commission; it then did just that.

Looking Ahead—and Up

To continue protection of the environment and accommodation and economic development, broader state-level land and water resource planning is critical. A key component of such a planning program is being established: a computerized land resource inventory program with unparalleled access to detailed data. The program is expected to provide the necessary information for most state and county planning for the next 20 years.

Environmental Protection Laws

Environmental Protection Act, PA 127 of 1970
 Shorelands Management and Protection Act, PA 245 of 1970
 Natural River Act, PA 231 of 1970
 Inland Lakes and Stream Act, PA 346 of 1972
 Soil Erosion and Sedimentation Control Act, PA 347 of 1972
 Farmland and Open Space Preservation Act, PA 116 of 1974
 Sand Dune Protection and Management Act, PA 222 of 1976

Solid Waste Management Act, PA 641 of 1978
 Wetland Protection Act, PA 203 of 1979
 Hazardous Waste Management Act, PA 64 of 1979

Land Use Planning and Development Regulation Laws

City-Village Zoning Act, PA 207 of 1921
 Municipal Planning Act, PA 285 of 1931
 Township Rural Zoning Act, PA 184 of 1943

County Rural Zoning Enabling Act, PA 183 of 1943
 County Planning Act, PA 282 of 1945
 Regional Planning Act, PA 281 of 1945

Township Planning Act, PA 168 of 1959
 Subdivision Control Act, PA 288 of 1967
 Land Sales Act, PA 286 of 1972
 Condominium Act, PA 59 of 1978
 Michigan Resource Inventory Act, PA 204 of 1979

The Michigan legislature is also considering a complete revision of the subdivision control act. The current act requires a plat review process that often takes one to three years to complete, and defines "subdivide" in a way that has allowed hundreds of thousands of acres to be divided into lots thousands of feet in depth that can be divided again, without formal approval, at 10 year intervals. These and other problems stimulated the formulation of an advisory

committee, which has spent over four years revamping the act and moving it through legislative committees. Although its passage is not certain, and a number of counterproductive amendments have been proposed, a revised act could go far to improve the regulatory structure of land use management in the state.

Another positive step is the establishment of the Great Lakes and Water Resources Planning Commission, which has

a broad charge to plan for Michigan's water management needs into the next century. The commission is looking into relationships between land and water as well as the plethora of water resource laws, and has recently released a draft water resources plan that represents a balanced approach to water use and protection.

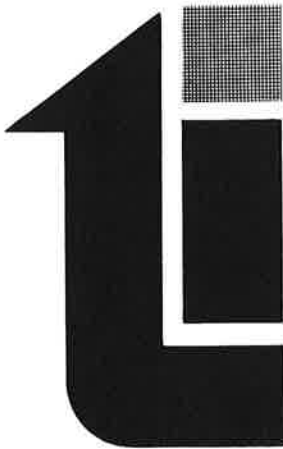
These and other gubernatorial initiatives to streamline permit procedures will help bridge the gaps in present laws. It remains to be seen, however, whether Michigan can ever take the big step of passing comprehensive legislation to structure a consistent framework of land and water management regulation. In the meantime, Michigan developers and planners will continue to muddle through the maze. Says Norman Hyman, a prominent Detroit land use attorney, "From a practical standpoint, although the laws are confusing, each individual case manages to sort itself out." (IRWA)

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