

Public Policy Position
Proposed Amendment to Michigan's Zoning Enabling Act, MCL 125.3405

The Government Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 1,273 members. The Government Law Section is not the State Bar of Michigan and the position expressed herein is that of the Government Law Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Government Law Section has a public policy decision-making body with 21 members. On December 7, 2024, the Section adopted its position after a discussion and vote at a scheduled meeting. 15 members voted in favor of the Section's position, 0 members voted against this position, 0 members abstained, 6 members did not vote.

Support

Explanation:

In 2024, the Michigan Supreme Court decided *Mayfield Township vs. Jostock*, a case involving a dispute over a conditional rezoning request. The Court's holding allows a Local Unit of Government approve conditional rezoning for a principal permitted use, and also a special land use authorized in a zoning district. The Government Law Section is proposing an amendment to MCL 125.3405 so that Michigan's Zoning Enabling Act conforms with, and codifies the holding of the *Jostock* opinion, as well as provides clear procedures and requirements for conditional rezoning requests.

Conditional Rezoning Amendment Proposal - As Approved by the GLS Council on December 7th, 2024

The proposed changes are CAPITALIZED

125.3405 Use and development of land as condition to rezoning.
Sec. 405.

(1) IN CONNECTION WITH A REZONING, an owner of land may voluntarily offer in writing, and the local unit of government may approve, A certain use and development of the land as a condition to with SITE-SPECIFIC CONDITIONS TO THE rezoning of the land or an amendment to a zoning map. THE CONDITIONS MUST RESULT IN A LIMITATION ON A PERMITTED USE BY RIGHT, OR A PERMITTED SPECIAL LAND USE, IN THE ZONING DISTRICT TO WHICH THE LAND IS PROPOSED TO BE

REZONED.

(2) In approving the conditions under subsection (1), the local unit of government may establish a time period during WITHIN which the conditions CONDITIONAL REZONING WILL apply to the land. Except for CONSIDERING ANY extension under subsection (4), if ALL OF the conditions are not satisfied within the time specified under this subsection, the land shall revert to its former zoning classification.

(3) The local government shall not add to or alter the conditions approved under subsection (1) during the time period specified under subsection (2) of this section. THE MINUTES OF THE MEETING OF THE LEGISLATIVE BODY AT WHICH THE CONDITIONAL REZONING IS APPROVED SHALL REFLECT THE CONCURRENCE OF THE PROPERTY OWNER THAT THE REQUIREMENT OF THIS SECTION IS MET.

(4) The time period specified under subsection (2) may FOR GOOD CAUSE be extended upon the WRITTEN application of the landowner and approval of the local unit of government. THE DURATION OF SUCH EXTENSION SHALL BE REFLECTED IN THE MINUTES OF THE MEETING AT WHICH IT IS APPROVED.

(5) A local unit of government shall not require a landowner to offer conditions as a requirement for rezoning. The lack of an offer under subsection (1) shall not otherwise affect a landowner's rights under this act, the ordinances of the local unit of government, or any other laws of this state.

(6) PROVIDED THAT IT DOES NOT CONFLICT WITH THIS SECTION, A LOCAL UNIT OF GOVERNMENT MAY REGULATE CONDITIONAL REZONINGS IN ITS ZONING ORDINANCE. IN ADDITION TO ADDRESSING OTHER MATTERS, SUCH ORDINANCE REGULATION MAY INCLUDE THE FOLLOWING:

(A) THE REQUIREMENT FOR THE PROPERTY OWNER TO ENTER INTO A DEVELOPMENT AGREEMENT WITH THE LOCAL UNIT OF GOVERNMENT, IN RECORDABLE FORM, SPECIFYING THE RELEVANT TERMS OF AN APPROVED CONDITIONAL REZONING;

(B) THE OBLIGATION OF THE OWNER TO RECORD A NOTICE OF THE DATE AND TERMS OF THE CONDITIONAL REZONING WITH THE REGISTER OF DEEDS FOR THE COUNTY IN WHICH THE LAND IS SITUATED;

(C) ANY SPECIAL REVIEW PROCEDURE FOR APPROVING A SPECIAL LAND USE FOR THOSE CASES IN WHICH AN OWNER'S CONDITIONAL REZONING OFFER IS BASED ON A PERMITTED SPECIAL LAND USE IN THE DISTRICT TO WHICH REZONING IS SOUGHT. SUCH PROCEDURE MUST PROVIDE THE PUBLIC WITH THE RIGHT TO BE HEARD ON THE OWNER'S PROPOSED SPECIAL LAND USE.



GOVERNMENT LAW SECTION

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