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acres is all the Michigan
we will ever have."*

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Michigan State University
Extension Land Use Team

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How to Take Minutes for Administrative Decisions

This bulletin discusses what should be in a governmental body's minutes. The contents of minutes will differ, depending on which government body the minutes are for. This is a general document; communities may wish to tailor its recommendations to their specific situations after a review by legal counsel. For purposes of this discussion, there are two types of governmental bodies:¹ legislative or elected bodies (e.g., township boards of trustees, village and city councils² and county boards of commissioners) and administrative bodies such as zoning boards of appeals and planning commissions. This bulletin is about the second type of body: an administrative board.

Material on how to take minutes and the content of minutes for legislative or elected bodies is available from the Clerks Association of the Michigan Association of Counties, the Michigan Townships Association, and the Michigan Municipal League.

Some Basic Concepts

Minutes for an elected board are often very brief, containing little discussion and little more than the text of motions. Some include only motions that have been adopted. Minutes for an administrative body should include much more detail.

To understand this, first, it is helpful to understand the difference between a legislative body and an administrative body. Legislative bodies adopt policy, adopt ordinances, and have a degree of autonomy and governmental

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¹Crawford, Clan Jr.; *Michigan Zoning and Planning* Third Edition; Institute of Continuing Legal Education, Ann Arbor, Michigan 1988; page 53.

²City and village councils can, according to statute, also act as zoning boards of appeals. It is not clear if this would be upheld upon court challenge when reviewed against separation of powers in the Michigan Constitution. If a city or village council also acts as the zoning board of appeals, it should hold those meetings separately and keep a separate set of minutes as the board of appeals. It should also act as, and keep minutes as an administrative body, rather than an elected body.

immunity when acting on legislative matters, and a legislative body's actions are subject to legal tests that are ordinarily applied to legislation.³ When a legislative body acts on legislative matters, it is not important to document who said what, so a record is not kept about such things. Legislative bodies are not required to base legislative decisions on proven

Some Administrative Bodies

- Planning commission
 - Zoning or planning board
 - Zoning board of appeals
 - Park commission/authority
 - Board of review (tax)
 - Department of public works (for some decisions)
 - Road commission (for some decisions)
 - City/village street authority (or the council, if acting in that capacity)
 - Transit authorities (airports, bus, etc.) (for some decisions)
 - Public health board (for some decisions)
 - Health code appeals board
 - Construction board of appeals
 - Soil and sedimentation board of appeals
 - Historic district board
- and others (including elected bodies acting on administrative matters such as special land uses, site plans for zoning, land divisions, and administrative matters related to other ordinances).

facts or to state their reasons.⁴ If a community finds itself in a courtroom, the presumption is that the action of a legislative body is correct and the burden is on the other party to show the legislative body's action was not proper.

In contrast, the decisions of an administrative body are subject to much more rigorous review in a courtroom. The administrative body may have a

greater burden to defend its decision. Administrative bodies in a courtroom do not always start out with the presumption that their decisions are correct.

Further, if an administrative decision is challenged, the court's review will be of the facts and reasons stated in the record (minutes). There is no opportunity for an administrative body to add more facts or reasons than what appears in the minutes.⁵ If the required items are not in the minutes, they cannot be used in the defense of the administrative body's decision.

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If the minutes and record are inadequate for the court to make a determinative review, the zoning statutes require the court to order further proceedings before the administrative body.⁶ That means the administrative body may have to visit the issue again. For a couple of reasons, that task should be viewed as an unpleasant experience to be avoided. First, the issue is controversial (remember, it went to court). Second, it will be even hotter with more public attention the second time around.

³Crawford, Clan Jr.; *Michigan Zoning and Planning* Third Edition; Institute of Continuing Legal Education, Ann Arbor, Michigan 1988; page 53.

⁴*1426 Woodward Avenue Corp v. Wolff*, 312 Mich 352; 20 NW2d 217 (1945).

⁵*Farah v. Sachs*, 10 Mich App 198; 157 NW2d 9 (1968); *Lafayette Market Co. v. Detroit*, 43 Mich App 129; 203 NW2d 745 (1972); *Lorland Civic Ass'n v DiMatteo*, 10 Mich App 129; 157 NW2d 1 (1968)

⁶Section 502(4) and 606(2) of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3502(4) and 125.3606(2)). (This footnote used to cite the following acts, each repealed as of July 1, 2006: Section 23(3) of P.A.183 of 1943, as amended (being the County Zoning Act, M.C.L.125.223(3)); section 23a(2) of P.A. 184 of 1943, as amended, (being the Township Zoning Act, M.C.L. 125.293a(2)); and Section 5(12) of P.A. 207 of 1921, as amended, (being the City and Village Zoning Act, M.C.L. 125.585(12)).)

Some Types of Administrative Decisions

- Special land use permit (by zoning board/planning commission or legislative body).
- Planned unit development as a special use (by zoning board/planning commission or legislative body).
- Review of any capital improvement for compliance with a plan such as a land purchase, road, street, square, park, or other public way, ground, open space, building or structure (by a planning commission with an adopted plan).
- Variance (by zoning appeals board).
- Ordinance interpretation (by a zoning appeals board).
- Review of a township plan/plan amendment (by a county planning commission).
- Review of a township zoning ordinance/zoning amendment (by a county planning commission).
- Farmland Preservation Act application (by a county variety of public bodies).
- Commercial Forest Act application (by a variety of public bodies).
- Subdivision (by a variety of public bodies).
- Land Division (normally done by an individual or public body).
- Lot (in a subdivision) split (by a variety of public bodies).
- Driveway/private road/access reviews by a variety of public bodies.

When reviewing an administrative decision, the court applies a number of tests. One of the tests is to review the record “to determine whether the result was based upon competent, material and substantial evidence on the record as a whole.” This language comes from the 1963 Michigan Constitution, Article IV, on the judicial branch of government providing instruction on review of administrative actions (Article VI, §28). It is a three-part test: (1) the decision was based on materials that are sufficiently substantiated to be found to be true (having substance or capable of being treated as fact, not imaginary); (2) the amount of evidence supporting the administrative body’s decision outweighs the material supporting other possible decisions; (3) and the review is based on

the entire record (minutes, application, attachments and so on), not a review of just part of the record.

The above test is just one of the legal tests a court uses in reviewing an administrative decision, though it is the only one relevant to the task of taking minutes.⁷

The decision in *Macenas v Village of Michiana*⁸ set out to further clarify the above standard of review:

Where the facts relating to a particular use are not in dispute, the legal effect of those facts, that is, how the terms of the [zoning] ordinance are to be interpreted in relation to the facts, is a matter of law, and the Courts are not bound by the decisions of administrative bodies on questions of law⁹....

Where the primary question is whether the [zoning] ordinance provision applies in the given situation, there are two questions for determination:

- What are the facts which, taken together, can be said to describe the situation?
- How does the ordinance apply to those facts?

Determination of the first question is for the [zoning appeals] Board to decide. If its determination with respect to this is reasonable **and is supported by**

⁷The other tests are (a) Complies with the constitution and laws of the state, (b) Is based upon proper procedure; (c) Is supported by competent, material, and substantial evidence on the record; (d) Represents the reasonable exercise of discretion granted by law to the zoning board of appeals. See Article 6, Section 28 of the 1963 Michigan Constitution; and section 606(1) of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3606(1)). (This footnote used to cite the following acts, each repealed as of July 1, 2006: Section 23(2) of P.A. 183 of 1943, as amended (being the County Zoning Act, M.C.L. 125.223(2)); or Section 23a(1) of P.A. 184 of 1943, as amended, (being the Township Zoning Act, M.C.L. 125.293a(1)); or Section 5(11) of P.A. 207 of 1921, as amended, (being the City and Village Zoning Act, M.C.L. 125.585(11)).

⁸*Macenas v. Village of Michiana*, 433 Mich 380; 446 NW2d 102 (1989). Brackets added.

⁹*Macena*, 395 (citing 3 Rathkopf, *The Law of Zoning & Planning* (4th ed) §42.07, pp. 42-69.)

substantial evidence in the record, even though debatable, it should be accepted by the court of review.

Determination of the second question, i.e., what the ordinance means in relation to the facts, is a question of law for the courts to decide.¹⁰

As a result, the job of taking minutes for an administrative body involves more effort and more detailed content than taking minutes for a legislative body when it acts on legislative matters. When a legislative body acts in an administrative capacity, however, it is bound by the procedures and standards in the ordinance the same as an administrative body. It also needs the minutes on administrative actions to be very complete. When a legislative body makes a final decision on a special land use permit, site plan or land division, it is acting in an administrative capacity. Taking complete minutes and keeping a good record can be an important strategy to improve a municipality's position if the decision is challenged in court and, better yet, may enable it to avoid being taken to court in the first place. A number of important items should be included in minutes, and other items should be attached to or filed with the minutes. The minutes and items attached or filed with the minutes become "the record."

Taking complete minutes and keeping a good record can be an important strategy to improve your municipality's position if challenged in court, and better yet may enable it to avoid being taken to court in the first place.

Some matters discussed at an administrative body meeting may not be important. Therefore, simply providing a transcript of the meeting – recording every word – may create minutes that are longer and more extensive (and thus expensive to

do) than they need to be. Also, a transcript may still not provide everything that should be in the record. Preparation of a transcript is not always required by courts.¹¹ Below is an outline of what the minutes and record should contain.

Minutes Content

In general, minutes should include enough information for a person who did not attend the meeting to get a reasonable idea of what happened at the meeting. Specifically, the minutes should include the following elements for each administrative action taken:

- Who spoke and a summary of what was said.
- A statement of the approval being requested (e.g., special land use permit, variance, subdivision, land division, etc.).
- The location of the property involved (tax parcel number and description, legal description and common description).
- What exhibits were submitted (list each one, describe each, number or letter each, and refer to the letter or number in the minutes).
- What information was considered (summary of discussion by members at the meeting).
- The administrative body's findings of fact.
- Reasons for the decision that has been made. (If the action is to deny, then each reason should refer to a section of an ordinance that would be violated or not complied with.)
- The decision (e.g., approve, deny, approve with modification).
- A list of all required conditions to the approval or improvements (and if they are to be built up front, name the type of performance security to be used), if any.
- List all changes to the map/drawing/site plan submitted. (Sometimes it is easier to use a black felt-tip pen and draw the changes on the map indicating what was applied for, rather than listing the changes. Do not use different

¹⁰*Macenas*, 395 (citing 3 Rathkopf, *The Law of Zoning & Planning* (4th ed) §42.07, pp. 69-70) Brackets and emphasis added.

¹¹*Janigian v. Dearborn*, 336 Mich 261; 57 NW2d 876 (1953).

colors. The map will most likely be photocopied, and colors on the copy will not show at all or will just be black.)

- Make the map/drawing/site plan part of the motion (e.g., "...attached to the original copy of these minutes as appendix 'A', and made a part of these minutes...").

Send a copy of the final action to the applicant by mail or registered mail (return receipt) or personally deliver (and have him or her sign a statement saying he or she received it, or have a municipal official sign an affidavit saying it was delivered/mailed). If the latter two options are used, there will be no doubt the applicant got a copy of the final action and knows what happened and what conditions, changes, etc., must be met, if any. This is important if enforcement is needed in the future. Do not assume that because a person was at the meeting, he/she knows what was decided.

The findings of fact, reasons, and the decision can be handled one of two ways. First all three can be included as part of a motion or motions. Second, the findings of fact may simply be in the part of the minutes that summarizes the discussion, with the decisions and reasons included in a motion or motions. There are advantages and weaknesses to both approaches.

If the findings of fact are handled as part of the minutes that summarize the discussion, the advantage is the minutes will include each point brought up in the debate. The minutes should also reflect enough of the debate to clearly indicate which statements made in discussion became, by consensus, the administrative body's list of facts it found to be true and germane to the issue, the "findings of fact." This is effective if there is an efficient minute taker (such as an office secretary using a laptop computer or shorthand). Another disadvantage is all the statements made in debate would be summarized in the minutes, including some points that do not support the conclusion. (Some may argue this is not a disadvantage. It simply accurately reflects many issues do not have clear black and white answers and judgment is made on the basis of the preponderance of

information available.)

The other method is to include the findings of fact, reasons, and conclusions only within the motion or motions. All three elements can be made as a single motion or handled separately so the findings of fact, reasons, and conclusions are handled as two or three separate motions. The advantage is the administrative body goes through the process of agreeing on the final wording of the motion and, as a result, makes more formal findings of fact. The disadvantage is the motions are more complex and lengthy. A complex, lengthy motion is difficult to write on the fly during a meeting. This difficulty can be overcome if staff (planner, zoning administrator, consultant) draft a motion to approve and a motion to disapprove prior to the meeting. This draft of possible pro and con motions can then be edited to suit the administrative body during the meeting. Many municipal attorneys do not support this approach because it often implies to citizens that a result was predetermined, and rewording a previously prepared motion on the spot can result in unintended problems or ambiguities.

A third possible option is to use a combination of both of these—i.e., summarizing discussion to reflect some of the sorting-through statements that led to the findings of fact, and recording the motion or motions containing all three elements: findings of fact, reasons and conclusion/decision.

A fourth option often used in communities with adequate planning/zoning staffs is to accept a staff report as the basic findings of fact. This is possible only when such a report is complete and includes analysis but is without a recommended action.

For purposes of formalizing this part of the minutes, one section of an administrative body's rules of procedure (i.e., bylaws) states what such motions should contain. The following sample, from a zoning appeals board, could be modified for any administrative body.

4. 10 Motions.

Motions shall be reiterated by the Chair before a vote is taken.

A. Motions dealing with an appeal or variance concerning Anytown zoning ordinance shall be stated as one, two, or three motions which collectively contain each of the following parts:

(1) The list of facts, which is the information pertinent to making a decision on the matter, structured as a "findings of fact" on the case (including parcel owner, parcel legal description, what is applied for).

(2) The rationale, i.e., reasons for why the conclusion was made. The rationale shall contain at a minimum

a. For Dimensional Variances: A dimensional variance may be granted by the Zoning Board of Appeals only in cases where the applicant demonstrates in the official record of the public hearing that practical difficulty exists by showing all of the following:

(1) That the need for the requested variance is due to unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shape, water, or topography and is not due to the applicants personal or economic difficulty.

(2) That the need for the requested variance is not the result of actions of the property owner or previous property owners (self-created).

(3) That strict compliance with regulations governing area, setback, frontage, height, bulk, density or other dimensional requirements will unreasonably prevent the property owner from using the property for a

permitted purpose, or will render conformity with those regulations unnecessarily burdensome.

(4) That the requested variance is the minimum variance necessary to do substantial justice to the applicant as well as to other property owners in the district.

(5) That the requested variance will not cause an adverse impact on surrounding property, property values, or the use and enjoyment of property in the neighborhood or zoning district.

b. For Use Variances: Under no circumstances shall the Appeals Board grant a variance to allow a use not permissible under the terms of this Ordinance in the district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said district.

[OR, THIS SECOND OPTION, BELOW, IS AVAILABLE ONLY TO CITIES AND VILLAGES, TOWNSHIPS AND COUNTIES THAT, AS OF FEBRUARY 15, 2006 HAD A ZONING ORDINANCE PROVISION THAT EXPRESSLY AUTHORIZED GRANTING USE VARIANCES (E.G., USES THE PHRASE "USE VARIANCE" OR "VARIANCES FROM USES OF LAND"), OR TO A TOWNSHIP AND COUNTY THAT ACTUALLY GRANTED A USE VARIANCE(S) BEFORE FEBRUARY 15, 2006.]

b. For Use Variances: A use variance may be granted by the Zoning Board of Appeals only in cases where the applicant demonstrates in the official record of the public hearing that undue hardship exists by showing all of the following:

(1) The building, structure, or land cannot be reasonably used for

any of the uses permitted by right or by special use permit in the zoning district in which it is located.

- (2) That the need for the requested variance is due to unique circumstances or physical conditions of the property involved, such as narrowness, shallowness, shape, water, or topography and is not due to the applicant's personal or economic hardship.
- (3) That the proposed use will not alter the essential character of the neighborhood.
- (4) That the need for the requested variance is not the result of actions of the property owner or previous property owners (self-created).

[END OF USE VARIANCE OPTION.]

(Note: All four of the above points must be found true, or in the affirmative, or a variance shall not be granted.)

- c. Other specific standards for variances that may be in the Anytown Zoning Ordinance.
- d. An explanation of how the facts support the conclusion.
- (3) The conclusion or decision.
 - a. Any conditions upon which a variance may be issued, if applicable. Conditions shall be listed in detail and based on regulations or standards already in Anytown Zoning Ordinance related to this decision.
 - b. Reasons why the conditions are imposed.
- B. Any other motion dealing with a non-administrative decision matter shall be stated in prose or in the form of a resolution.

Here's another sample section from an

administrative body's rules of procedure:

4.5 Motions

- A. Motions shall be restated by the chair (or the recording secretary) before a vote is taken.
- B. Findings of Fact. All actions taken in an administrative capacity (including but not limited to appeals, special land use permits, subdivisions, zoning, site plan review, planned unit developments, variances, determination of compliance with an adopted plan, and review of township zoning) shall include each of the following parts.
 1. A findings of fact, listing what the Commission determines to be relevant facts (including parcel owner, parcel legal descriptions, what is applied for) in the case in order to eliminate misleading statements, hearsay, irrelevant or untrue statements.
 2. Conclusions, listing reasons based on the facts for the Commission's action.

The Commission's action, recommendation, or position, approval, approval with conditions, or disapproval.

Outline

A full set of minutes should include each of the following as it may have occurred during the meeting:

- Time and place the meeting was called to order.
- Attendance of members and support staff members.
- Indication of others present (listing names if others choose to sign in and/or an approximate count of those present).
- Summary or text of points of all reports (including reports of what was seen and discussed at a site inspection) given at the meeting, who gave the report and in what capacity. Attach a copy of reports offered in writing.
- Summary of all points made in public participation or at a hearing by the applicant, officials or guests and an indication of who

made the comments (name and address). Attach a copy of the public's statement, petition or letter if it is provided in written form.

- Full text of all motions introduced (whether seconded or not), who made each motion and who seconded the motion.
- A summary of all points made by members and staff members in debate or discussion on the motion or issue.
- Who called the question, if applicable.
- The type of vote and its outcome. If a roll call vote, indicate who voted yes, who voted no and who abstained (and a reason for abstaining), or state that the vote was unanimous. If not a roll call vote, then simply a statement such as "The motion passed/failed after a voice vote."
- Whether a person making a motion withdrew it from consideration.
- All the chair's rulings.
- All challenges, discussion and vote/outcome on a chair's ruling.
- All parliamentary inquiries or points of order.
- Time when a voting member enters or leaves the meeting.
- When a voting member or staff person has a conflict of interest and the general nature of the conflict, and when the voting member ceases or resumes participating in discussion, voting and deliberations at a meeting.
- All calls for an attendance count, the attendance and the ruling on whether a quorum exists.
- The time of start and end of each recess.
- Full text of any resolutions offered.
- Summary of announcements.
- Summary of informal actions or agreement on consensus.
- Time of adjournment.

Often it is easier and quicker to attach written materials (report, public statement, letter, petition, exhibits, evidence, etc.) to the minutes rather than take the time and trouble to summarize them in the minutes. This can be done by lettering or

numbering each attachment. A statement in the minutes similar to the following is used to indicate something was presented and is a part of the minutes: "The statement by Mr. Doe is attached to the original copy of these minutes as appendix 'A' and made a part of these minutes." The attachments do not need to be sent out with copies of the minutes for the next meeting, but each attachment should be included with the minutes filed with the clerk, kept on file by the administrative body or provided to a court.

Open Meetings Act

The following points should be kept in mind for purposes of complying with the Open Meetings Act:

- Minutes must be done and available for public inspection within eight business days following the meeting.¹²
- Corrections in the minutes shall be made not later than the next meeting after the meeting to which the minutes refer. Corrected minutes shall be available no later than the next subsequent meeting after correction. The corrected minutes shall show both the original entry and the correction.¹³
- Approved minutes shall be public record and made available not later than five days after approval for the public to inspect at the address of the public body that appears on the public meeting notice. The public shall be able to buy copies of the minutes "at the reasonable cost for printing and copying."¹⁴

¹²Section 9(3) of P.A. 267 of 1976, as amended, (being the Open Meeting Act, M.C.L. 15.269(3)).

¹³Section 9(1) of P.A. 267 of 1976, as amended, (being the Open Meeting Act, M.C.L. 15.269(1)).

¹⁴Section 9(2) of P.A. 267 of 1976, as amended, (being the Open Meeting Act, M.C.L. 15.269(2)).

Note-taking Techniques

Most public bodies elect a secretary or clerk. It is sometimes assumed that this person will take the minutes. In the case of an administrative body, that person is often a voting member of the board or commission. It is difficult to participate fully in the discussion and debate at the meeting while at the same time writing minutes. Doing both might be considered an unfair expectation. Expecting staff members (zoning administrator, planner) to be available at the meeting, making presentations and answering questions while at the same time taking minutes is also problematic. A number of alternatives can be more effective and reasonable in cost:

- Provide for the elected secretary to appoint a deputy secretary who attends the meeting to take and then prepare the minutes.
- On a contract basis, hire an individual to attend the meeting and take minutes. This often can be someone with a home computer who is seeking ways to make extra income.
- Often the elected clerk or the clerk's deputy can be available to take minutes for the administrative body. In that case, the clerk should understand the difference between what should go into the minutes of an administrative body and those of a legislative body.
- If there is an office secretary in the municipality's employ (for example, the secretary in the planning or building department or the general office secretary for the municipality), assign the job of taking minutes to that individual.

When a draft of the minutes is done, it should be proofread and then signed by the administrative body's elected secretary. This proofreading should be done within eight business days after the meeting to comply with the Open Meetings Act.¹⁵

If a tape recording of the meeting is used by the secretary, that tape should be erased once the written version of the minutes has been approved. Avoid having more than one record of a meeting. That one record should be the written minutes, which are approved at the next meeting.

Using a tape recorder is an inefficient way to take minutes. Use of shorthand, a laptop computer or various other methods of note taking save time, are efficient and can be just as accurate. With laptop computers, a first rough draft of the minutes is done and already typed as soon as the meeting is over. An office secretary, deputy clerk or a person hired to take minutes should be expected to have this ability.

The Full Record

The entire record of a meeting should include more than just the minutes. The following should be kept as "the record" for each meeting. These items can be kept separately or attached to the copy of the minutes for that meeting.

- Copy of the Open Meetings Act notice or posting of the meeting.
- Affidavit of mailing and publication for required notices, as applicable.
- Affidavit indicating the Open Meetings Act notice was posted, when and where.
- Original copy of the minutes of the meeting.
- A copy of each attachment or exhibit referred to in the minutes.
- A copy of the application(s) and all of its attachments that were acted upon at the meeting (support documents, maps, site plans, photographs, correspondence received) attached as an appendix to the minutes.
- Subsequent records of any action (inspections, violation notices, etc.).

¹⁵Section 9(3) of P.A. 267 of 1976, as amended, (being the Open Meeting Act, M.C.L. 15.269(3)).