

PRESSING ZONING MATTERS



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New zoning issues arise throughout Michigan all the time. Novel types of uses, activities, structures, and buildings periodically pop up that are not covered by the existing local municipal zoning ordinance. If enough people are concerned, the municipality will typically amend its zoning ordinance after the appropriate public hearing.

Two current “hot zoning topics” in Michigan are wind energy conversion systems (i.e. large wind turbines that generate energy, often called “WECS”) and large solar panel facilities (or “solar farms”). Although a significant number of municipal zoning ordinances in Michigan already deal with those topics, many do not. In most cases, it is prudent for every municipality (i.e., Michigan cities, villages, and townships, and in a few cases, counties) to expressly deal with and regulate WECS and solar farms. Otherwise, the local community might not have any control or say over the development of new WECS or solar farms.

The installation of large WECS (particularly where many dozen are installed throughout a community) has been quite controversial in various areas throughout the Lower Peninsula. Why? There are many reasons. First, the contemporary WECS tend to be much taller than the earlier versions of a decade or two ago. Most of the new ones easily exceed 300 feet in height with one of the blades in the up position. Second, in many areas, they may dominate the horizon for 360 degrees. Although many citizens find telecommunication towers, new factories, large billboards, and other items in rural and semi-rural communities to be undesirable, objectionable, and sometimes negatively affecting property values, they are located only on one small-scale site and do not dominate the entire community or its visual vista. Proposed WECS farms can prompt all of those concerns by local residents and property owners. Third, at night, groupings of large WECS have blinking lights that some find undesirable and disruptive to the darkness.

The counter-argument is that WECS are needed to meet Michigan’s current and future energy needs, particularly to service the public’s growing desire to reduce carbon emissions. Some of the utility companies are effectively mandated by law to invest in or develop WECS. Proponents assert that wind energy is *clean* energy.

Solar panels are also a current hot zoning topic. Many communities either do not regulate them, or have little regulation of solar panels that are mounted on buildings or are ground mounted but small. Extensive zoning regulations tend to regulate the larger solar farms, which are generally those larger than a few acres in size. In many rural and semi-rural areas, area residents have little or no concerns about a one-half acre solar farm but might be opposed to the potential impacts of a 100-acre solar farm.

Based on all of the above, it is likely wise for every municipality to examine its zoning regulations and to amend them accordingly to cover both WECS and solar farms.

New short-term rental (“STR”) cottages, cabins, houses, and trailers continue to increase throughout Michigan. They often cause controversy and potential problems for the local community. Today, very few Michigan municipalities expressly allow, prohibit, or even regulate STRs. Most municipal zoning and other ordinances are simply silent regarding STRs. Again, in most cases, it is prudent for each municipality to define and either disallow or regulate STRs via the local zoning ordinance and also potentially through a separate regulatory or licensing ordinance.

Although there have been several bills introduced and debated in the Michigan Legislature to prohibit local municipalities from banning or even regulating STRs, so far none of those bills have become law. Of course, that could change at any time. To the extent that you feel strongly about STRs, one way or the other, you should contact both your Michigan Senator and House of Representative member (and even the Governor) to express your opinion about the matter. Unfortunately, the state Legislature continues to take away local control in Michigan on a wide variety of different matters.

Another hot topic is food trucks. As food trucks grow in popularity throughout the state, more and more municipalities are regulating how, where, and when food trucks can serve members of the public.

Medical and recreational marijuana facilities continue to be a debated topic statewide. An increasing number of municipalities are allowing medical marijuana dispensaries, which are retail stores that sell to the general public. Although some opposition to such stores has decreased, there are still many communities where the overwhelming majority of residents oppose any marijuana facility and the local zoning or other municipal regulations prohibit such marijuana stores.

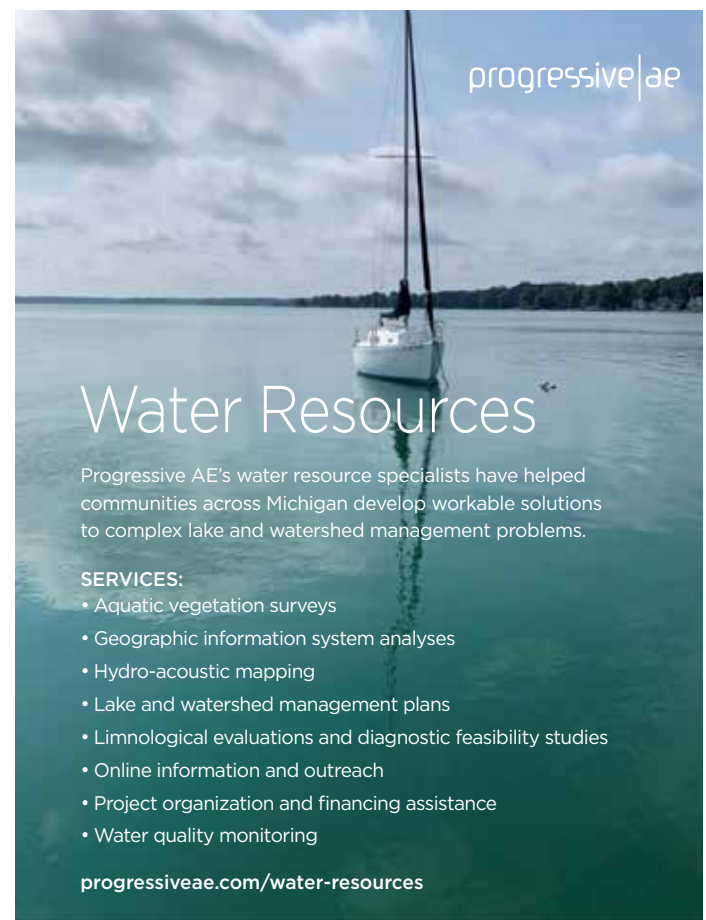
Finally, given increased development pressure over the past few years on many lakes throughout Michigan, riparians should check with their local unit of government to make sure that the government has effective zoning or other ordinance regulations covering the following:

1. Prohibiting new “funnel” or “keyhole” developments.
2. Regulations banning the creation of new canals, channels, and large boat wells, and prohibiting the expansion of existing ones.
3. Restricting or prohibiting multi-family developments on the waterfront, but potentially allowing them for Great Lakes city or village shoreline development.
4. Regulations regarding docks, boat hoists, rafts, and similar items.
5. A lake road end ordinance prohibiting private docks, overnight boat mooring, etc.
6. A regulatory ordinance to govern existing platted parks, walkways, alleys, etc. adjacent to lakes.
7. Regulations keeping the waterfront from being “cluttered up” and overcrowded; for example, a prohibition on items cantilevered over the lake and the banning of permanent docks or piers.
8. An ordinance banning bubblers and other water agitators from lakes during the winter.
9. Regulations regarding creating new ponds and artificial bodies of water.

When it comes to good zoning and other government regulations, the old adage rings true: an ounce of prevention is worth a pound of cure. Once a problem arises, it is generally too late to enact an ordinance to prevent it. That is why it is often called “zoning and planning.”

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For some reason, the Michigan Lakes & Streams Association, Inc. (“MLSA”) has received more complaints about attempts to create new canals, channels, or large “boat wells” (often referred to as “mini canals”) during the past year or so than in the prior decade. Possible municipal regulation or banning of new canals, channels, and similar artificial expanding of waterways was covered in a previous article entitled “Woe is Canals” in the Fall 2021 issue of *The Michigan Riparian* magazine. It apparently is more important than ever that Michigan municipalities with inland lakes and rivers consider adopting zoning or other ordinance regulations banning or severely regulating the creation of new canals, channels, large boat wells, and similar attempts to artificially increase the surface area and size of Michigan lakes and rivers. It is discouraging that state regulatory agencies would even consider allowing such artificial and problematic alterations of Michigan waterways outside of perhaps the commercial and municipal marina sphere. *R*



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