
Chapter Six: Watershed Zoning and Ordinances

Overview

Watershed management requires the use of many different techniques in order to be effective. Tools include educational outreach programs, voluntary land protection incentives for property owners of critical habitat areas, on-the-ground implementation of Best Management Practices to restore nonpoint source pollution sites, research & monitoring, and incorporating conservation-friendly design standards into new developments. Land use planning and zoning, at the local level, is another important tool for watershed protection. In addition to the direct benefits for aquatic resources, planning and zoning are tools used for ensuring the conservation of wildlife habitat, providing for sustainable development, protecting property values and maintaining community character.

A sound planning and zoning program requires that a community not only “buy-in” to the idea, but dedicate the trained personnel and funding make the program work; effective planning and zoning thus takes commitment and resources.

In the state of Michigan, planning and zoning are implemented at the township, municipal, or county level. The enabling legislation for land use planning can be found within four state acts:

Public Act 285 of 1931 -- Municipal Planning Act
Public Act 168 Of 1959 -- Township Planning Act
Public Act 282 of 1945 -- County Planning Act
Public Act 281 of 1945 --Regional Planning Act

Following adoption of a master plan, the local unit of government creates a zoning ordinance. The zoning ordinance must be based on the goals set forth in the master plan.

The state has three legislative zoning acts that enable local units of government to control land uses through regulation of activities on the land:

Public Act 184 of 1943 -- the Township Rural Zoning Act
Public Act 183 of 1943 -- the County Zoning Act
Public Act 207 of 1921 -- the City and Village Zoning Act

In addition to planning & zoning, there are state regulations that are intended to help conserve natural resources. Relevant state laws for water resource protection include (this is only a brief summary, please see the respective law or contact MDEQ for more information):

Act 451, Part 91, Soil Erosion Control and Sedimentation Act
(for earth changes within 500 feet of the shoreline)

Act 451, Part 303, Wetland Protection
(covers the dredging, draining, or filling of regulated wetlands; however, non-contiguous wetlands in rural counties are generally not regulated wetlands)

Act 451, Part 301, Inland Lakes & Streams Act
(covers work conducted below the ordinary high water mark)

Public Act 368 (1978), Aquatic Nuisance Control

For some of the issues related to watershed management, agencies (beyond the local unit of government) have a regulatory role. In the case of soil erosion & sedimentation, the Michigan Department of Environmental Quality (MDEQ) has jurisdiction; they have an agreement with counties to enforce the program at the local level (thus counties have a Soil Erosion Officer). With regard to regulation of wetlands, MDEQ also has jurisdiction (authorized through the federal Clean Water Act). Questions regarding wetlands and the permitting process should be directed to MDEQ's Land & Water Management Division. Regulations for septic systems are handled through the District Health Department. In all three of the areas listed above, a local community may adopt their own programs for managing the resource (standards adopted cannot be weaker than what the state would otherwise use). Such a decision to adopt a local ordinance may lead to more work for the local unit of government and a greater expenditure of fiscal resources; it may also create an opportunity to better achieve the goals laid out in community's comprehensive master plan.

In any event, a local unit of government should develop a comprehensive land use plan (based on public input) that allows them to plan for the future while maintaining what is important to the community. The plan becomes the basis for the zoning ordinance. Attention should be paid to whether the standards in the zoning ordinance actually achieve the goals set forth in the comprehensive master plan; oftentimes they do not. Once local government units have "good" land use policies in place, there is still work that needs to be done -- the governing body must keep their policies up-to-date and make decisions regarding infrastructure and zoning in accordance with their plan.

Oftentimes, volunteers on local zoning boards are pressured to make a decision on a site-specific issue without considering the whole system. Zoning standards and decisions must be made with the comprehensive master plan in mind; it can be extremely difficult to step back from a particular issue and consider the big picture, but that is exactly what trained planning commission officials must do. In addition, zoning regulations need to be enforced and followed up. Without enforcement, the majority that make the effort to follow land use regulations are, in effect, penalized, as they have went to greater effort and expense than those not following regulations. Such systems will eventually break down for local units of government -- either most everyone will eventually give up on trying to follow the rules or the court system will not hold up the regulations.

This following review of local land use regulations in the watersheds of the Lower Cheboygan River and Douglas Lake was prepared by Huron Pines Resource Conservation & Development Area Council in December 2003. This review is not intended evaluate the history of planning and zoning within the watershed, nor is intended to be the sole basis for determining the effectiveness of policies regarding water resource management. It may provide insight into how effective local unit of government are at protecting aquatic resources and help to identify some of the glaring weaknesses within current zoning ordinances.

Summary of Local Planning & Zoning Efforts

Townships located in a county with zoning have the option of having the county handle the entire planning and zoning program or administering their own. (In rare cases,

neither a county nor township may have a zoning ordinance, these areas are considered “unzoned”). Within the Lower Cheboygan/Douglas Lake watersheds, the townships are covered under county zoning, while the City of Cheboygan administers its own program. Below is a list of local government units within the watershed and the adoption date of their master plans and zoning ordinances. (In those instances where major revisions appear to have been made, the “revised” plan/ordinance date is used, rather than the “adopted” date.)

Table 21: Planning and Zoning Jurisdictional Units Within the Cheboygan River/Lower Black River Watershed		
Government Unit	Zoning Ordinance Last Date of Revision or Adoption	Comprehensive Master Plan Last Date of Revision or Adoption
Cheboygan County (Benton, Grant, Aloha, Inverness, Beaugrand, Hebron, and Munro townships)	1983	2002
City of Cheboygan	2001	1988*
Emmet County (Carp Lake, McKinley, Maple River, Center, and Bliss townships)	2001	1997

*The City is currently updating their master plan.

To determine, in part, the efficacy of regulatory coverage for aquatic resources within the Cheboygan River/Lower Black River Watershed, local zoning ordinances were reviewed to evaluate what, if any, “environmental provisions” were in place that may have an impact on water resources. The ordinances were specifically reviewed for the following:

- Vegetative Buffer Zones (Greenbelts): With regard to minimizing the impact of residential development along the waterfront, ensuring that vegetation is left along the shoreline is generally considered one of the most important actions that can be taken. Vegetative buffers help to filter nutrients, reduce erosion, and provide natural habitat. Although much research has been done through the years to verify the effectiveness of vegetative buffers, there are several practical difficulties with having a “greenbelt ordinance.” It can be difficult to enforce, many local officials and residents are unaware of what an effective greenbelt consists of, historic patterns of development have already degraded many areas (and these may be “grandfathered” in), zoning language is often poorly worded for proper enforcement, and citizens are often unaware that there is an ordinance in place. Even with the negatives, however, maintaining a greenbelt is essential to protecting water resources – even a 25 foot greenbelt can be effective. A mowed lawn to the water’s edge is not a greenbelt.

- Setbacks of structures along the waterfront are important for reducing the amount of impervious surface near the water, helping to ensure that a greenbelt can be maintained, and reducing the potential for serious resource problems. A structure that is setback only 30 or 40 feet is more likely to be associated with negative impacts to water resources than a structure 75 or 100 feet away from the water's edge. Unfortunately, many local units of government that do have an effective setback for homes will make many exceptions for large decks and boathouses. Such exemptions defeat the intent of the setback, as impervious surface cover will still be present near the water's edge. Furthermore, while many local units of government may have a greenbelt requirement of 50 or 75 feet width, they allow the structure setback to be less than the greenbelt restriction. Such a scenario significantly reduces the effectiveness of the greenbelt requirement. In addition, during the construction period, a structure being built less than 50 feet from the water will have a construction site that runs right down to the water. This leads to the unavoidable problem of the destruction of the greenbelt during construction. Maintaining the natural greenbelt in the first place is much easier than restoring a greenbelt. Setback requirements should be regarded as a key element for water resource protection.
- Minimum Lot Width for waterfront parcels is important for waterbodies because it ultimately determines the number of homes that will be built on the water. Developed shorelines with less than a 100-ft minimum lot width often experience water resource problems. Generally, the smaller the lot width around a lake, the more homes, greater wastewater treatment needs, increased user conflicts, fertilizer inputs, stormwater runoff, increased erosion, and loss of native vegetation, as well as an increase in the amount of impervious cover in the critical near-shore areas of surface water.
- Open space preservation is used for communities to protect their rural character, as well as maintain prime recreational, farm or forest land. Unfortunately, most zoning ordinances, if implemented correctly, are not written in such a way to accomplish those goals. Many local units of government that have open space guidelines in this watershed typically state something to the effect of, "At least 40% of the total gross project shall be left as open space." Some only require 25%, which is not a way to accomplish their community goals.

An improvement to the open space section of their ordinances would be to require the developer to increase the amount of open space to 50 or 60% and also make sure that some of the set aside acreage is from the developable portion of the site. Steep slopes, surface water, wetlands, etc., should be excluded from this calculation; otherwise only the most undesirable areas will be set aside as open space. Ordinance language should be something such as, "A minimum of 60% of the parent parcel's gross acreage shall be set aside as permanently protected open space. This area shall include at least half of the parcel's buildable land area."

There are incentive programs that local communities can adopt to encourage open space preservation, such as allowing higher development densities on the remaining land in a development or through setting up a Purchase of Development Rights (PDR) program.

- Septic Systems are under the jurisdiction of the District Health Department. Typically, only severe problems are addressed, departments are understaffed, and there are poor records of septic systems. Some local units of government have begun to initiate their own programs for inspections, maintenance, or replacement requirements. Generally, such a program is being run as a “Point of Sale” program, whereby inspections of septic systems are required at the time of property transfer. System upgrades are then required for those that are not working properly.
- Wetland Protection is handled through the state Department of Environmental Quality. For rural northern Michigan, the law does not apply to isolated wetlands. Some communities have addressed this oversight by adopting their own wetland regulatory program, which is authorized through the state wetland act. Only those ordinances that have standards *in addition to those at the state level* are noted.
- Stormwater Management is recognized as critical for keeping oils, greases, organic debris, and trash from running directly into a waterbody. While stormwater control measures are often taken during construction, the post-construction runoff of stormwater is a problem that is often overlooked. Proper management would require that new developments handle their own stormwater on-site (or at least do not increase the amount of runoff that would otherwise occur at the undeveloped site), rather than move the stormwater off their site as quickly as possible (which has been the historic practice).
- Lot Coverage/Impervious Cover is, on a watershed-wide level, an important indicator for overall watershed health. (Studies have been conducted that show water quality declines once 10% of the land area in a watershed is covered by impervious surfaces and that serious problems occur once more than 25% of the land area is covered.) Communities that recognize this fact sometimes attempt to address this problem on a parcel by parcel level by placing a maximum on the amount of land that can be covered by impervious cover. While well intended, these standards typically state that the buildings can only occupy a certain percentage of land, but fail to address roads, driveways, decks, patios, and walkways, which are all a part of the impervious cover issue.

Table 22 is a general summary of “environmental provisions” by local government unit.

Table 22: Summary Of Environmental Provisions			
Water Quality Regulations	Local Government Unit		
	Cheboygan County	City of Cheboygan	Emmet County
Vegetative Buffer Zones (greenbelts)	Buffer strips must be at least 40 ft in width along water. (Lake & Stream Protection District.)	Not addressed	<i>Recommended</i> (35 ft) for waterfront properties.
Waterfront Setbacks	40 ft	20ft (but this can be used for parking)	60 ft setback for homes & 25 ft for decks/patios
Minimum Lot Width for Riparian Parcels	100 ft for Lake & Stream Protection District	Not addressed	100 ft
Impervious Cover	Not addressed	35% maximum, although this does not apply to waterfront district.	Yes, a maximum 30% of each lot can be covered by impervious surface.
Open Space	Preservation of open space is encouraged through a PUD density bonus	Yes	Addressed within Planned Unit Development section of ordinance.
Septic Systems	Must be at least 100 ft from the water's edge, but 150 ft back from the River Protection District on the Upper Black	Not applicable	No special restrictions, ordinance references health code.
Wetland Protection	Not addressed	Not addressed	Not addressed
Stormwater Management	Yes	The county stormwater program is administered within the city limits.	Yes