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## ABSTRACT

### ZONING CONTROL OF NONCONFORMITIES IN THE STATE OF MICHIGAN

by Scribner Houston Sheafor

A fundamental purpose of urban planning is to improve man's physical environment as a place to live, work, learn, and play. Through the comprehensive planning process a community attempts to, among other things, promote the most appropriate use of its land. A long accepted implementation measure initiated to correct existing problems of inappropriate land uses is the regulation of nonconformities through the municipal zoning ordinance.

This thesis was undertaken to determine methods and techniques available to Michigan municipalities to regulate and eliminate nonconformities; to determine whether municipalities have developed regulations which take advantage of the full-range of techniques available to control and eliminate nonconformities; to determine whether the provisions in general are clearly and precisely written and related to modern zoning approaches; and to suggest model provisions modernizing the nonconformity section of the zoning ordinance to take full advantage of the techniques available. Analysis was based on a review of enabling

legislation authorizing zoning and the control of non-conformities, study of court decisions concerned with controlling nonconformities, and a review of local ordinance provisions.

On the whole, decisions in Michigan and the United States Courts affirm strict measures controlling nonconformities. Particularly important have been decisions upholding the right of the community to prohibit any structural changes or additions to nonconformities. Even in the controversial area of amortization, significant state and United States' decisions have supported this approach to removing nonconformities in principle. Only the opportunity created by state legislative action will reveal what the attitude of the Michigan Supreme Court will be in this important area of regulation.

An analysis of nonconformity legislation in Michigan municipalities indicates that few communities have taken advantage of the full opportunities available to regulate nonconformities. Ordinances are, on the whole, incomplete and much too flexible. Almost one-sixth of the ordinances surveyed lack provisions covering one or more of the most important considerations in controlling nonconformities--restoration, change, structural alterations, or enlargements, and discontinuance. The Board of Appeals is given substantial powers, generally without standards or guidelines, for weakening already weak provisions. Finally,

few ordinances have nonconformity provisions that are related to the relatively new techniques of performance standard zoning, proscriptive zoning, and broad use of special exceptions.

Municipalities in Michigan have considerable power to implement a program of strict control over nonconformities. An effective program of control and elimination of nonconformities requires a well-developed and highly restrictive ordinance, a strong administrative action program, and most importantly, a commitment and continuing commitment by the legislative body to the principle of elimination of nonconformities.



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IN THE STATE OF MICHIGAN

By

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## CHAPTER I

### INTRODUCTION

One of the fundamental purposes of urban planning is to improve man's physical environment as a place to live, work, learn, and play. Major comprehensive planning policy recommendations are aimed at achieving a more healthful, efficient, safe, functional, beautiful, and stimulating community. Seeking these goals a community, through the comprehensive planning process, attempts to promote the most appropriate use of its land. "Appropriateness" at the broad and general community-wide level is ascertained by an analysis of existing physical, social, and economic conditions and trends and a determination of long range objectives. "Appropriateness" at the more specific level of neighborhood or project planning policy is determined, to a great extent, by evaluating the degree that uses of the land complement and benefit or damage one another by virtue of close proximity and by finding the "highest and best use" of the land from the community's long range and comprehensive viewpoint.

Only in the rare circumstance of "new town planning" will community land use policies apply solely to development of vacant land. Consequently, a community will

contain a legacy of existing uses and existing development conditions which do not meet the standards and policy statements of the comprehensive plan. These "nonconformities" are recognized as detrimental to the long-range development and redevelopment objectives of the community. The eventual elimination of nonconforming uses, in fact, is often called for in planning policy statements.

A community has a variety of effectuation measures available to implement land use policies for development of public and private lands including urban renewal activity, street and highway construction, acquisition of land for schools, parks, and other community facilities, and passage of legal measures including zoning ordinances and subdivision regulations. Of all of these tools, zoning is probably the most extensively used method of controlling private land use development and, historically, has been the principal method for implementing the land use policies, principles, and objectives of the comprehensive plan.

Through zoning regulations an attempt is made to group those uses which are most compatible and separate uses which may be harmful to one another. Through zoning a community seeks to preserve or encourage the planned character of living areas, shopping areas, and working areas by excluding uses and structures which are detrimental to the restricted purposes of the areas.

Since most zoning ordinances are applied to at least partially built-up areas some uses deemed detrimental to the planned character of particular areas are likely to exist. The problem of nonconforming uses was recognized early in the evolution of zoning legislation. Edward M. Bassett relates the concern of New York City property owners over treatment of nonconforming uses in the zoning ordinance being developed for the city in the early 1900's. The ordinance as passed in 1916 permitted nonconforming uses to continue indefinitely and thus set a pattern for the zoning ordinances that have followed in this country. Bassett stated some twenty years after adoption of the New York ordinance:

It has been considered that buildings erected according to law, even if out of place, should be allowed to stand indefinitely, and that the nonconforming use should not be stopped. Zoning seeks to stabilize and protect and not to destroy. [Citations omitted] The view that has been followed is that a few nonconforming buildings and uses if allowed to continue will not be a substantial injury to a community if only such nonconforming buildings are not allowed to multiply where they are harmful or improper. Zoning has sought to safeguard the future, in the expectation that time will repair the mistakes of the past.<sup>1</sup>

Typically, owners of nonconforming uses and structures have been free to continue the uses indefinitely provided certain limiting conditions regarding such things as alterations, changes, expansion, extension, and repairs were

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<sup>1</sup>Edward M. Bassett, Zoning (New York: Russell Sage Foundation, 1936), p. 105.

met. By this device of limiting growth or change of use, nonconforming uses and structures were supposed to ultimately disappear. As Basset said, "efforts should constantly be made to remove nonconforming uses into districts intended for them. They should not be perpetuated any longer than necessary."<sup>2</sup>

Uses which become nonconforming as a result of adoption or amendment of a zoning ordinance are declared to be obstacles to orderly community growth and development and not appropriate uses of the land as now existing. If the zoning ordinance is to implement the land use policies of the comprehensive plan a goal of the ordinance should be to eventually eliminate nonconforming uses. The planning problem becomes one of encouraging the elimination of these uses as quickly as possible through well considered ordinance provisions and effective administration. Such ordinance provisions must, of course, be developed within the constitutional constraints of "due process" and, since zoning is an exercise of the police power, such provisions must show substantial relationship to the health, safety, or general welfare as well.

One of the original purposes of this study was to inventory and evaluate administrative techniques used by municipalities to regulate nonconformities. Interviews were conducted with many officials connected with the

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<sup>2</sup>Ibid., p. 109.



administrative operation of local zoning ordinances. With some very limited and minor exceptions, nothing was being accomplished on an administrative level to effectively enforce nonconformity provisions in local ordinances. Record keeping was poor at best and generally non-existent. Enforcement, if any, was based on neighborhood complaints and neighborhood opinion concerning the lawfulness or unlawfulness of a particular use in many instances. Municipal size did not seem to affect the "expertise" in nonconformity administration although administrators in a few communities large enough to have planning staffs mentioned dated land use maps as possible sources of information to aid in regulating nonconformities if required. It has been the author's experience in professional planning practice following initiation of this study that this situation is not by any means unique to the state of Michigan.

Because of the apparent lack of any useful experience in controlling nonconformities in most Michigan municipalities, the study was reduced in scope and directed to local ordinance provisions themselves and the legal framework for nonconformity regulation. More specifically, the purposes of this study of zoning control of nonconformities in Michigan are to:

1. Determine methods and techniques available to Michigan municipalities to regulate and eliminate nonconformities;

2. Determine whether municipalities have developed regulations which take advantage of the full range of techniques available to control and eliminate nonconformities;
3. Determine whether the provisions in general are clearly and precisely written and related to modern zoning approaches;
4. Suggest model provisions modernizing the nonconformity section of the zoning ordinance to take full advantage of the techniques available.

Analysis will be based on a review of enabling legislation authorizing zoning and control of nonconformities and a study of court decisions concerned with controlling nonconformities. The specific legislation passed by municipalities will be reviewed to determine the adequacy of the provisions.

## CHAPTER II

### STATUTORY AUTHORITY AND COURT DECISIONS

To examine a specific aspect of zoning it is first necessary to survey the enabling legislation authorizing the powers to zone. Under our federal system, the state legislature is the source of police powers in municipal affairs. Local units of government do not have any inherent powers. They are creatures of the state and receive their power only by specific delegations from the state.

Local ordinances, including zoning, are valid and will be upheld by the courts only when they conform to the statutory authorizations of the state and constitutional provisions of both federal and state government. A review of constitutional provisions and statutory authority is, consequently, a necessary step in analyzing local zoning provisions. The effectiveness of a zoning ordinance is only as great as its susceptibility to attack on the basis of assumption of powers not conferred or unconstitutional provisions.

Questions of constitutionality in zoning litigation are based on the guarantees in the United States Constitution, Amendments Five and Fourteen, which prohibit the

States or Federal Government from depriving any person of liberty or property without due process of law. The Michigan Constitution repeats this guarantee: "No person shall . . . be deprived of life, liberty or property, without due process of law. . . . "<sup>3</sup>

Zoning provisions must find their justification in some aspect of the police power asserted for the public health, safety, morals, or general welfare. To meet the constitutional requirements of due process, zoning provisions must not only be enacted for the public welfare but must also employ reasonable and not arbitrary or confiscatory means of achieving the public welfare. In the landmark Euclid v. Ambler decision which declared the principle of use zoning constitutional as a valid exercise of the police power, the United States Supreme Court declared:

The ordinance in its general scope and dominant features, so far as its provisions are here involved, is a valid exercise of authority, leaving other provisions to be dealt with as cases arise directly involving them.<sup>4</sup>

In the last fifty years numerous decisions have been made regarding the reasonableness or the arbitrary character of provisions in zoning legislation as applied to specific cases. The remainder of this chapter will survey the delegation of the state's police power to zone to Michigan municipalities through state enabling legislation and

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<sup>3</sup>Michigan Constitution, Art. 1, sec. 17.

<sup>4</sup>Village of Euclid, et al. v. Ambler Realty Co., 272 U.S. 364, 57 S. Ct. 114 (1926).

annotate pertinent decisions of the Michigan Supreme Court regarding nonconformity regulations. Where necessary to fill gaps in Michigan decisions or to provide different viewpoints, decisions of the highest courts in other states will be examined. The chapter will conclude with a summary of the major court decisions on amortization provisions relating to nonconformities.

### Enabling Legislation

Enabling legislation directly related to nonconformities is found in the City and Village Zoning Act, the Township Rural Zoning Act, and the County Rural Zoning Act.

The lawful use of land or a structure exactly as such existed at the time of the enactment of the ordinance affecting them, may be continued, except as hereinafter provided, although such use or structure does not conform with the provisions of such ordinance. The legislative body may in its discretion provide by ordinance for the resumption, restoration, reconstruction, extension or substitution of non-conforming uses or structures upon such terms and conditions as may be provided in the ordinance. In addition to the power granted in this section, cities and villages may acquire by purchase, condemnation or otherwise private property for the removal of non-conforming uses and structures: Provided, the property shall not be used for public housing. The legislative body may in its discretion provide that the cost and expense of acquiring such private property be paid from general funds, or the cost and expense or any portion thereof be assessed to a special district. The elimination of such non-conforming uses and structures in a zoned district as herein provided is hereby declared to be for a public purpose and for a public use. The legislative body shall have authority to institute and prosecute proceedings for the condemnation of non-conforming uses and structures under the power of

eminent domain in accordance with the laws of the state or provisions of any city or village charter relative to condemnation.<sup>5</sup>

The lawful use of any dwelling, building or structure and of any land or premise as existing and lawful at the time of enactment of a zoning ordinance, or, in the case of an amendment of an ordinance, then at the time of such amendment, may be continued although such use does not conform with the provisions of such ordinance or amendment. The township board shall provide in any zoning ordinance for the completion, restoration, reconstruction, extension or substitution of nonconforming uses upon such reasonable terms as may be set forth in the zoning ordinance.<sup>6</sup>

The lawful use of any building or structure and of any land or premise as existing and lawful at the time of enactment of a zoning ordinance, or in the case of an amendment of an ordinance, then at the time of such amendment, may be continued although such use does not conform with the provisions of such ordinance or amendment. The board of supervisors shall provide in any zoning ordinance for the completion, restoration, reconstruction, extension or substitution of nonconforming uses upon such reasonable terms as may be set forth in the zoning ordinance.

Immediately after the effective date of any zoning ordinance or amendment thereto, the county zoning commission shall prepare a complete record of all nonconforming uses and occupations of lands, buildings and structures existing at the time of such ordinance or amendment. Such record shall contain the names and addresses of the owner of such nonconforming use and of any occupant, other than the owner, the legal description of the land, and the nature and extent of use. The board of supervisors shall prescribe the procedure for making any necessary correction, and copies of the corrected record, when approved by the board of supervisors, shall be filed in the offices of the county clerk

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<sup>5</sup>Michigan, Statutes Annotated (Rice, 1965) Article 5.2933 (1).

<sup>6</sup>Ibid., Art. 5.2963 (16).

and in the office of the register of deeds which record shall constitute prima facie evidence of the number, character and extent of the nonconformances at the time an ordinance or an amendment thereto becomes effective. The record of nonconformance shall be corrected annually as the board of supervisors may prescribe.<sup>7</sup>

The basic authorization controlling nonconformities is essentially identical in the Township and County Zoning Acts. The County Act has an additional section requiring nonconformities to be recorded and specifies administrative procedures for carrying out this requirement. As will be noted in the next chapter, a few city and township ordinances have used the administrative procedure in Section 17 of the County Act as a model for their recording procedure.

There is significantly different enabling language in the City and Village Zoning Act. Municipalities operating under this legislation have an opportunity to institute very strict control over nonconformities. The Township and County Acts have mandatory language specifying that the governmental body shall provide for the completion, restoration, reconstruction, extension, or substitution of nonconformities.<sup>8</sup> The City and Village Zoning Act, however, gives municipalities discretion in this regard by using the permissive word "may" when referring to the resumption,

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<sup>7</sup>Ibid., Art. 5.2961 (16 and 17).

<sup>8</sup>Ibid., Art. 5.2963 (16); Art. 5.2961 (16 and 17).

restoration, reconstruction, extension, or substitution of nonconformities. By using the phrase "exactly as such existed at the time of the enactment of the ordinance" in reference to nonconformities, the legislation seems clearly to protect nonconformities only with regard to their existing nature and extent.<sup>9</sup>

The City and Village Zoning Act goes further to provide for the acquisition of nonconformities by eminent domain if necessary. The entire section appears to express the intent of the legislature that municipalities operating under this legislation should have broad and flexible powers to control nonconformities and provide for their eventual elimination.

The Home Rule Cities Act contains the following provision under which the voters may insert broad zoning powers in their city charters.

Each city may in its charter provide:

. . . . .  
For the establishment of districts or zones within which the use of land and structures, the height, the area, the size and location of buildings and required open spaces for light and ventilation of such buildings and the density of population may be regulated by ordinance.<sup>10</sup>

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<sup>9</sup>Michigan, Statutes Annotated (Rice, 1965) Article 5.2933 (1).

<sup>10</sup>Michigan, Statutes Annotated (Rice, 1965) Article 5.2082.



Appellate Court Decisions

Reasonableness and Police Power

Zoning ordinances, when related to public health, morals, safety, or general welfare, are a valid exercise of the police power but such ordinances must be reasonable in their application.<sup>11</sup> It is necessary that a zoning ordinance be reasonable and the reasonableness becomes the test of its legality.<sup>12</sup>

Michigan decisions follow the Euclid case in stating that zoning, in principle, meets the due process clause of the Constitution by having a substantial relationship to the promotion of the health, safety, morals, or general welfare of the community. However, in its exercise, zoning must be reasonable and not arbitrary or confiscatory. In Austin v. Older,<sup>13</sup> the Court quoted with approval the following paragraph from State v. Hallman,<sup>14</sup>

All property is held subject to the right of government to regulate its use in the exercise of the police power, so that it shall not be injurious to the rights of the community, or so that it may promote its health, morals, safety, and welfare . . . Regulations may result to some extent practically in the taking of property, or the restricting its uses, and yet not be deemed confiscatory or

<sup>11</sup>McGiverin v. City of Huntington Woods, 343 Mich. 706 (1955).

<sup>12</sup>City of North Muskegon v. Miller, 249 Mich. 52 (1929).

<sup>13</sup>Austin v. Older, 283 Mich. 677, (1938).

<sup>14</sup>State v. Hallman, 147 Atl. 294 (1932).

unreasonable. . . . Courts will not hold laws, ordinances, or regulations adopted under sanction of law to be unconstitutional unless they are clearly unreasonable, destructive, or confiscatory.

### Continuance and Vested Rights

Several decisions concerning vested rights give a fairly clear picture of the courts attitude in this regard. In City of Lansing v. Dawley,<sup>15</sup> the city sought to restrain the defendant from erecting a business building in an area recently changed from a commercial zone to a residential zone. The defendant stated that he relied on a valid ordinance while investing substantial time and money into a development project and had thus created vested property rights which could not be destroyed by the ordinance subsequently adopted. The Court stated that the defendant's investment in plans and surveys was not sufficient preliminary work to create a vested right to erect the building.

However, when excavation of building walls was started and material and accessories had been purchased the defendant was permitted to continue construction as the corporation had a vested interest.<sup>16</sup> In another case the excavation and installation of storage tanks for a gas station were sufficient to obtain a vested right so that a change in the use

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<sup>15</sup>City of Lansing v. Dawley, 247 Mich. 394 (1929).

<sup>16</sup>Sandenburgh v. Michigamme Oil Co., 249 Mich. 372 (1930).

regulations for the property could not prevent continuation of construction.<sup>17</sup>

Finally, a use not operating at the effective date of the ordinance but seasonal in nature has a vested right to continue as a nonconforming use.<sup>18</sup> "Where an occupational use of the premises is seasonal, and the means for use installed, and the opening of the season only awaited, there exists lawful occupational use. . . ."<sup>19</sup>

Additions, Structural Alterations,  
Expansion, Extension

Definitive statements by the Court in cases concerning additions or structural alterations support the prohibition of any action which could extend the life of a nonconformity. In Austin v. Older, the Court said:

The purpose of the [zoning] ordinance is to keep residential, commercial and industrial uses within certain territorial confines, and to limit as far as constitutionally permissible, the continuation of nonconforming uses. The effect of the zoning ordinance would be largely vitiated if a large mercantile establishment or factory would be permitted to supplant a small store or shop which existed at the time of the adoption of the ordinance.

Limiting the further extension of a nonconforming use by prohibiting alterations and additions to

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<sup>17</sup>City of Coldwater v. Williams Oil Co., 288 Mich. 140 (1939).

<sup>18</sup>Civic Association of Dearborn Township, Dist. No. 3, et al. v. Horowitz et al., 318 Mich. 261 (1947).

<sup>19</sup>Adams et al. v. Kalamazoo Ice and Fuel Co., 245 Mich. 261 (1928).

existing buildings is a valid exercise of government power.<sup>20</sup>

In Battle Creek, the zoning ordinance permitted extensions of nonconforming uses within existing buildings provided no structural alterations were made. The Court in Cole v. City of Battle Creek said:

The proper test as to whether or not the alterations should be permitted is whether the existing nonconforming use is extended and the life of the existing nonconforming building prolonged.<sup>21</sup>

The Court supported provisions prohibiting additions and structural alterations despite the plea that such restrictions would force the nonconformity out of business. The Court reiterated its decision on this question in South Central Improvement Association v. City of St. Clair Shores:

This Court has held that the provision of a zoning ordinance permitting the continuation of a nonconforming use is designed to avoid the imposition of hardship upon the owner of property, but the limitation upon such use does not permit the erection of new nonconforming buildings or additions to existing nonconforming buildings.<sup>22</sup>

Actions not considered prohibited additions, structural alterations, etc., include the installation of show

<sup>20</sup>Austin v. Older, 283 Mich. 677, (1938).

<sup>21</sup>Cole v. City of Battle Creek, 298 Mich. 104 (1941).

<sup>22</sup>South Central Improvement Association v. City of St. Clair Shores, 348 Mich. 153 (1957).

windows in a building containing a nonconforming use. The Court in Paye v. City of Grosse Pointe,<sup>23</sup> said this type of alteration did not change the form or character of the building, its general appearance or structural quality and did not enlarge the nonconforming use. In City of Madison Heights v. Manto,<sup>24</sup> the relocation and improvement of a trailer park's septic tank and tile fields was considered ordinary maintenance and not a prohibited expansion.

#### Discontinuance

No Michigan Supreme Court decisions deal specifically with the question of discontinuance or abandonment. Although the right to prohibit resumption of a nonconformity after it is discontinued is well established in this country, discontinuance has generally been considered more than just suspension or cessation of operation or temporary nonoccupancy of buildings. Rather, discontinuance has generally been considered synonymous with the legal meaning of abandonment which requires proof of positive voluntary intent to cease operations.<sup>25</sup>

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<sup>23</sup>Paye v. City of Grosse Pointe, 279 Mich. 254 (1937).

<sup>24</sup>City of Madison Heights v. Manto, 259 Mich. 244 (1960).

<sup>25</sup>Wisconsin State ex. rel. Morehouse v. Hunt, 291 N. W. 745 (1940); State ex. rel. Schaetz v. Vanders, 238 N. W. 835 (1931).

A more liberal view is expressed in New York. In Franmore Realty Corp. v. Le Boeuf<sup>26</sup> the Court ruled that a gas station use in a residential district could not be resumed on the basis of non-use alone for the time prescribed in the ordinance. The Court stated that in the approval of gradual elimination of nonconforming uses the courts have gone further than non-use in permitting amortization. Consequently the concept of non-use was valid and the only question would be the reasonableness of the period of time allowed for non-use.

#### Restoration

No Michigan Supreme Court decisions have been made on restoration provisions. The Minnesota Supreme Court, however, has held that requirements that nonconforming structures substantially destroyed may be restored only in conformance with all regulations of the zoning ordinance was valid. The Court compared the importance of the portion of the building removed with the function of the whole building in evaluating the meaning of the phrase "substantially destroyed," used in the ordinance.<sup>27</sup>

In Ohio, the Court of Appeals found provisions valid that permitted restoration of a nonconformity only

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<sup>26</sup>Franmore Realty Corp. v. Le Boeuf, 104 NYS 2d 234 (1958).

<sup>27</sup>State v. Pahl, 95 N. W. 2d 85 (1959).

if the restoration was begun within one year and provided damages did not exceed fifty percent of the value of the building.<sup>28</sup> A Wisconsin Supreme Court decision on the validity of a provision prohibiting reconstruction of a nonconformity damaged to an extent of fifty percent or more of its assessed value stated that assessed value is not indicative of true value and that only destruction to the extent of the specified percentage of actual value will prevent the resumption of the nonconforming use.<sup>29</sup>

#### Change

Michigan Supreme Court decisions do not support prohibitions against any changes in nonconforming uses although, as noted earlier, the City and Village Zoning Act appears to be permissive in this area. In Redford Moving and Storage v. City of Detroit,<sup>30</sup> the owners of a nonconforming light manufacturing use wanted to change the use to a nonconforming moving and storage business. The Court ruled that the owners were entitled to the change because the new use was "a higher nonconforming use" than the industrial use, notwithstanding the zoning ordinance provisions

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<sup>28</sup>State ex. rel. Brizes v. DePledge, 162 N. E. 2d 234 (1958).

<sup>29</sup>State ex. rel. Covenant Harbour Bible Camp, etc. v. Steinke, 96 N. W. 2d 356, 361 (1959).

<sup>30</sup>Redford Moving and Storage Co. v. City of Detroit, 336 Mich. 702 (1953).

restricting the property to single family residences. The Court stated that such a restriction was clearly unreasonable.

In another case it was found to be unreasonable to prevent a change to "a higher use" when the change was sought to use property substantially designed for the new nonconforming use. The Court said a higher nonconforming use is one not as objectionable as the former one. "While it does not conform it, however, does so in a greater degree than the use to which the property was formerly put and when the zoning ordinance was adopted."<sup>31</sup>

#### Repair

The Court makes it quite clear that a municipality must permit routine repair and ordinary maintenance made necessary by deterioration in a trailer park case referred to above.<sup>32</sup>

#### Amortization

Court decisions concerning attempts to terminate existing uses date from before the term "zoning" was used to describe districting of uses. A Los Angeles ordinance dividing the city into residence districts excluded the making of bricks in these districts. Under this provision

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<sup>31</sup>Palmer v. City of Detroit, 306 Mich. 449 (1943).

<sup>32</sup>City of Madison Heights v. Manto, 359 Mich. 244 (1960).



an existing brick yard was forced to terminate its pre-existing brick manufacturing operation. The United States Supreme Court in Hadacheck v. Sebastian,<sup>33</sup> declared that the use was a public nuisance and the termination requirement in the ordinance was valid.

It is to be remembered that we are dealing with one of the most essential powers of government [the police power], one that is the least limitable. It may, indeed, seem harsh in its exercise, it usually is on some individual, but the imperative necessity for its existence precludes any limitation upon it when not exerted arbitrarily. A vested interest cannot be asserted against it because of conditions once obtaining. . . . To do so would preclude development and fix a city forever in its primitive conditions. There must be progress, and if in its march private interests are in the way they must yield to the good of the community.

In New Orleans a zoning ordinance adopted in 1927 required termination of nonconforming uses within one year of the effective date of the ordinance in residential districts. The Louisiana Supreme Court, in upholding this provision referred to the Euclid v. Ambler<sup>34</sup> case:

It is to be observed . . . that the ordinance there under consideration provided for the establishment and maintenance of residential districts from which every kind of business was excluded. The ordinance did not deal specifically with any already established business in the zoned district. But, if the village had the authority to create and to maintain a purely residential district, which the court held it did have, and if such ordinance was not arbitrary and unreasonable, it follows necessarily

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<sup>33</sup>Hadacheck v. Sebastian, 239 U. S. 394, 36 S. Ct. 143 (1915).

<sup>34</sup>Village of Euclid, et al. v. Ambler Realty Co., 272 U. S. 365, 47 S. Ct. 114 (1926).

that the village was vested with authority to remove any business or trade from the district and to fix a limit of time in which the same shall be done.<sup>35</sup>

Early Michigan decisions ruled in favor of existing nonconforming uses when attempts were made by municipalities or individuals to remove such uses. The decisions were not based, however, on zoning ordinance provisions requiring termination of certain uses after an amortization period but rather on situations where attempts were made to terminate uses immediately because of questions regarding their lawfulness as nonconforming uses.

In Adams v. Kalamazoo<sup>36</sup> the suit was an attempt by neighbors to stop the use of an ice station installed just prior to the adoption of the ordinance but not operated until after the effective date of the ordinance because of its seasonal nature.'

The Court said:

The threatened invasion of a residence district by business may be an impelling reason for affording protection by way of a zoning ordinance, but such an ordinance may not operate to remove business found there. The legitimate purpose of a zoning ordinance, in its restrictive provisions relative to a residence district, is to preserve and not to disrupt existing conditions.

In the City of Coldwater v. Williams Oil Co.,<sup>37</sup> the Court ruled that an ordinance requiring a permit from the

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<sup>35</sup>State ex. rel. Dema Realty Co. v. McDonald, 121 So. 613 (1929).

<sup>36</sup>Adams v. Kalamazoo Ice and Fuel Co., 245 Mich. 261 (1928).

<sup>37</sup>City of Coldwater v. Williams Oil Co., 288 Mich. 140 (1939).

city before a gasoline station might be erected and maintained, enacted after legitimate use of the premises for such purposes was actually commenced, could not be given retroactive effect.

In 1962 the Michigan Court dealt directly with the question of provisions requiring termination of certain nonconforming uses after a stated time period. The city of Lowell enacted a zoning ordinance which included a provision requiring certain nonconforming uses, including junk yards, to terminate within three years of the effective date of the ordinance. A junk yard owner in the city asked the court to rule such a provision invalid. Decisions in other states supporting amortization provisions were submitted to the Court by the city. The Court ruled however:

Whatever the law may be in other states . . . the fact remains that the cities of Michigan have not as yet been authorized, by requisite legislative act, to terminate uses by ordinance of time limitation.<sup>38</sup>

The Court, of course, did not decide the constitutionality of the ordinance since it was ruled invalid on other grounds. The Court did comment that a negative opinion on constitutionality was issued by the assistant attorney general while the Senate was considering specific legislation to authorize cities and villages to terminate nonconformities. In dictum the Court stated that

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<sup>38</sup>De Mull v. City of Lowell, 268 Mich. 242 (1962).

nonconforming uses could, nonetheless, be abated by condemnation as specifically authorized by the legislature.

Although this decision clearly invalidates amortization clauses without specific enabling legislation and such enabling legislation as applied would be subject to Court review, the following cases from other states would probably be presented to the Court in such a review.

In Florida, the Federal Court of Appeals upheld a zoning ordinance which required the removal of gas stations within business and residential districts ten years after the effective date of the ordinance. The Court stated that the provision was related to the police power and that consideration of financial loss was insufficient to outweigh the necessity for legislative exercise of the police power. The United States Supreme Court refused to review the decision.<sup>39</sup>

In a case upholding a Los Angeles amortization provision affecting nonconforming uses of land and nonconforming uses in buildings designed for conforming uses the Court said:

There is a growing tendency to guard against the indefinite continuance of nonconforming uses by providing for their liquidation within a prescribed period. . . . It was not and is not contemplated that pre-existing nonconforming uses are to be perpetual. . . . The presence of any nonconforming use endangers the benefits to be derived from a comprehensive zoning plan. Having the undoubted power to establish residential districts, the

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<sup>39</sup>Standard Oil Co. v. City of Tallahassee, 183 F. 2d 410 (1950).

legislative body has the power to make such classification really effective by adopting such regulations as would be conducive to the welfare, health, and safety of those desiring to live in such district and enjoy the benefits thereof.

. . . It would seem to be the logical and reasonable method of approach to place a time limit upon the continuance of existing nonconforming uses, commensurate with the investment involved and based on the nature of the use; and in cases of nonconforming structures, on their character, age, and other relevant factors. . . .

The distinction between an ordinance restricting future uses and one requiring the termination of present uses within a reasonable period of time is merely one of degree, and constitutionality depends on the relative importance to be given to the public gain and to the private loss. Zoning as it affects every piece of property is to some extent retroactive in that it applies to property already owned at the time of the effective date of the ordinance. The elimination of existing uses within a reasonable time does not amount to a taking of property nor does it necessarily restrict the use of property so that it cannot be used for any reasonable purpose. Use of a reasonable amortization scheme provides an equitable means of reconciliation of the conflicting interest in satisfaction of due process requirements. As a method of eliminating existing nonconforming uses it allows the owner of the nonconforming use, by affording an opportunity to make new plans, at least partially to offset any loss he might suffer. The loss he suffers, if any, is spread out over a period of years, and he enjoys a monopolistic position by virtue of the zoning ordinance as long as he remains. If the amortization period is reasonable the loss to the owner may be small when compared with the benefit to the public. Nonconforming uses will eventually be eliminated. A legislative body may well conclude that the beneficial effect on the community of the eventual elimination of all nonconforming uses by a reasonable amortization plan more than offsets individual losses.<sup>40</sup>

The Court also relied heavily on the Louisiana amortization case cited earlier in this chapter.

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<sup>40</sup>Los Angeles v. Gage, 274 P 2d 34, 44 (1954).

A Seattle ordinance requiring discontinuance of nonconforming uses of the land in residential districts after one year was challenged. In City of Seattle v. Martin,<sup>41</sup> the court said the test of the reasonableness of such a provision is whether the hardship to the defendant "reasonably overbalances the benefit which the public would derive from the termination of the use. . . ." In this instance the hardship of terminating the repair of construction equipment on a vacant lot did not reasonably overbalance the benefit to the public. In Wolf v. City of Omaha,<sup>42</sup> the Nebraska Supreme Court supported amortization provisions requiring nonconforming dog kennels to be terminated after seven years.

#### Evaluation

On the whole, decisions in Michigan and the United States Courts affirm strict measures controlling nonconformities. Time after time the Michigan Supreme Court has repeated and supported the zoning principle that nonconformities should eventually be eliminated.

Approval is given to local ordinances prohibiting structural changes which tend to prolong the life of a nonconformity. The claim that additions or major rebuilding of nonconforming uses is necessary to meet competition

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<sup>41</sup>City of Seattle v. Martin, 342 P 2d 602 (1959).

<sup>42</sup>Wolf v. City of Omaha, 129 N. W. 2d 501 (1964).

is rejected as insufficient grounds for declaring strict provisions invalid.

Absolute prohibitions on changing nonconforming uses to other nonconforming uses are invalid, at least when buildings are designed for such purposes. However, the Court implies that an upgrading in performance with such a change is an important consideration in adjudicating such cases and this opens the way for municipalities to require such upgrading as a condition for change.

Important state and United States decisions supporting amortization provisions in principle have been handed down since the earliest days of zoning. Only the opportunity created by state legislative action will reveal the Michigan Court's attitude in this important area of regulation.

With this information on enabling legislation and court decisions as background, a more perceptive analysis of existing zoning provisions is possible. The next chapter will present an analysis of selected Michigan zoning ordinance provisions controlling nonconformities. It will conclude with an evaluation of how well the ordinances meet constitutional prerequisites as indicated by court decisions and whether the ordinances, as evaluated, take full advantage of enabling legislation and the attitude of the court as expressed in appropriate decisions.

## CHAPTER III

### ORDINANCE ANALYSIS AND EVALUATION

One of the basic purposes of this study is to determine what methods are being used to control nonconformities in a representative sample of Michigan political jurisdictions. To accomplish this task, sixty-five Michigan zoning ordinances were reviewed in detail. A standardized form listing typical categories of regulations controlling nonconformities was used to evaluate the ordinances. When an ordinance contained a particular category of regulation it was recorded on the form. Unusual provisions or re-occurring provisions with essentially the same wording were noted for future reference and analysis.

All Michigan ordinances on file in the School of Urban Planning and Landscape Architecture library and the Institute for Community Development library were surveyed. Ordinances analyzed in this study were selected to meet the following objectives:

1. To obtain examples from a broad cross-section of communities in the State operating under different enabling legislation;
2. To obtain examples which permit comparisons between recently enacted provisions and



provisions in effect for a long period of time;  
and

3. To obtain examples of ordinances enacted by the same community over a period of time.

The sixty-five ordinances include fifty city ordinances, eleven township, two county, and two model ordinances. Enactment or last amendment date of the ordinances have the following range:

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1920-1929	2	1950-1959	34
1930-1939	2	1960-1965	9
1940-1949	14	Unknown	4

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Library copies of the original and revised zoning ordinances were available for five municipalities. All five were included in this study.

The following sections will present the results of this survey and analysis by major regulatory categories. The chapter will conclude with a general evaluation of the scope, content, and organization of nonconformity provisions.

### Analysis

#### Purpose and Intent

Only three ordinances contain any statements of intent regarding nonconformity provisions. A great deal

more attention to statements of intent is apparent in recent zoning ordinances throughout the country. However, just two of the nine ordinances studied which were adopted or proposed during the 1960's have such statements. Both are comprehensive revisions of ordinances which did not contain intent statements in the earlier legislation.

The Ann Arbor Ordinance states:

It is the intent of this Chapter to recognize that the eventual elimination, as expeditiously as is reasonable, of existing uses or structures that are not in conformity with the provision of this Chapter is as much a subject of health, safety, and welfare as is the prevention of the establishment of new uses that would violate the provisions of this Chapter. It is also the intent of this Chapter that any elimination of non-conforming uses or non-conforming structures shall be effected so as to avoid any unreasonable invasion of established private property rights.<sup>43</sup>

The proposed ordinance for St. Johns has the following purpose for nonconforming use and structure regulations:

This Ordinance establishes separate districts, each of which is an appropriate area for the location of specified types of buildings, structures, and uses. It is necessary and consistent with the establishment of these districts that all lawfully non-conforming buildings, structures, and uses be permitted to continue only under specific controls. It is, further, necessary and consistent with the establishment of these districts that certain non-conforming uses be eliminated in accordance with applicable statutes. . . .<sup>44</sup>

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<sup>43</sup>Ann Arbor, Michigan, Zoning Ordinance, Sec. 5:85.

<sup>44</sup>St. Johns, Michigan, Zoning Ordinance, (Proposed, 1963), Art. 8, sec. 8.1.

## Definitions

Nonconformities are defined in fifty ordinances. Twenty-five ordinances define the term "nonconforming use" while the remainder differentiate between nonconforming uses and nonconforming structures or buildings. Two approaches are used in ordinances using the one term definition. The first approach classifies any "use" which does not meet all requirements of the ordinance as a nonconforming use. A nonconforming use in the Dearborn, Michigan ordinance is defined as "any use of premises that does not conform to the provisions of this ordinance. . . ." <sup>45</sup> Thus, an industrial use in a residential district or a residential use with insufficient side yards in a residential district are treated equally, by definition, in the application of nonconformity provisions in the ordinance.

A second approach excludes buildings and structures which fail to meet dimensional requirements, parking requirements, etc., from the nonconformity provisions of the ordinance. The definition used in East Detroit is typical of this approach.

USE--NON-CONFORMING Any use of land or building which does not conform at the time of the adoption of this Ordinance, to the use regulations of the district in which such land or building is located. Existing buildings or structures, which are conforming as to use, shall not be deemed non-conforming,

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<sup>45</sup> Dearborn, Michigan, Zoning Ordinance, Art. 2, sec. 201.6.

because they do not meet the area, height, yard or size of building requirements as specified in the district regulations.<sup>46</sup>

Grandville, Michigan's ordinance contains provisions similar to others which divide nonconformities into structures and uses.

NON-CONFORMING STRUCTURE: A structure lawfully existing at the time of adoption of this Ordinance, or any amendment thereto and which does not conform to the regulations of the District in which it is located.

NON-CONFORMING USE: A use which lawfully occupied a structure or land at the time of adoption of this Ordinance, or any amendment thereto, and which does not conform to the regulations of the District in which it is located.<sup>47</sup>

Fifteen ordinances contain no definitions for nonconformities. However, only one of the nine ordinances prepared during the 1960's fails to define terms. Of the five municipalities offering time period comparisons, one had no definition and the other four contained a definition of nonconforming use only in the earlier legislation while three define both use and structure and two define use in the revisions.

#### Completion of Previously Authorized Construction

Thirty ordinances specifically state that construction approved prior to the effective date of the ordinance may be

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<sup>46</sup>East Detroit, Michigan, Zoning Ordinance, Art. 2, sec. 2.58.

<sup>47</sup>Grandville, Michigan, Zoning Ordinance, Art. 2, Sects. 220, 221.

started or continued to completion even if such construction or the use will be nonconforming as a result of the adoption of the ordinance. This exemption is generally provided on a conditional basis. The following examples of such provisions require some action on the part of the developer to maintain his rights to continue construction.

Nothing in this ordinance shall require any change in the plans, construction or intended use of a building for which a building permit has been issued prior to the time of the original passage of this ordinance . . . and the construction of which shall have been commenced within three months of the date of such permit, and the ground story framework of which, including the second tier of beams, shall have been completed within one year from the date of such permit.<sup>48</sup>

Nothing in this Ordinance shall prohibit the completion of construction and use of a nonconforming building for which a building permit has been issued prior to the effective date of this Ordinance, PROVIDED that construction is commenced within 90 days after the date of issuance of the permit; that construction is carried on diligently and without interruption for a continuous period so that the entire building shall be completed according to the plans filed with the permit application within two (2) years after the issuance of the building permit.<sup>49</sup>

#### Structural Alterations, Enlargements, Additions

Provisions controlling enlargements, structural alterations, and additions are included in fifty-nine ordinances. Fourteen, including two township ordinances

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<sup>48</sup>Royal Oak, Michigan, Zoning Ordinance, Art. 3, sect. 302.

<sup>49</sup>Gladstone, Michigan, Zoning Ordinance, (Proposed, 196?), Art. 5, sec. 5.5.9.

permit no additions or alterations whatsoever. Forty-five ordinances permit additions and alterations under certain circumstances. One permits unlimited additions upon application to the enforcement officer.

Eighteen require approval of the Board of Appeals with no specific standards stated to guide the Board in its review of such cases. Twenty-three specify specific standards such as: the additions shall not exceed a certain percentage (twenty-five to one hundred percent) of the floor area existing at the time the use became nonconforming; or, provided such enlargement takes place within a specified time after the use becomes nonconforming; or, provided such increase is on the same lot, etc.

The Grand Rapids ordinance offers an example of provisions permitting enlargements under stated conditions.

No non-conforming use of any land or structure shall hereafter be enlarged or extended except that the Board of Appeals shall have the power, after holding a public hearing, to authorize an enlargement or extension of up to 50 percent of the floor area of the existing building or buildings devoted to a non-conforming use; provided, such extension or enlargement does not unduly prolong the life of such non-conforming use, that the extension or enlargement is made on adjoining land within the same block and owned by the owner of the non-conforming use at the time this ordinance becomes effective; and further provided, that such extension or enlargement will not be of substantial detriment to adjacent property and will not materially impair the intent and purposes of this ordinance or the public interest.<sup>50</sup>

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<sup>50</sup>Grand Rapids, Michigan, Zoning Ordinance, Art. 5, sec. 505.

Three ordinances permit enlargements of nonconforming structures containing conforming uses provided no existing nonconformity is increased.

A few ordinances include the following provision quoted from the Royal Oak legislation:

Nothing herein contained shall prevent the ultimate erection of its full height and bulk as originally planned of a building constructed to a less height and bulk prior to the adoption of this ordinance, but with its foundation and structural members designed to carry the larger building.<sup>51</sup>

### Extension

There is no consistency in the way the term "extension" is used in Michigan ordinances. Twenty-nine ordinances refer to extensions in some form. Many ordinances appear to use the term "extension" as a synonym for addition or enlargement and, therefore, permit or prohibit such extension in identical terms as used in provisions controlling additions and enlargements. In others, extension is considered a separate situation in which the provision is enacted to control increases in the extent of the nonconforming use within an existing building. The proposed zoning ordinance for Antrim County, Michigan contains a typical provision of this type:

The nonconforming use of a building may be extended throughout those parts thereof, which

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<sup>51</sup>Royal Oak, Michigan, Zoning Ordinance, Art. 3, sec. 302.

were manifestly arranged or designed for such use at the time of adoption of this Ordinance.<sup>52</sup>

### Change

Provisions relating to the changing of nonconforming uses are included in sixty-two ordinances. Seven ordinances permit changes to conforming uses only, eleven permit changes only upon authorization of the Board of Appeals, and the remainder permit changes upon application to the appropriate administrative official.

The Ann Arbor provision is typical of ordinances permitting changes:

A non-conforming use . . . shall not be:  
 Changed to another non-conforming use, except, after approval of the Zoning Board of Appeals, to those permitted uses which are contained in the Zoning District wherein the non-conforming use first appears in the SCHEDULE OF USE REGULATIONS. Before granting such approval, the Board shall determine that such change in use will have a less detrimental effect on neighboring property than the existing non-conforming use.<sup>53</sup>

The Bay City ordinance states:

If no structural alterations are made, a non-conforming use of a building may be changed to a use of the same or higher classification according to the provisions of this ordinance.<sup>54</sup>

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<sup>52</sup>Antrim County, Michigan, Zoning Ordinance, (Proposed, 196?) Sec. 17, Subsection 1.

<sup>53</sup>Ann Arbor, Michigan, Zoning Ordinance, Sec. 5:86 (1)(a).

<sup>54</sup>Bay City, Michigan, Zoning Ordinance, Sec. 3, Subsection 8.



These provisions reflect the philosophy of cumulative uses. Such an approach assigns grades to various land uses whereby some are considered "higher" or "more desirable" than others.

Ordinances which do not use this approach give no guidelines or only very brief statements for use in determining whether a nonconforming use should be permitted to change to another nonconforming use. South Haven<sup>55</sup> permits "minor" changes upon authorization of the Board of Appeals and in the Gladstone ordinance<sup>56</sup> changes which are "more suitable" are permitted.

#### Restoration

Fifty-eight ordinances contain provisions permitting restoration of nonconforming structures (uses) damaged by fire or other causes. Restoration privileges are conditional in all instances. Reconstruction is permitted provided damage does not exceed a specified percentage of "value" or provided reconstruction begins within a certain time period or a combination of the two.

The basis for measuring damage and the procedures specified to determine damage vary widely. The following terms are used: replacement cost; appraised value;

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<sup>55</sup>South Haven, Michigan, Zoning Ordinance, Art. 2, sec. 203.41.

<sup>56</sup>Gladstone, Michigan, Zoning Ordinance, (Proposed, 196?) Art. 5. sec. 5.1.4.

assessed value; reproduction value; value; fair valuation; original value; and market value. Extent of damage determinations are the responsibility of the building inspector, zoning administrator, board of appeals, and the board of appeals with the advice of the assessing officer and/or fire marshall. In thirty-four ordinances no specific administrative procedure is specified for assessing the extent of damage.

The percentage of damage which a nonconforming structure can incur and still be reconstructed ranges from fifty percent to one hundred percent. Permitting reconstruction when damage does not exceed fifty percent of appraised value, replacement value, etc., is most common with twenty-five ordinances using this figure. Ten ordinances permit reconstruction after total destruction provided reconstruction begins within a stated time period, generally six months or one year.

Five city ordinances and two township ordinances contain no provisions with respect to restoration of nonconformities. One of the city ordinances was recently revised and now includes such a provision.

### Repairs

Fifty-one of the ordinances permit the strengthening of unsafe nonconformities to meet city or state requirements or orders. The Gladstone ordinance states:

Nothing in this Ordinance shall prevent compliance with an order by an appropriate authority to prevent occupancy, remove, correct, improve, strengthen, or restore to a safe condition any building or any part of a building declared to be unsafe.<sup>57</sup>

The provisions relating to repair in the Warren ordinance permit much more extensive investment directed toward extending the life of a nonconforming building.

Non-Conforming Use-Repair. Nothing in this Ordinance shall prevent the repair, reinforcement or reconstruction of a non-conforming structure, or part thereof existing at the effective date of this Ordinance, rendered necessary by wear and tear, deterioration or depreciation, provided the cost of such work shall not exceed thirty (30) percent of the valuation of such building or structure at the time such work is done, nor shall any provision of this Ordinance prevent compliance with the provisions of any Building Code in effect in this City or the Housing Law of Michigan relative to the maintenance of buildings or structures.<sup>58</sup>

#### Discontinuance, Abandonment

Fifty-seven ordinances have provisions regarding the resumption of nonconforming uses. Most commonly, regulations state that nonconforming uses discontinued for a certain time period shall not be resumed. A few ordinances provide that uses discontinued and abandoned for a specified time shall not be resumed. Because of the problem of defining abandonment legally, some of the more recent

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<sup>57</sup>Gladstone, Michigan, Zoning Ordinance, (Proposed, 196?) Art. 5. sec. 5.1.4.

<sup>58</sup>Warren, Michigan, Zoning Ordinance, Art. 4. sec. 4.17d.

ordinances state that the cessation of a use for a certain period of time shall constitute abandonment for the purposes of the ordinances.

Discontinuance of Use: Whenever a non-conforming use has been discontinued for a period of one year or more, such discontinuance shall be considered conclusive evidence of an intention to abandon legally the non-conforming use. At the end of the one year period of discontinuance, the non-conforming use shall not be re-established, and any future use shall be in conformity with the provisions of the district in which it is located.<sup>59</sup>

Six ordinance provisions prohibit resumption of non-conforming uses if they are discontinued for any period of time. Specified time periods in the ordinances range from ninety days to three years with half of the ordinances prohibiting resumption of nonconforming uses after one year. Two ordinances with major revisions originally permitted resumption of nonconforming uses without any time limit on discontinuance. In the revised versions a one year period was included.

#### Substandard Lots of Record

Fifteen ordinances have provisions relating to lots made nonconforming by the adoption of minimum lot size and width regulations. The proposed ordinance for St. Johns includes a typical provision of this type.

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<sup>59</sup>St. Johns, Michigan, Zoning Ordinance, (Proposed, 1963), Art. 8, sec. 8.4.2.

Any residential lot created and recorded prior to the effective date of this Ordinance may be used for any permitted use even though the lot area and/or width are less than those required for the District in which such a lot is located provided:

- a. That the other requirements of the District are met.
- b. That the owner of said lot does not own, and has not owned since the effective date of this Ordinance, a sufficient amount of land adjacent to permit compliance with the minimum lot area requirements.<sup>60</sup>

Most ordinances containing substandard lot provisions require a replatting of substandard contiguous lots held in one ownership where such an action can create one or more lots which conform or more closely conform to minimum lot width and lot area requirements.

#### Termination of Nonconformities

One-third of the ordinances reviewed contain provisions requiring termination of certain kinds or classes of nonconformities following a specified period of time. Such provisions are included in seventeen city ordinances, three township ordinances, one county and one model ordinance. All of these amortization provisions except the model provision were adopted or recommended prior to the Michigan Supreme Court decision ruling such provisions invalid as lacking proper enabling legislation authority. Eight ordinances, however, only restate Act 207 provisions

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<sup>60</sup>St. Johns, Michigan, Zoning Ordinance, (Proposed, 1963), Art. 7, sec. 7.3.

permitting acquisition of nonconforming uses or structures by purchase or condemnation.

Signs, billboards, junk yards and similar uses are the most common targets for amortization provisions in Michigan ordinances.

No basement, cellar, garage or any incompletely constructed structure in use as a dwelling at the effective date of this Ordinance shall be used as a dwelling for more than twelve (12) months following said date, unless such structure has been brought to a state of completion in conformity with the regulations of this Ordinance relative to dwellings in the district in which said structure is located.<sup>61</sup>

The lawful use of unimproved land and advertising signs and bulletin boards which do not conform to the provisions of this ordinance shall be discontinued within one year from the date of the approval of this ordinance. . . .<sup>62</sup>

An amortization period of three to five years is generally provided before nonconforming land uses, signs, etc. are supposed to be terminated.

Several ordinances have the following provisions which affect all "nonconforming uses" not meeting the general performance statement of the provision.

The Board of Appeals, at any time more than three years after the time of passage of this ordinance, may order the revocation of a Certificate of Occupancy issued to a non-conforming use where the continuance of such use, due to the development of neighboring properties or other conditions arising since the issuance of such Certificate, has become

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<sup>61</sup>Battle Creek, Michigan, Zoning Ordinance, Art. 5, sec. 5.15.

<sup>62</sup>Coldwater, Michigan, Zoning Ordinance, (Proposed, 1951), Section 11.

a hindrance to the normal development of surrounding property in the manner contemplated by the ordinance. Written notice of intent to order such revocation shall be given by registered mail to the owner or his authorized agent, and to the occupant of the lot occupied by such non-conforming use at least six months prior to the issuance of such order and a public hearing shall be held at which such owner, agent or occupant shall be granted opportunity to show cause why such order should not be issued. The owner and occupants of lots in the vicinity of such non-conforming use and affected thereby shall also be notified of such hearing and given the opportunity to be heard. If after such hearing, the Board finds that the public interest demands the issuance of such revocation order the Board shall proceed there with and such order shall take effect six months from the date of issuance thereof.<sup>63</sup>

The Clawson ordinance provides no guidelines for such action by the Board of Appeals.

The Board of Appeals after appropriate notice and hearing as specified in the statute may revoke certificates of occupancy issued to a non-conforming use.<sup>64</sup>

### Administration

Fifteen ordinances contain specific administrative procedures applicable to nonconformities. The purposes of the provisions are to require recording of relevant information on nonconformities, to determine whether such nonconformities are lawful, and to provide an opportunity for owners of nonconformities to be informed of their rights and limitations under the ordinance.

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<sup>63</sup>Royal Oak, Michigan, Zoning Ordinance, Art. 8, sec. 801.

<sup>64</sup>Clawson, Michigan, Zoning Ordinance, Art. 3, sec. 3.5.

Responsibility for recording nonconformities varies widely. The most common practice is to require an owner of a nonconformity to apply for a certificate of occupancy or a nonconforming use permit within a certain time period after the date the ordinance renders the use or structure nonconforming. In other instances the township zoning board, the planning commission, the board of appeals, or the zoning enforcement officer must initiate the recording process.

The degree of detail specified in the ordinance provisions also varies. The following example is typical of the provisions simply requiring a record and specifying responsibility for developing the record.

Such non-conforming use may be continued upon application to the building inspector for [a] certificate of occupancy within one year from the date of the passage of this Ordinance and such continuance shall be subject to all the provisions of this section.<sup>65</sup>

A slightly more definitive provision is included in the proposed Battle Creek Township ordinance.

Any use or occupancy of any land or building not specifically permitted in its particular zoning district shall require the issuance of a certificate of occupancy for continued use. The certificate shall indicate the authorized use, the authority by which it is permitted, and any limiting conditions to such use.<sup>66</sup>

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<sup>65</sup>Ann Arbor Township, Zoning Ordinance, Art. 9, sec. 9.2.

<sup>66</sup>Battle Creek Township, Zoning Ordinance, (Proposed, 1958), Art. 3, sec. 3.1.3b.



More detailed administrative procedures are specified in the two County ordinances studied.

Immediately after the effective date of this Ordinance or amendment thereto, the Zoning Administrator shall prepare a complete list of all nonconforming uses and occupations of lands, buildings, and structures existing at such time. Such record shall contain the names and addresses of the owners of such nonconforming use and of any occupant, other than the owner, the legal description of the land and the nature and extent of use. The Board of Supervisors shall prescribe the procedure for making any necessary correction, and copies of the corrected record, when approved by the board of Supervisors, shall be filed in the offices of the County Clerk and the Register of Deeds which record shall constitute prima facie evidence of the number, character and extent of the nonconformance at the time this Ordinance or any amendment thereto becomes effective. The record of nonconformance shall be corrected annually as the Board of Supervisors may prescribe.<sup>67</sup>

#### RECORD OF NONCONFORMING USES

(a) Immediately following the effective date of this Ordinance, the Supervisor of each township shall prepare a record of all instances of uses, location, size and construction of buildings, structures, premises, lots and lands which, on the effective date of this Ordinance, are not in conformity with its provisions. Such record shall state the nature and extent of all nonconformities, and on completion be deposited with the County Zoning Administrator.

(b) As soon as the record is completed for the county, the Zoning Administrator shall provide for the examination thereof in his office for thirty (30) successive days by any interested person for the purpose of noting errors or omissions, and shall give notice of the provision for examination by publication in a newspaper of general circulation in the county for three (3) successive weeks.

(c) Errors and omissions in such record shall be corrected upon appeal and presentation of proof to the Board of Supervisors during its first session following the close of said examination period,

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<sup>67</sup> Antrim County, Michigan, Zoning Ordinance, (Proposed, 196?), Sec. 17, Subsection 6.

following which the corrected record shall be permanently filed in the office of the County Zoning Administrator. The corrected record shall constitute prima facie evidence of the nature and extent of nonconformance with reference to any land, premises, lot, building or structure existing at the time this Ordinance becomes effective.

(d) Following the filing of the corrected record of nonconformance, it shall be the duty of each supervisor to observe these nonconformances when he makes his property assessments, and to report annually to the Board of Supervisors on the discontinuance of any nonconformance in his township, including the date thereof. Such reports shall be filed with the County Zoning Administrator.<sup>68</sup>

The East Detroit Zoning Ordinance adopted in 1957 has language adapted from the County Rural Zoning Act regarding the recording of nonconformities.

Immediately after the effective date of this Zoning Ordinance or amendment thereto, the Planning Commission shall prepare a complete record of all non-conforming uses and occupations of lands, buildings and structures, existing at the time of such Ordinance or amendment. Such record shall contain the names and addresses of the owners of such non-conforming uses and of any occupant, other than the owner, the legal description of the land and the nature and extent of use. The record shall be approved by the Planning Commission and shall be filed in the office of the City Clerk, which record shall constitute prima facie evidence of the number, character and extent of the non-conformances at the time the Ordinance or amendment thereto becomes effective. The record of non-conformance shall be revised annually as the Planning Commission may prescribe.<sup>69</sup>

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<sup>68</sup>Clinton County, Michigan, Zoning Ordinance, Art. 14, sec. 14.2.

<sup>69</sup>East Detroit, Michigan, Zoning Ordinance, Art. 15, sec. 15.11.

This provision is much more detailed than the administrative procedures included in an earlier zoning ordinance for the city.

All non-conforming uses existing at the effective date of this Ordinance shall be recorded for the purpose of carrying out the provisions of [the non-conformities section].<sup>70</sup>

The most comprehensive administrative provisions relating to nonconformities are included in the model municipal zoning ordinance recommended by the Kent County Planning Commission in 1965.

REGISTRATION OF NON-CONFORMING USE. Any person owning or occupying premises being lawfully used contrary to any provision of this Ordinance . . . shall within one (1) year from and after the effective date of this Ordinance or amendment file a Statement of Non-Conforming Use with the Building Inspector on forms which the Building Inspector shall provide for such purpose. The statement shall include:

- (A) Address of premises.
- (B) Legal description.
- (C) Name of owner and any other persons who are tenants or other occupants.
- (D) Description of use including any plot plan or floor plan necessary to an adequate record of the nature and extent of the non-conforming use.
- (E) Date on which such lawful use initially was commenced if the use was non-conforming under any prior ordinance.
- (F) Any other information requested by the Building Inspector to assist in the administration of this Ordinance.

INVESTIGATION BY BUILDING INSPECTOR, SUBSTITUTE STATEMENT. The Building Inspector shall make such investigation as he shall deem necessary to verify the facts alleged in such Statement within ninety

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<sup>70</sup>East Detroit, Michigan, Zoning Ordinance, Art. 15, sec. 15.11, (1948).

(90) days following the date of filing any Statement of Non-Conforming Use. In the event the Building Inspector shall find that the statement filed does not accurately describe a valid non-conforming use, he shall within ninety (90) days following the effective date of the ordinance or amendment make a Substitute Statement and mail a copy thereof to the person who submitted the original Statement of Non-Conforming Use. Such Substitute Statement shall constitute the Statement of Non-Conforming Use unless the person filing such Statement shall within thirty (30) days petition the Board of Appeals for a hearing on the status of the alleged Non-Conforming Use.

APPEAL. In the event such a petition is filed, the Board of Appeals shall hear said matter . . . and enter an order making findings of the fact as to such non-conforming use which order shall thereafter constitute the Statement of Non-Conforming Use.

STATEMENT AS EVIDENCE. In the event a Statement of Non-Conforming Use is filed and no substituted statement of Non-Conforming Use is filed within the prescribed time, the Statement of Non-Conforming Use shall be prima facie evidence of the facts set forth therein as to use of the premises described therein at the effective date of such ordinance or amendment. Any substituted Statement of Non-Conforming Use not appealed to the Board of Appeals or any order of the Board of Appeals entered pursuant to subsection (C) of the section shall have the same force as evidence.

FAILURE TO FILE STATEMENT AS EVIDENCE. With respect to any premises not covered by a Statement of Non-Conforming Use filed as provided above, the failure to file a statement of Non-Conforming Use shall be prima facie evidence that on the effective date of this ordinance or any amendment thereto there was no lawful non-conforming use, provided notice was mailed [by the appropriate official of the municipality to the owner of a non-conforming use] . . .<sup>71</sup>

The degree of administrative procedural detail included in the ordinance does not seem to affect the actual

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<sup>71</sup>Kent County Michigan, Model Municipal Zoning Ordinance Recommended by Kent County Planning Commission, 1965.

administrative practice as a rule. In general, the author found no conscientious effort to implement administrative procedure whether it was included in the ordinances or not.

### Board of Appeals

The Board of Appeals in many municipalities is granted specific powers pertaining to nonconformities. In some cases such power may be limited to the recording of nonconformities or to making the final determinations where there is a question regarding the administration of the nonconformity section of the ordinance. In other cases much broader powers are granted.

In the sixty-five ordinances studied, the Board of Appeals is given some review power in a total of seventy-seven areas. The most frequently assigned responsibility to the Board of Appeals is to determine the extent of damage incurred by a nonconforming structure. The Board, in some cases, can permit restoration of a damaged structure exceeding the maximum percentage specified in the ordinance as well.

The Board, in almost half the ordinances, is given power to permit expansion of nonconforming uses. Ten ordinances have no stated limitations for the Board in granting such expansion permission. The Board of Appeals is also granted power to permit changes in nonconforming uses, to determine abandonment of nonconformities and to terminate nonconformities after a specified time period.

The following provisions from the Grand Rapids and Flint zoning ordinances are good examples of the type of powers granted the Board of Appeals.

No non-conforming use of any land or structure shall hereafter be enlarged or extended except that the Board of Appeals shall have the power, after holding a public hearing, to authorize an enlargement or extension of up to 50 per cent of the floor area of the existing building or buildings devoted to a non-conforming use; provided, such extension or enlargement does not unduly prolong the life of such non-conforming use, that the extension or enlargement is made on adjoining land within the same block and owned by the owner of the non-conforming use at the time this ordinance becomes effective; and further provided, that such extension or enlargement will not be of substantial detriment to adjacent property and will not materially impair the intent and purposes of this ordinance or the public interest.<sup>72</sup>

In addition to the general powers above given, the Board of Appeals shall have the authority in specific cases after public notice and hearings, to authorize by permit a variation of the application of the use, height and area district regulations herein established in harmony with their general purpose and intent, as follows:

.....  
 Grant a permit for the enlargement of existing building or buildings, or erection on the same lot or plot of ground of additional buildings for a trade, business or industry located in a district restricted against its use, where such enlargement or expansion of such trade, business or industry will not be detrimental to or tend to alter the character of the neighborhood.

.....  
 Grant a permit for a non-conforming use in the "A" or "B" Residential District to the owner of the property and under such rules and regulations as the Board may deem necessary. Such permit to be nontransferable and not to be considered as a change in the classification of the property.<sup>73</sup>

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<sup>72</sup>Grand Rapids, Michigan, Zoning Ordinance, Art. 5, sec. 505.

<sup>73</sup>Flint, Michigan, Zoning Ordinance, Sec. 74.11.

Evaluation

On the whole, the Michigan ordinances reviewed are incomplete and/or too flexible. They are incomplete because they often fail to cover important aspects of the nonconformity problem. Approximately one-sixth of the selected ordinances lack provisions covering one or more of the most important considerations in controlling nonconformities--restoration, change, structural alterations or enlargements, and discontinuance. Only a handful of ordinances include a definitive statement of the intent of the legislative body in enacting such provisions.

Other problems with regard to incomplete ordinances are:

1. No specific recording techniques required in the bulk of the ordinances;
2. A most significant nonconformity, the substandard lot of record, ignored in most of the ordinances;
3. No nonconformity provisions relating to performance standards in the few ordinances having any standards of this type;
4. No provisions dealing with the treatment of existing uses which are special exception uses after the effective date of the ordinance; and
5. No consideration given to the effects of prescriptive zoning on nonconformities in the few ordinances that use this modern zoning approach.

Although it appears clear in Court decisions that additions and structural alterations can be prohibited absolutely in Michigan cities, thirty-eight of fifty city ordinances studied give owners far more flexibility to prolong the life of non-conformities through major additions and structural alterations.

Additional flexibility and opportunity to destroy the effectiveness of nonconforming provisions, is built into a majority of ordinances by specifically authorizing the Board of Appeals to:

1. Permit additions even greater than the generous expansion permitted initially;
2. Permit nonconforming use changes to other nonconforming uses without any standards or any meaningful standards for such action;
3. Permit restoration of completely destroyed nonconformities;
4. Extend the period of discontinuance allowed for nonconformities without any guidelines for this action; and
5. Expressly permit construction of additional nonconforming buildings and uses on petition.

Finally from a strictly technical point of view, strict enforcement of more than one-third of the ordinances would be unwise as well as impossible. Where ordinances define nonconforming uses to include buildings, the restrictions on additions and structural alterations, changes



and discontinuance would apply to nonconforming buildings housing conforming uses. Under a strict reading of some of the ordinances an existing building failing to meet a side yard requirement could not be enlarged even if the nonconformity was not increased; a residential building with insufficient front yard, vacant for more than a stated period of time, prohibited from being occupied by a residential use until the building was altered to conform with the front yard requirements, etc. Of course, it is most unlikely in practice that such restrictions would be held applicable. However, such problems could lead to poor administrative handling of the entire nonconformity section and may be one of the reasons administration of the nonconformity section of the ordinance is so ineffective.

Clearly the amortization provisions occurring in fourteen of the ordinances reviewed are unenforceable as a result of the 1962 Michigan Supreme Court decision. Discussion with officials in two municipalities with amortization provisions disclosed that the provisions were not enforced prior to this decision. Amortization provisions continue to be proposed in recent ordinances, however.

No township or county ordinance meets the express language of the enabling legislation in providing for "the completion, restoration, reconstruction, extension or substitution" of nonconformities. The ordinances either prohibit or fail to cover one or more of these actions.

Seriously lacking in most ordinances is a comprehensive and firm approach to the control of nonconformities. Because of imprecise language and serious omissions the nonconformity provisions are difficult to understand and often fail to provide direction in even the most basic control areas. The tremendous number of built-in "flexibilities" in the ordinances, particularly the powers delegated to the Board of Appeals, appear to indicate that the legislators were either confused and unsure about the impact of the provisions enacted or were not committed to effective control of nonconformities.

## CHAPTER IV

### RECOMMENDATIONS FOR THE CONTROL OF NONCONFORMITIES

Municipalities have considerable power to implement a program of strict control over nonconformities. It is apparent from the research undertaken for this study that Michigan Supreme Court decisions uphold the principle that the long-term goal for elimination of nonconformities is legitimate provided the means for attaining this goal are reasonable.

Despite the Court's refusal to uphold amortization provisions without statutory authority, all of the blame for reported lack of any significant success in eradicating nonconformities over time using zoning controls cannot be placed on adverse court decisions. Alfred Bettman says the lack of progress in eliminating nonconformities is due to "leniencies and language-stretching indulged in by administrators and courts" and "difficulties [arising] from the zone plan itself, which is not so careful, thorough, and honest as to produce a zone map which justifies the starving of nonconforming uses." He says that a major weakness of zoning ordinances is the failure to develop and keep

current zoning district boundaries which create nonconformities that realistically should be eliminated from the city over time.<sup>74</sup>

An effective program of control and elimination of nonconformities requires a well developed and highly restrictive ordinance and sound administrative techniques. The descretion of the Board of Appeals should be limited severely by detailed standards where Board review is necessary. Limitations should apply not only to the Board's role in administering nonconformity regulations but also to the powers given the Board to grant variances to the ordinance.

Actions of the Board of Appeals and the legislative body can destroy any potential for long term improvement in the nonconformity situation in a municipality. In Detroit the number of nonconformities continues to increase through legislative and quasi-judicial action.

The [Common] council has . . . been guilty of passing resolutions allowing . . . what amounts to nonconforming uses to certain citizens who have petitioned it. . . . Whenever an individual has received approval of council, via a resolution, and petitions the Board, it is customary for the Board to grant the appeal without question.<sup>75</sup>

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<sup>74</sup>Alfred Bettman, "A Backward Step in Zoning," City and Regional Planning Papers, ed. Arthur C. Comey (Cambridge: Harvard University Press, 1946), Chapter 12, Paper presented in 1940, p. 65.

<sup>75</sup>Richard M. Bauer, "The Board of Zoning Appeals, Its Functions, Duties, and Responsibilities and An Analysis of the Operations of the Detroit Board of Zoning Appeals" (unpublished Master's dissertation, Dept. of Landscape Architecture and Urban Planning, Michigan State University, 1957).

Adequate record keeping is another vital part of a long range program to control and eliminate nonconformities. A program which relies solely on reports of neighbors or a land use survey map prepared by the city planning department cannot be expected to create a firm foundation for effective administrative and legal action.

The model provisions suggested in the following section strictly control nonconformities. A strong administrative action program, continued commitment to the principle of elimination of nonconformities by the legislative body, and a fair, yet firm ordinance are all necessary to create an effective process for attacking the problem of nonconformities. It is evident in our cities that all three ingredients are found to be wanting.

### Model Provisions

#### Article X Nonconformities

Section X00 Purpose and Intent.--It is a fundamental principle of zoning that nonconformities should be eliminated as rapidly as may be done without infringing upon the constitutional rights of property owners. The eventual elimination of nonconformities is as much a subject of health, safety, and welfare as is the prevention of the establishment of new uses that would violate the provisions of this Ordinance. This principle is declared to be the purpose and intent of this Article because such nonconformities are incompatible with and detrimental to permitted uses

and structures in the zoning districts in which they are located; they adversely affect the City's planned overall development pattern; and they inhibit present and future sound development of nearby properties.

Section X01 Definitions.--

(a) Nonconforming Use. A use of a building, structure, or land existent lawfully on the effective date of this Ordinance or any amendments thereto which fail to conform to Article ---, USE REGULATIONS of this Ordinance or Article ---, PERFORMANCE STANDARDS of this Ordinance for the zoning district in which it is located. Off-street parking and loading shall be considered nonconforming uses for purposes of this Ordinance.

(b) Nonconforming Structure or Lot. A building, structure, or lot, existing lawfully on the effective date of this Ordinance or any amendments thereto which fails to conform to Article ---, DIMENSIONAL REQUIREMENTS for the zoning district in which it is located or to the regulations for signs.

Section X02 Continuance.--A nonconforming use, structure, or lot may be continued subject to the provisions of this Article.

(a) Nonconforming Lot. No nonconforming lot shall be deemed to have existed on the effective date of this Ordinance or any amendments thereto unless it was duly recorded on such date.

(b) Nonconforming Use. No nonconforming use shall be deemed to have existed on the effective date of this Ordinance or any amendments thereto unless it was in being on a continuous basis on such date or, if seasonal and not in season, had operated during the appropriate season immediately preceding the effective date of this Ordinance or any amendments thereto.

(c) Nonconforming Structure. No nonconforming structure shall be deemed to have existed on the effective date of this Ordinance or any amendments thereto unless it was in being on such date. Provided, nothing in this Ordinance shall be deemed to require a change in plans, construction, or designated use of any structure on which actual construction was lawfully begun prior to such date, provided such construction is diligently prosecuted to completion within two years following such date. Actual construction is hereby defined as the placing of construction materials so that they are in a permanent position and fastened to the earth in a permanent manner.

Section X03 Structural Alteration, Enlargement, Addition or Extension.--

(a) Nonconforming Use. No nonconforming use of land shall be added to or enlarged and no structure devoted to a nonconforming use shall be added to, enlarged, or structurally altered unless required by law except to change the nonconforming use to one which is permitted in the district in which such use is located. This prohibition

shall not apply to an existing residential use in a district where residences are prohibited provided that:

1. Such structural changes can be made only in conformity with all dimensional requirements of the R-X Residential District;
2. No additional dwelling units shall be added and that there is no such intensification of occupancy as would constitute a rooming or boarding house;
3. Floor area added shall not exceed fifty percent of the total floor area existing in the dwelling at the time of affixing proscriptive zoning;
4. Such addition shall not be made if a portion of the existing dwelling has been converted to a conforming use subsequent to the proscriptive zoning;
5. The parcel to be so used is restricted to that existing as a residential use at the time of affixing the proscriptive zoning district, or to that parcel plus such subsequent consolidation as would bring the parcel up to, or tending toward, the minimum residential building lot area and lot width as specified in this Ordinance. The nonconforming use of part of a structure, all or substantially all of which is designed for a use which



is not permitted in the district in which it is located may only be extended throughout the existing structure where said use is presently located provided the other requirements of this Section are observed.

(b) Nonconforming Structure. A structure which does not conform to the regulations of this Ordinance other than Article ---, USE REGULATIONS, may be added to, enlarged, or structurally altered, provided that no existing nonconformity is increased beyond its extent on the date that it became nonconforming, and provided that if the nonconforming structure contains a nonconforming use the regulations of paragraph "a" above shall apply.

Section X04 Moving.--

(a) Nonconforming Use. No nonconforming use of land shall be moved to another part of a lot or outside the lot, and no nonconforming use of a structure shall be moved to any part of the structure not manifestly arranged and designed for such use at the time the use became nonconforming, and no structure containing a nonconforming use shall be moved, unless the results of any moving described in this section is to end the nonconforming use.

(b) Nonconforming Structure. No nonconforming structure shall be moved unless the result of such moving is to reduce or to eliminate its nonconformity.

Section X05 Changes.--Once changed to a conforming use, no structure or land shall be permitted to revert to a nonconforming use. A nonconforming use of land shall not be changed to any other use except to a use permitted in the district in which the land is located. A nonconforming use located in a structure originally designed for a conforming use and readily adaptable to a conforming use shall be changed only to a conforming use.

A nonconforming use of a structure may be changed to another nonconforming use only under the following conditions:

(a) Such change shall be permitted only by special exception under the provisions of Article --- (Board of Appeals);

(b) Such change shall require no additions, enlargements, or structural alterations;

(c) The applicant shall show that the nonconforming use cannot reasonably be changed to a use permitted in the district where such nonconforming use is located.

(d) The applicant shall show that the proposed change will be less objectionable in terms of external effects than the existing nonconforming use with respect to:

1. Traffic generation and congestion including truck, passenger car, and pedestrian traffic;
2. Noise, smoke, dust, fumes, gases, heat, odor glare, or vibration.

3. Storage and waste disposal.
4. Signs and lighting.
5. Appearance.

Section X06 Restoration.--No structure which has been damaged by any means out of the control of the owner to an extent of fifty percent or more of its market value (excluding the value of land, the cost of site preparation, and the value of any foundation adaptable to a conforming use) at the time of damage, or by any means within the control of the owner (except as provided in Section X07 below) to any extent whatsoever, shall be repaired, reconstructed, or used except in conformity with the provisions of this Ordinance. Provided that, if a structure is located on a lot with a smaller lot area or a lesser lot width than is prescribed for the district in which it is located, it need not comply with the provisions of that district for minimum lot area or lot width but shall maintain as a minimum, the lot area and width existing previous to the damage to the structure.

If the cost of restoration is less than fifty percent of its market value at the time of damage (excluding the value of land, the cost of site preparation, and the value of any foundation adaptable to a conforming use) the structure and its use may be restored, provided the restoration in no way increases any former nonconformity, and provided further that restoration of such structure is begun within

one year of such destruction and diligently prosecuted to completion.

The determination of market value shall be made by the Zoning Administrator according to the standards adopted by the City Board of Review.

Section X07 Repairs.--In order to assure that non-conforming structures or structures containing nonconforming uses will be maintained in safe condition for so long as such nonconformity exists, nothing in this Ordinance shall be deemed to prohibit:

(a) Any ordinary repairs and replacement of existing materials with similar materials placed in the same manner;

(b) Any work required by the codes and ordinances of the City or ordered by any City official charged with protecting the public health, safety, or welfare, if such work does not add to or enlarge a nonconforming use or otherwise increase any nonconformity.

Section X08 Abandonment.--

(a) Any nonconforming<sup>u</sup> use which has been abandoned shall not thereafter be re-established. Any structure or land, or structure and land in combination, which was formerly devoted to a nonconforming use which has been abandoned shall not again be devoted to any use other than those uses which are permitted in the district in which the

structure or land, or structure and land in combination, is located.

(b) Any one of the following shall constitute prima facie evidence of intent to abandon:

1. Any positive act indicating such intent;
2. Any conscious failure to take all necessary steps to resume the nonconforming use with reasonable dispatch including advertising of the property for sale or for lease;
3. In the case of a nonconforming use of land only, or of minor structures such as signs and buildings less than two hundred square feet in area, or of a nonconforming use in a structure originally designed for and readily adaptable to a conforming use, cessation of the nonconforming use for ninety consecutive days or for a total of six months during any one-year period;
4. In the case of a nonconforming use in a structure or a structure and land in combination except as provided above, cessation of the nonconforming use for twelve consecutive months, or for a total of twenty-four months during any three-year period.

Provided customary seasonal nonconforming uses shall be considered abandoned if such uses do not operate at least half of any normal season.

Section X09 Performance Standard Nonconformities.--

No use existing on the effective date of this Ordinance or amendment thereto shall be so altered as to conflict with or further conflict with the performance standards established in this Ordinance and other municipal ordinances for the district in which such use is located.

All uses nonconforming at the effective date of this Ordinance or amendment thereto by reason of noncompliance with performance standards established herein shall adopt necessary measures to conform therewith within five years of such date.

Section X10 Special Exception Uses.--Any use existing on the effective date of this Ordinance or amendment thereto which is listed as being permitted only by special exception in the district wherein located, shall be considered a nonconforming use until a special exception has been obtained pursuant to the procedures and other requirements of Article --- (Board of Appeals).

If such use cannot meet the standards (such as location, method of operation, etc.) required for authorization of a special exception, such use shall continue to be considered a nonconforming use for purposes of this Ordinance.

Section X11 Nonconforming Lots of Record.--

(a) The provisions of this Ordinance with regard to lot area and lot width shall not prevent the construction of a single-family dwelling in a Residence District, provided all other regulations of the district are observed,

on any lot which was lawful when created and which prior to the effective date of this Ordinance was in separate ownership duly recorded.

(b) If two or more adjoining lots of record, one or both of which fail to meet the requirements of this Ordinance with regard to lot area or average lot width, have continuous frontage and are in single ownership as of or subsequent to the effective date of this Ordinance, and if such lots taken together would form one or more lots, each meeting the requirements of this Ordinance with regard to lot area and lot width, such lot or lots shall no longer be considered nonconforming, and must be used in compliance with the lot area and average lot width requirements irrespective of subsequent changes in ownership.

Section X12 Administration.--Within six months of the effective date of this Ordinance or amendment thereto the Zoning Administrator shall execute a formal, written determination of nonconformity with respect to all nonconforming uses in the City. Such determination shall include the names and addresses of the owners of such nonconforming uses, the legal description of the parcel and the nature and extent of the use. Such determination shall be forwarded to the owners of said nonconforming uses. If this determination is not appealed within fifteen days of the notification of such determination the Zoning Administrator shall record this determination with the Register

of Deeds of ----- County. In case of appeal, the recording shall be done when the determination is sustained or modified. Such record shall be considered prima facie evidence of the nature and extent of the non-conforming use at the effective date of this Ordinance or amendment thereto.

#### Commentary on Model Provisions

The model provisions are designed to meet the enabling legislation in the City and Village Zoning Act. Municipalities operating under the Township Rural Zoning Act or the County Rural Zoning Act would have to adjust the provisions, particularly with regard to structural alterations and enlargements.

Section X00 states clearly that the long term goal of the ordinance is to end nonconformities in the city. This statement serves as a commitment by the legislative body and a measuring point in all administrative and legal action in the enforcement and interpretation of the provisions.

To develop an ordinance that applies in a logical, consistent and realistic way to nonconformities, the various nonconformities must be clearly defined. Consequently, non-conforming uses and nonconforming structures and lots are defined separately. With the dual definitions, regulatory provisions can be developed specifically for the various types of nonconformities.



Section X02 provides for continuance of nonconformities as required under the law. This section provides "ground rules" for determining what is in existence or under construction at the time of ordinance adoption.

The values of making a distinction between nonconforming uses and structures is readily apparent in Section X03. Structures containing nonconforming uses are not permitted to be enlarged, added to, or structurally altered to accommodate the uses except in the case of nonconforming residential uses under strictly controlled standards. Nonconforming uses can be extended throughout a conforming or nonconforming building expressly designed for such use but in no other case. Nonconforming uses of land are not permitted to expand or be extended.

Nonconforming structures containing conforming uses, however, can be enlarged, added to, etc. provided the existing nonconformity is not increased. This provision permits improvement and modernization of certain nonconforming structures which can deter functional obsolescence and general decline yet insure that dimensional nonconformities will not be increased.

Section X04 prohibits moving of nonconforming uses unless such a move will end the nonconforming use. Nonconforming structures containing conforming uses can be moved under this section if the move will reduce or eliminate the nonconformity.

Section X05 meets the legal requirement that non-conforming uses in buildings designed for nonconforming uses be permitted to change to other nonconforming uses. A major difference between the model provision and most zoning provisions controlling changes is the detailed list of conditions which must be met to make such a change. In this way the city can be reasonably assured that changes will bring an "upgrading" to the area involved. This approach also avoids the "cumulative uses" approach which fails to recognize that all uses may be "desirable" or "undesirable" depending on the situation and location and, consequently, uses should be considered on an equal basis.

Section X06 is specific about what measure is to be used for damage to a structure and how the extent of damage is to be determined. Market value is used rather than assessed value because of the many possibilities for assessment inequalities in a community both within a use category and between categories.

Section X07 permits repairs but defines what repairs are considered acceptable. This description can close a potential "loophole" where repairs of a nonconformity can turn into a major rebuilding job.

Section X08 provisions affect different types of non-conformities differently in an attempt to be more reasonable in the application of the provisions. The provision is worded to overcome the problem of proving "abandonment" in a legal sense as discussed earlier in this study.

Sections X09 and X10 "modernize" the nonconformity section of the zoning ordinance. Section X09 requires uses nonconforming as to performance standards to meet these standards within a reasonable time. Although special exception uses are not new, modern zoning ordinances employ the special exception device much more frequently. Section X10 describes how nonconformity and special exception provisions shall be applied to pre-existing special exception uses.

In order to permit property owners to do something with vacant lots even though they may not meet the minimum lot width or lot area requirements, Section X11 authorizes a low intensity land use of such lots provided all other requirements of the ordinance are met.

Section X12 states the procedure by which nonconforming uses are recorded for purposes of the ordinance. Without such records future administrative and legal determinations would be difficult.

Nonconforming structures are not recorded because it is assumed that any additions will require a zoning permit and a determination of conformity or nonconformity with dimensional requirements can be made at that time as is the case with completely new construction.

#### Amortization

The process of obsolescence, decay, and destruction of nonconformities in a city will be slow even under the

most ideal conditions stated earlier of effective ordinance provisions, aggressive administration, and, legislative support. Experience indicates that nonconformities do not disappear readily. Nonconforming uses benefit because they receive special privileges denied to other properties within the same zone. This monopolistic situation solidifies the position of the nonconforming use in the district where it is prohibited.

Nonconformities were protected originally because of the fears expressed by property owners that existing nonconformities would be ousted with the passage of zoning ordinances, the doubts concerning the constitutionality of the termination of nonconformities, and the assumption by zoning advocates that nonconformities would disappear in the natural process of obsolescence.

Gradually the concept has developed that, in principle, there is no real difference between employing the police power as a means of preventing incompatible uses from invading an area and the use of the police power to eliminate an existing incompatible use. A few of the court decisions supporting amortization provisions were reported in an earlier chapter. A Chicago Law Review article summarizes the court's general reasoning in supporting such provisions:

An amortization plan, if administered to reduce the owner's loss to a minimum, would not, because of the period of adjustment and the monopoly accorded to the owner, be more drastic than the situation requires. The beneficial effect on the community of

the eventual elimination of all non-conforming uses by such a plan more than offsets individual losses and should render the plan constitutional.<sup>76</sup>

The basic requirements of a successful amortization program are an administrative procedure which provides for ascertaining the value of nonconformities to be terminated and a reasonable amortization schedule to minimize or eliminate an owner's loss through such a program.

The following discussion and examples of amortization provisions will provide a framework for developing meaningful measures for terminating nonconforming uses through zoning should this approach be authorized by the Michigan legislature and approved by the Court.

The elimination of nonconforming uses is approached in two basic ways--selectively and comprehensively. The selective approach, which is by far the most common in the ordinances reviewed from Michigan and all parts of the United States, requires removal of only very limited types of nonconformities which generally have the following characteristics:

1. Uses are primarily open in nature;
2. Structures and buildings, if any, have relatively little economic value;
3. Only commercial and industrial uses are affected;

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<sup>76</sup>"Amortization of Property Uses Not Conforming to Zoning Regulations," University of Chicago Law Review, Vol. 9, No. 3 (April, 1942), p. 486.

4. Structures and uses scheduled for elimination are deleterious to residential areas from an aesthetic point of view.

Representative samples of selective amortization provisions are included below.

The non-conforming use of land, where no structure thereon is used for such non-conforming use, existing at the time this Ordinance becomes effective, may be continued for a period of not more than three (3) years therefrom. . . .<sup>77</sup>

The lawful uses of land for storage purposes and for advertising signs and billboards which do not conform to the provisions of this Ordinance shall be discontinued within five years from the date of the approval of this Ordinance and the same uses of land which become nonconforming by reason of a subsequent change in this Ordinance shall also be discontinued within five years from the date of the change.<sup>78</sup>

No outdoor advertising sign or outdoor advertising structure which, after the adoption of this Ordinance, exists as a nonconforming use . . . shall continue, as herein provided for nonconforming uses, but every such sign or structure shall be removed or changed to conform to the regulations of said district within a period of two (2) years.

A nonconforming use of land, where the aggregate value of all permanent buildings or structures is less than one thousand dollars (\$1,000), existing at the time of adoption of this Ordinance, may be continued for a period of not more than three (3) years therefrom. . . .

Any such use [automobile wrecking, junk, or salvage yard, building material storage yard, contractor's yard, or any similar more or less temporary use of land] is hereby declared to be a public

<sup>77</sup> East Detroit, Michigan, Zoning Ordinance, Art. 4, sec. 4.17h.

<sup>78</sup> Muncie, Indiana, Zoning Ordinance, Sec. 25, Sub-section 2.

nuisance in any residential district established by this Ordinance and shall be abated, removed or changed to a conforming use within a period of one (1) year after the date of passage of this Ordinance.

Any nonconforming automobile wrecking, junk, or salvage yard in any non-residential district shall be, after the adoption of this Ordinance, abated, removed, or changed to a conforming use within three (3) years.<sup>79</sup>

In any Residence District, uses of land only, and outdoor uses whether of all or part of a lot which are nonconforming . . . shall either be made to conform to the regulations of the district in which they are located, or be discontinued and removed within three years . . . Under this paragraph . . . shall be included junk yards, storage yards, outdoor sales areas, quarries, and other such uses, where the principal activities on the lot are not carried on within a structure or are carried on within a structure which is adaptable to a conforming use, or where the outdoor use is independent of or unnecessary to activities carried on within any structure on the lot.

Advertising signs located in Residence Districts, other than on a property devoted also to some other business or industrial use, shall be discontinued and removed within three years . . .<sup>80</sup>

The lawful use of land (without buildings) which does not conform to the provisions of this ordinance shall be discontinued within one year from the effective date of this Ordinance . . .<sup>81</sup>

Examples of ordinance provisions which are much broader in the application of amortization procedures are included below. Even these more comprehensive ordinances

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<sup>79</sup>Knoxville, Tennessee, Zoning Ordinance, Art. 6, sec. E.

<sup>80</sup>New Haven, Connecticut, Zoning Ordinance, Art. 67, sec. C.8.

<sup>81</sup>Louisville, Kentucky, Zoning Ordinance, Sec. 100.068.

have amortization provisions which affect only certain types of nonconformities. Nonconformities not directly affected in the following examples include nonconforming structures with conforming uses. In fact, the only ordinances surveyed which directly authorize elimination of nonconforming structures housing conforming uses are those which do not distinguish, in definition and use, between nonconforming uses and nonconforming structures and provide for the termination of "nonconforming uses" according to specified procedures.

The more inclusive ordinances range from the simple to the complex. A loosely worded model provision for Minnesota communities affects all nonconforming uses and requires termination of such uses after a specified time period based at least in part on the type of building construction.

Junk yards shall not continue beyond 1 year except in commercial and industrial districts if fenced or enclosed in a building.

No outdoor advertising structure may continue as a nonconforming use after 6 months.

No nonconforming use of a building may be continued for more than ten years after the effective date of this ordinance, or, if later, beyond the end of a reasonable period for amortization of the building. In no event shall the amortization period, commencing with the completion of erection of the building, be more than:

- a. 30 years for buildings of ordinary wood frame construction;
- b. 40 years for buildings of wood and masonry construction;
- c. 50 years for buildings of other construction.<sup>82</sup>

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<sup>82</sup> Zoning--A Guide for Minnesota Cities and Villages  
(Minneapolis: Information Service, League of Minnesota Municipalities, 1951), pp. 44-45.



The Fremont, California ordinance which follows, specifies that nonconforming structures with nonconforming uses shall be depreciated according to standard accounting methods rather than stating specific formulae for depreciation (except for nonconforming uses of land and minor buildings). By using the "appraised market value" at the time the use becomes nonconforming the Fremont amortization base is more realistic than the Minnesota model which uses a fixed base period. The fixed base and the alternate amortization schedule of ten years could force termination of older structures after a relatively short period regardless of their current market value.

In the Fremont ordinance all nonconforming uses involving land or structures of low value, commercial and industrial uses in residential districts, and residential and commercial uses in industrial areas are subject to elimination through amortization.

The hereinafter designated nonconforming uses of land are illegal and prohibited after the useful economic value of the structures used in such nonconforming use has been consumed or realized by the owner of such structure. For a determination of the time when such nonconforming use must be discontinued, the following tests and procedures are established:

- (a) The economic value of a nonconforming structure shall be the appraised market value of such structure as determined by the county assessor . . .
- (b) The value so established shall be depreciated by a standard method of depreciation accepted and used generally in the business world. When such structures have been depreciated to their salvage value, they shall be considered to have no further

economic value, their nonconforming use shall be discontinued and the structures shall be removed; provided, however, that the following presumptions shall apply:

- (1) That the nonconforming uses of land not involving any building or structure other than minor structures such as fences, signs and buildings of less than four hundred square feet in floor area will be depreciated at not less than one hundred dollars a year or in two years, whichever results in the later discontinuance.
  - (2) That a nonconforming structure having such appraised value of five hundred dollars or less will be depreciated at not less than one hundred fifty dollars a year or in three years, whichever results in the later discontinuance.
  - (3) That all other structures will be depreciated in not to exceed the number of years designated by the United States Treasury Department for the depreciation of such structures for income tax purposes, whether or not the property is so used as to be depreciable for income tax purposes.
- (c) Such mandatory discontinuance of nonconforming uses is applicable to the following:
- (1) All nonconforming uses involving structures of an appraised value of five hundred dollars or less.
  - (2) Uses permitted in [commercial and industrial districts] but located and nonconforming in [Residential districts] designated for residential use in the General Plan.
  - (3) Nonconforming residential or commercial uses located in [Industrial Districts].

All nonconforming signs, billboards or commercial advertising structures lawfully existing as of January 1, 1958 may be continued in use, without expansion, alteration or other substantial change, until September 30, 1965, at which time such nonconforming signs, billboards and structures shall immediately be removed, discontinued and abated, or changed so as to conform with the requirements of this chapter.<sup>83</sup>

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<sup>83</sup>Fremont, California, Zoning Ordinance, Art. 23, sec. 8-223.5.

The Fremont ordinance does not take into account all of the nonconformity combinations which are possible. The amortization provisions are structured on the premise that nonconforming uses are either open uses of the land or are housed in nonconforming structures. No consideration is given in the language of the ordinance to the possible and likely existence of nonconforming uses in conforming structures. The provisions also fail to cope with the problem of multiple structures used for a nonconforming activity where termination of structures might occur at widely different times.

The Chicago proposal has a different approach in defining what is to be affected by amortization provisions. Recognizing the many cases in which a nonconforming uses may be located in a conforming structure (an industrial building and use that meet all the dimensional requirements of the residential district where located, a residential structure that contains a nonconforming commercial use, etc.) the Chicago ordinance requires elimination of "all structures and buildings, all or substantially all of which are designed or intended for a use not permitted in the district in which they are located" and the discontinuance in residential districts of nonconforming commercial and industrial uses in buildings "all or substantially all of which [are] designed or intended for a use permitted in the district in which [they are] located."<sup>84</sup>

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<sup>84</sup> Chicago Zoning Ordinance, (Proposed), Art. 6, sec. 6.3-8.

The Chicago proposal requires termination of all structures designed or intended for a nonconforming use which have an assessed value of less than \$5,000. Amortization is also specified for structures exceeding \$5,000 in residential districts when they are designed for uses permitted only in the commercial and industrial areas and buildings designed for residential purposes but located in commercial and industrial districts.

In all Residence Districts any building or structure, other than those [of less than \$5,000 regulated elsewhere], all or substantially all of which is designated or intended for a use permitted only in one of the Business, Commercial or Manufacturing Districts, shall be removed or it shall be altered and converted to a building or structure designed for a use permitted in the district in which it is located within six months after the termination of the respective periods of time set out hereinafter, which periods are hereby established as a reasonable amortization of the normal, useful life of each class of building and type of construction above the foundation walls or piers:

--Solid brick, stone or reinforced concrete with structural members of steel: 40 years from the date of issuance of the building permit for the construction of either the whole structure or the initial building or initial part thereof, or 25 years after the effective date of this ordinance, whichever last occurs.

--Solid brick, stone or reinforced concrete with structural members of metal other than steel, reinforced concrete masonry, or a combination thereof: [30 or 20 years as above].

--Timber and all other construction: [20 or 10 years as above].

If, prior to the adoption of this ordinance, substantially all of a nonconforming building has been reconstructed, rebuilt or structurally altered, or if an addition at least equal in size or appraised value has been structurally attached thereto, the normal useful life of such building is hereby fixed in accordance with the foregoing schedule from the date of the issuance of the building permit for such reconstruction or addition.

Any building designed or intended for a residential use which is located in a Business, Commercial

or Manufacturing District, and in which such residential use is not permitted, shall be removed or shall be altered, remodeled and converted for a permitted use within six months after the termination of the normal useful life of such building which is hereby established in accordance with the respective amortization periods set out in [the first paragraph above] . . .

The non-conforming use of a building or structure, all or substantially all of which is designed or intended for a use not permitted in the district in which it is located, shall be terminated and shall not thereafter be operated on the premises at the end of the useful life of said building as herein determined and upon the removal of said building or upon the reconstruction, alteration or remodeling of the building for a use permitted in the district in which the property is located.

Where the application of the terms of [the first paragraph above] hereof would cause two or more buildings or structures in common ownership and located upon the same or adjoining lots or parcels of land to be removed or reconstructed at different periods, the Board of Appeals shall have the authority, upon petition, to extend the amortization period for not more than the longest period permitted one of the buildings or structures.<sup>85</sup>

The regulations provide a range in termination dates based on construction type. Also taken into account is the possible need for termination adjustments when two or more structures designed for a nonconforming activity are located on the same or adjoining parcels.

Nonconforming uses located in buildings designed for a use permitted in the particular district are amortized as follows:

In all Residence Districts, the non-conforming business, commercial or manufacturing use of a building, all or substantially all of which is designed or intended for a residential purpose or for a residential accessory purpose, shall be entirely

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<sup>85</sup>Ibid., Art. 6, sec. 6.3-8.

discontinued and shall thereafter cease operation and not be re-established on or before five years from the date the use becomes nonconforming, whichever date is later.

In all districts other than the Residential Districts any non-conforming use located in a building, all or substantially all of which is designed or intended for a use permitted in the district in which it is located, shall be entirely discontinued and shall thereafter cease operation and not be re-established on or before 10 years from the date of this amendment or 10 years from the date the use becomes non-conforming, whichever date is later, provided, however, this paragraph shall not be interpreted to apply to a use which is conforming except only for inadequate off-street parking facilities.<sup>86</sup>

Finally, a more carefully worded schedule for the elimination of nonconforming uses of land, which covers more contingencies than most examples, is included in the Chicago proposal.

The non-conforming use of land shall be discontinued and cease within two years from the adoption of this ordinance or within two years from the date the use becomes non-conforming, whichever is later, in each of the following cases:

--where no buildings or structures are employed in connection with such use;

--where the only buildings or structures or other physical improvements employed are accessory or incidental to such use or have an appraised valuation of less than \$2,000; or

--where such use is maintained in connection with a conforming building or structure; except that inadequate off-street parking facilities used in connection with a building the use of which complies with the requirements of the district in which it is located, may be continued for so long as the premises are used for a permitted use.

A non-conforming use of land which is accessory to the non-conforming use of building or structure shall be discontinued on the same date the non-conforming use of the building or structure is discontinued.

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<sup>86</sup>Ibid., Art. 6, sec. 6.4-3.

A non-conforming use of land which has in connection therewith physical improvements underground or substantially at ground level, and which are in excess of \$2,000 appraised valuation shall be deemed to be a non-conforming structure and shall be subject to the applicable provisions [relating to the elimination of structures designed or intended for nonconforming uses].<sup>87</sup>

No ordinances examined in the process of making this study had amortization provisions for nonconforming structures occupied by conforming uses. The dramatic change in living standards and what are considered minimum requirements for light and air, open space, etc. have left a huge legacy of structures which do not meet modern standards. To prevent new construction at old standards most ordinances do not reflect existing site development standards in the older parts of the municipality. Consequently, most older structures fail to meet minimum standards. To institute a program of elimination of nonconforming structures would create an immense disruption of the city.

Thought should be given to amortizing certain non-conforming structures, however. A provision which would reduce the density of nonconforming multiple units over time would attack a major contributor to blight in older neighborhoods.

Building amortization based on date of construction creates several problems which must be considered in scheduling. During the life of a building and before or after the effective date of amortization provisions transfers

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<sup>87</sup>Ibid., Art. 6, sec. 6.5-4.

of title may occur, mortgages may be foreclosed, and additional capital expenditures may be made.

In another consideration, it is common practice to amortize all nonconforming uses of land in the same amount of time--one, two, or more years. Such a practice does not recognize the very substantial differences in market value which are possible between nonconforming land uses. An approach, which applies to all types of nonconformities, involving a determination of market value and an amortization schedule based on standard business methods can meet the basic problems of developing a fair and reasonable method for termination.

#### General Conclusions

A major objective of this study was to survey and assess administrative techniques and administrative successes in regulating nonconformities in Michigan. It was quickly realized through a number of personal interviews, however, that a general pattern of inaction in this area of zoning administration was the rule rather than the exception.

Because of this finding, the thesis was somewhat reduced in scope and the emphasis was changed. An assumption was made that methods and techniques to control and eliminate nonconformities were not available to Michigan municipalities because of adverse court decisions and/or poorly conceived nonconformity legislation. The study



was, therefore, designed to investigate the framework for nonconformity control in Michigan.

The major conclusions resulting from this investigation were:

1. The Michigan Supreme Court and Appeal and Supreme Court decisions of the United States generally uphold the basic principle that nonconformities must be eliminated over time;
2. Court decisions generally uphold strict measures controlling nonconformities;
3. Favorable court decisions have been made regarding amortization provisions applicable to nonconforming uses although such provisions are not permitted in Michigan at the present time due to lack of enabling legislation;
4. Local ordinance provisions related to control of nonconformities generally lack comprehensiveness, are imprecise, and are far too flexible for effective control.

Municipalities in Michigan have considerable power to implement a program of strict control over nonconformities. An effective program of control and elimination of nonconformities requires a well developed and highly restrictive ordinance, a strong administrative action program, and most importantly, a commitment and continuing commitment by the legislative body to the principle of elimination of nonconformities.

Further intensive attention should be given to identifying the basic reasons why nonconformity regulations are so weak and enforcement inadequate. Particularly, investigation should focus on attitudes and action of municipal attorneys and the political implications of strict regulatory controls as they affect the legislative body. A great deal of additional study should also be given to developing reasonable and equitable amortization techniques.

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