

Zoning Enforcement Webinar

- Purposes of Zoning and Enforcement
- Enforcement Procedures
- Appeals & Prosecution of Violations
- Q & A



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Quotes from North Dakota Officials

“If you don’t enforce a zoning ordinance, it’s not worth the paper it’s written on.”

- Retired Bismarck Zoning Administrator/Building Official

“If you want to have ordinances, enforce them. If you don’t want to enforce, get rid of your ordinances.”

- City attorney, Eastern ND

“If you have ordinances but don’t enforce them, they can become a burden to the community.”

- City Attorney, Central ND



Reactivating Enforcement

If you do wish to enforce your ordinance but maybe you haven't conducted enforcement for a long time, you could have a problem. If you enforce a violation that has occurred somewhere else in the past, and went unenforced, you could be vulnerable to a claim of exercising arbitrary enforcement.

You can insulate yourself from this potential problem situation by having your commissioners adopt a Resolution acknowledging that enforcement may not have been properly or actively pursued in the past, but from this time forward (and name a date), a new enforcement program will begin.

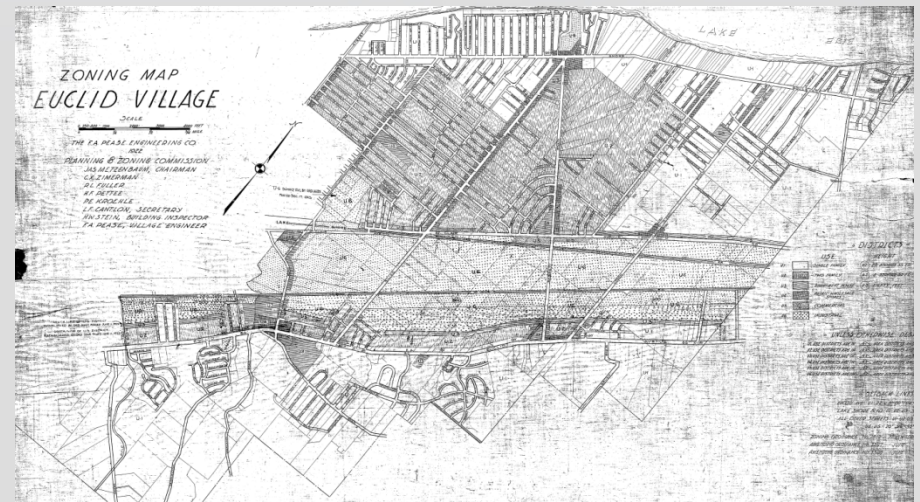


National Standards Established for Zoning Enforcement

Zoning enforcement is based on protecting property values and the character of a community.

Village of Euclid, Ohio v.
Ambler Realty Co. 1926

- Zoning upheld against constitutional challenge



Authority to Enforce Zoning

- Police power: power of local jurisdiction to protect the public health, safety, and welfare of its residents. *Berman v. Parker (1954, U.S. Supreme Court)*
- May "impose such restrictions upon private rights as are practically necessary for the general welfare of all." *State v. Cromwell (1943, North Dakota)*

NDCC Enabling Legislation

Cities

- 40-47-01. Cities may zone - Application of regulations.

Counties

- 11-33-01. County power to regulate property.

Townships

- 58-03-11. Establishment of zoning districts - Uniformity.

Local Requirements

Each jurisdiction must have a Comprehensive Plan as the basis for regulating and enforcing land use as prescribed by . . .

Cities: NDCC 40-47-03 / Counties: NDCC 11-33-03 / Townships: NDCC 58-03-12

Additionally, cities must “provide for the manner in which the regulations . . . must be . . . enforced” (supporting ordinance language is needed) NDCC 40-47-04



How to Approach Zoning Violations

- Know that the overwhelming majority of zoning violations are unintentional. Most people are simply not aware of the code and zoning regulations. Give them the benefit of the doubt.
- In most cases, once they're aware, they will comply.

Step 1: **Confirm the Violation**

- Follow-up on a complaint, inspect the location, verify the violation exists, take photos if possible.
- Identify the section of the ordinance that's been violated. You will be providing this to the property owner.
- Start a new file and document your steps.

Step 2: **Landowner Contact – Diplomacy**

You can contact the landowner by mail or go knock on the door. Mailing is faster and easier but face-to-face interaction may get better results.

In either case, give the property owner the benefit of the doubt - initially. Inform them of the violation and allow them time to correct it.

This first letter or first contact can be somewhat lenient if the violation isn't creating any safety hazards.

If the violation presents an immediate threat or hazard it will need to be taken care of sooner rather than later. Use your judgment.

Mailed notifications are needed for nonresident property owners and probably the best way to notify repeat offenders.



Step 2a: **Face-to-Face Contact**

- Knock on the door
- Make sure you're talking to the property owner, not a renter
- Identify yourself and explain why you're there
- Don't make it personal, refer to it as "the property does not meet compliance with the code"
- Show them the section of the code that's been violated and give them time to read it.
- Ask them how long they think it might take for them to fix the problem. You can negotiate this.



Step 3: **Consensus on Timeframe**

Face-to-face method continued . . .

- After a timeframe is agreed upon, some zoning administrators will have the property owner sign a statement saying that their property will meet compliance with the code by a specified date.
- Other zoning administrators will send a follow-up letter thanking the property owner and confirming the verbally agreed upon timeframe for compliance.
- Avoid any further contact until the deadline. A reminder call or letter or visit can be counterproductive because they'll think you don't trust them. You can monitor the property but don't prod the property owner.

Step 4: **Deadline Arrives**

- If the owner has resolved the problem, thank them, take some final photos and close out the file.
- If the property is not in compliance and the deadline has passed, contact the property owner again and find out why.
- If they have a legitimate reason, you can give them an extension on the timeframe. Don't be too lenient with extensions or your credibility will suffer and future violators will expect additional extensions too.
- If compliance is not met on the extended deadline, before mailing the Notice and Order, check with the property owner again.

Note: This method may seem lenient and time consuming, but in most cases it is successful in resolving the matter and keeping it out of court.



Step 5: The Notice and Order

What is a Notice and Order? It is a formal written statement informing property owners of the particulars of the violation, what is needed to abate the violation, and when it needs to be completed. It is delivered in person and handed to the owner or sent by certified mail.

Elements in the N & O

- Property owner's name and location of the violation
- Description of the unlawful land use
- Remedial steps needed to correct the violation
- Compliance deadline
- Information that failure to comply is punishable by sanctions
- Opportunity for an appeal hearing, to be requested by a certain date
- Your (sender's) contact information

Note: You should have your local attorney's support before sending the N&O



Appeals of the N & O

If the N & O results in compliance, take some final photos and close out the file.

The property owner has the right to request an appeal. If an appeal is requested, schedule a public hearing.

Be prepared to provide documentation at the public hearing: a citation of the ordinance violated, photos of the violation, records of contacts and notifications.

In cities, appeals go to the Board of Adjustment. In counties, appeals go to the Board of County Commissioners. In townships, appeals go to the Board of Township Supervisors.

At an appeal hearing, if the Board upholds the charge, they can use your findings for the basis of their decision. If they do otherwise, they need to document their own reasons for their decision. Courts will want to see the basis of decisions.



Further Appeals

If the decision of the Board of Adjustment or the Board of County Commissioners or the Board of Township Supervisors is to uphold and affirm the violation, the property owner can appeal that decision upwards.

In cities, the second appeal would go to the City Commission. The City Commission's decision can be appealed yet again to district court.

In counties and townships, the second appeal would go to district court.

Sometimes repeat offenders will game the system and request an appeal for the sole purpose of delaying the process and allow themselves more time to fix the problem. They usually won't appeal to district court though.

Citizens have the right to appeal. It is an important element of the system.



If an Appeal Is Not Requested and the Violation Is Not Abated

- Determine whether you want to try further to achieve compliance or begin prosecution of the violation.
- To prosecute, refer the case to your contract attorney, city attorney, or county state's attorney.
- There are several avenues to prosecution:
 - Obtain a court order
 - Charge criminally
 - File a civil action



Your attorney has a variety of tools to use

- Declaratory Relief: Useful for egregious cases requiring immediate action such as a “stop order” or “cease and desist” order. Typically there needs to be an “imminent threat” to public health or safety.
- Charge criminally: Generally this is the quickest, cheapest and easiest action. However, it often does not resolve the problem.
- File a civil action: NDCC 40-47-12 for cities. NDCC 11-33-17 for counties. NDCC 58-03-14 for townships.



Q & A

Please send us your questions and we will do our best to answer.

A recording of this webinar will soon be available for viewing on the VWND website.

In addition, a pdf containing additional resource materials will be provided for you on the VWND website.

- Example letters
- Example Notice and Order
- NDCC citations
- Fargo & other city & county ordinance links

Thank you for your participation!

