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Date: August 6, 2025

To: Alex Busman, Banks Township Supervisor

From: Michael W. Bila, Township Attorney

Re: Applicability of Zoning Ordinance

Dear Supervisor Busman:

You have asked my office to prepare a memorandum on the present applicability of the Banks Township Zoning Ordinance given alleged procedural defects in its adoption back in the 1970s. You indicated to us that certain residents may be concerned that the Zoning Ordinance was not adequately adopted more than 50 years ago, and that the Township may therefore be subject to liability or challenge.

Under Michigan Law, a resident cannot challenge a township's adoption of a zoning ordinance from over fifty years ago as procedurally invalid to negate the ordinance and all decisions made under it. Michigan courts have consistently held that public policy precludes challenges to zoning ordinance based on procedural defects where those challenges are made long after the ordinance is enacted.

For example, in the case of *City of Jackson v Thompson-McCully Co*, 239 Mich App 482 (2000), a resident attempted to challenge the amendment of a zoning ordinance from ten years prior. The Court rejected their challenges, stating that "[w]here a zoning ordinance is not challenged until several years after its enactment, a challenge on the ground that the ordinance was improperly enacted is precluded on public policy grounds." *Id* at 493. The Court further stated that "[t]he general public and those buying and selling real estate must be able to rely on the adoption of zoning amendments that remain unchallenged for a period of years." *Id* at 493-94.

The case of *Edel v Filer Township*, 49 Mich App 210 (1973), provides further support. In this case, the Court fully acknowledged that the Township had improperly adopted its zoning ordinance. However, because more than 18 years had passed before it was challenged, the Court held that such procedural defects in the enactment of the ordinance were no longer relevant. Similar to the *Jackson* case cited above, the Court in *Edel* noted that to allow procedural challenges after such a prolonged period of time would bring about "chaotic conditions" and make living in a township with zoning impossible. *Id* at 216.

The Court in *Northville Area Non-Profit Housing Corp v Walled Lake*, 43 Mich App 424 (1972) summarized this doctrine neatly:

> "In the orderly process of handling real estate transactions where they are affected by provisions of zoning ordinances and amendments, it is essential that the members of the general public and the people buying or selling real estate must be able to rely on the validity of the public record, towit: a zoning ordinance and the zoning map issued in accordance with such zoning ordinance, without the necessity of poring over musty files and searching newspaper morgues, going back years in order to avoid a claim by other persons that there was a failure to comply with some technical requirement of law in the adoption of the ordinance in question. To hold otherwise would bring about chaotic conditions beyond all comprehension in the transfer and usage of real estate in any community having a zoning ordinance affecting such land." *Id* at 435-36.

Based on these and dozens of other similar cases, it is our opinion that procedural or technical challenges to the Banks Township Zoning Ordinance from 50+ years ago have no merit. Courts have held that as little as four years is too late to challenge procedural defects, let alone fifty. The public and the Township have relied upon the authority of the ordinance for decades – and courts will not upset that reliance based on old technicalities. This is a long-settled tenet of municipal law.

I am available to discuss any further questions you may have.

Respectfully,

Michael Bila

Michael W. Bila
Banks Township Attorney