



## Zoning Ordinance Must List Uses Eligible for Special Use Permit Specifically – Listing Merely Categories of Uses Such as “Commercial” Uses Is Not Sufficient

Ronald D. Richards Jr.

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A zoning ordinance that merely lists uses eligible for a special use permit (SUP) generally does not comply with Michigan zoning laws. Rather, the ordinance must list those eligible uses very specifically. *Whitman v Galien Twp*, unpublished per curiam opinion of the Michigan Court of Appeals (2010). In *Whitman*, the township’s SUP provisions in its zoning ordinance provided that the following uses were eligible for a SUP: "establishments for the conducting of commercial or industrial activities." Under this ordinance, the township granted a SUP that allowed some permit applicants to construct and operate a snowmobile, dirt bike, and racetrack. The plaintiffs, neighbors, appealed the township board’s decision. The trial court upheld the SUP, opining that the township may authorize SUP even if the proposed use is not specifically enumerated in the applicable zoning ordinance.

The Court of Appeals reversed, and held that the ordinance violated zoning law by being too general. The ordinance did not specify the special land uses and activities as required. The Court first noted the controlling provision of the Michigan Zoning Enabling Act (MZEA): "zoning ordinance shall specify . . . the special land uses and activities eligible for approval . . . ." MCL 125.3502 (1). The Court stated that the ordinance’s general statement that "commercial or industrial activities" are eligible for a SUP was not specific enough to satisfy the MZEA. The township’s ordinance did not specify the special land uses and activities eligible for approval, but rather identified general categories of uses or activities. Since the zoning ordinance violated the MZEA, the Court found that the township board’s decision to grant the SUP was invalid. The Court therefore vacated the SUP.

Municipalities should take special note of *Whitman* and review their SUP provisions to ensure that those provisions do not suffer from the flaws the Court identified in *Whitman*.

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### **AUTHORS/ CONTRIBUTORS**

Ronald D. Richards Jr.

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