


David Whitaker, Esq.
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Commission
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Director, Historic Designation
Advisory Board

John Alexander
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M. Rory Bolger, Ph.D., FAICP
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Eric Fazzini, AICP
Willene Green
Christopher Gulock, AICP
Derrick Headd
Marcel Hurt, Esq.

City of Detroit
CITY COUNCIL
LEGISLATIVE POLICY DIVISION
208 Coleman A. Young Municipal Center
Detroit, Michigan 48226
Phone: (313) 224-4946 Fax: (313) 224-4336

Kimani Jeffrey
Anthony W. L. Johnson
Phillip Keller, Esq.
Edward King
Kelsey Maas
Jamie Murphy
Latawn Oden
Dolores Perales
Analine Powers, Ph.D.
W. Akilah Redmond
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Sabrina Shockley
Renee Short
Floyd Stanley
Thomas Stephens, Esq.
Timarie Szwed
Theresa Thomas
Ian Tomashik
Ashley A. Wilson

TO: COUNCIL MEMBERS

FROM: David Whitaker, Director 
Legislative Policy Division Staff

DATE: May 14, 2024

RE: Follow-Up: City Council's Voting Options for Neighborhood Enterprise Zone (NEZ)
Certificate Applications

Councilmember Santiago-Romero requested that the Legislative Policy Division (LPD), provide a follow-up to our NEZ report, "City Council's Ability to Deny a NEZ Certificate Request." Due to our findings, Council Gabriela Santiago-Romero requested that the Legislative Policy Division (LPD) respond to the following questions:

1. It has been determined that City Council does not have the right to deny NEZ applications. Does this mean that every member must vote to approve?
2. If council members do not have the option to vote to deny NEZ applications, why are the applications presented to City Council as a voting action matter?
3. It has been stated that City Council has the right to determine how long the NEZ certificate will last. Can you explain the process whereby City Council can change the length of a certificate?
4. What are the acceptable grounds on which Council can deny a request to establish a Neighborhood Enterprise Zone?
5. Additionally, Council member Santiago-Romero asked if LPD does provides detailed tax saving analysis for all newly established NEZ districts.

This report is our follow-up to this inquiry.

Development of the NEZ Act

It is important to remind Council why the NEZ statute was established in the first place. The Neighborhood Enterprise Zone Act¹ (NEZ), Michigan public Act 147 of 1992, was originally introduced under Michigan Senate bill 662 in 1992, by Michigan State Senator Jon Cisky of the State's 33rd district. NEZ legislation was developed to provide a tax incentive to stimulate new housing development and improvement in communities where such was not likely to otherwise occur. Prior to its inception, economically challenged municipalities throughout the state (urban areas in particular) faced a steep decline in new housing construction and little to no home improvements to their existing older and often debilitated housing stock, due primarily to the additional tax burden generated from the higher tax assessments given to both new housing and existing housing as a result of home improvements.

The NEZ program supports owner occupied housing and new investment in communities. The program was established to stabilize neighborhoods and to provide existing residents the ability to make repairs to their respective residences without an accompanying tax burden. Under the NEZ Act, qualified local units of government may designate one or more areas as Neighborhood Enterprise Zones (NEZs) for the purpose of extending property tax abatements for residential construction and rehabilitation. Only facilities located within established NEZs are eligible for NEZ certificates.

By statute, every NEZ must contain not less than 10 platted parcels of land that are compact and contiguous. The statute allows for an exception if a NEZ is in a *downtown revitalization district*. In a downtown revitalization district,² a NEZ may contain less than 10 platted parcels if the platted parcels together contain 10 or more facilities.

In 2008, **the NEZ Act was modified by Public Acts 204 & PA 228** to allow a neighborhood enterprise zone located in a "qualified downtown revitalization district" to contain fewer than 10 platted parcels if the platted *parcels* together contain 10 or more *facilities*. The Act as modified, defines "qualified downtown revitalization district" as an area located within the boundaries of one or more of the following:

- A downtown district, as defined in the Downtown Development Authority Act.³
- A principal shopping district or a business improvement district as defined in the principal shopping district Act (BID Act).⁴
- An area of the local unit zoned and primarily used for business, as determined by the local governmental unit.⁵

The downtown revitalization district tax abatements are the ones that are primarily reviewed by the Budget Finance and Audit Committee at the certificate stage. Each one of these that are in districts that were established in 2016 or later, when President Sheffield (then Council member Sheffield) requested that LPD provide Council with a report on each requested "qualified downtown revitalization district," since the establishment of the district assured the approval of a certificate.

Clarification on Council's Voting Authority

First of all, Council does in fact have direct input on the approval of every NEZ. However, that input is made at the district level when each Neighborhood Enterprise Zone is established, which is *prior* to the time that any NEZ certificates are issued. Pursuant to state statute, NEZ's are administered at the local level in two distinct stages, the district stage, where the approval of a zone or district is established, and the certificate stage, where a local legislative body approves a certificate application only when said application meets the requirements of 1992 PA 147, MCL 207.771 to 207.787.⁶

¹ NEIGHBORHOOD ENTERPRISE ZONE ACT, Public Act 147 of 1992, MCL 207.771 et seq.

² As defined in Section 2 (k) MCL 207.772

³ PA 197 of 1975, MCL 125.1651 - 125.1681

⁴ Principal shopping Districts and Business Improvements Districts Act 120 of 1961, MCL 125.981 - 125.990n

⁵ Under the DDA Act, "downtown district" means that part of an area in a business district.

⁶ A request that meets the requirements of 1992 PA 147, MCL 207.771 to 207.787. [AdministrativeRulesNEZ.pdf \(michigan.gov\)](#) (NEIGHBORHOOD ENTERPRISE ZONE ACT) [MCL - Act 147 of 1992 - Michigan Legislature](#)

Procedure at the District Stage of a NEZ Request (Step 1)

At the request for the district stage, which occurs in the Planning and Economic Development Committee, the entire zone or district is established as a NEZ designated area. *At this stage, Council has the discretion to vote a NEZ up or down.* Pursuant Section 3 of the NEZ statute, upon its approval of a NEZ, by resolution Council makes the following statements:

- The governing body of the local governmental unit shall make a finding that a proposed neighborhood enterprise zone is consistent with the master plan of the local governmental unit and the neighborhood preservation and economic development goals of the local governmental unit.
- The governing body before acting upon the resolution shall also adopt a statement of the local governmental unit's goals, objectives, and policies relative to the maintenance, preservation, improvement, and development of housing for all persons regardless of income level living within the proposed neighborhood enterprise zone.
- Additionally, before acting upon the resolution, the governing body of a local governmental unit with a population greater than 20,000 shall pass a housing inspection ordinance.⁷

Further, the NEZ statute states: (4) Upon receipt of a notice under subsection (3), the assessor shall determine and furnish to the governing body of the local governmental unit the amount of the true cash value of the property located within the proposed neighborhood enterprise zone and any other information considered necessary by the governing body.

Since 2016, at the request of Council President Sheffield (prior to her presidency on the Council), in the cases where there are individual developers seeking a new NEZ for a housing development project, LPD upon receiving a cost benefit analysis report from the Detroit Economic Growth Corporation (DEGC), provides the Council via the Planning and Economic Development Committee with a report on each prospective development, for discussion and review at every NEZ public hearing. In its reports, the DEGC denotes the viability, cost benefit, and the “but for” criteria of each NEZ project for review. The taxable value of each project and the final impact of a NEZ designation, is determined individually after the DEGC discusses the potential valuation of the finished project with the Assessor, which is based on a variety of factors, such as the taxable values of comparable properties in the area, if the units are new or rehabbed, building and unit sizes, materials used and amenities, etc. Ultimately, after a Public Hearing where the details and the merits of every NEZ request are discussed, the PED committee forwards its recommendations to the full Council body at its Formal Session, where the Council as a whole determines if a NEZ district is approved or denied locally for the final consideration and approval by the State Tax Commission (STC). The NEZ projects at this stage face the same level of scrutiny of the certificate phase of the other tax abatement programs. **Due to the fact that NEZ legislation is a municipal initiated tax abatement program, with the primary purpose of initiating new and rehabilitated housing investment and development activity, securing local approval is assured at this stage, in order to assure developers that they may make for the investment in housing at a reduced cost, facilitated by tax savings, which in many cases is a requirement to secure financing.**

Procedure at the Certificate Stage of a NEZ Request (Step 2)

After NEZ zones or districts are established, the second and final stage of the NEZ approval process is commenced in the Budget Finance and Audit Committee. As stated earlier, prior to this stage, the Council has already voted to determine if an established area may be designated for a future NEZ Certificate in the first stage of the NEZ processes. Therefore, in an established NEZ district, if the Council finds that the application does not meet the act at this stage, then the Council may vote to deny the application. Otherwise, “(3) All complete applications ... for new or rehabilitation neighborhood enterprise zone exemption certificates received through October 31 shall receive consideration and action by the commission (State

⁷ NEIGHBORHOOD ENTERPRISE ZONE ACT, MCL. 207.773 (3) [MCL - Section 207.773 - Michigan Legislature](#)

Tax Commission) before December 31, pursuant to the administrative rules of the State Tax Commission (STC), Part 12. Neighborhood Enterprise Zone Exemption Certificate, R 209.112 (3). Regarding the economic impact of each NEZ, beyond the factor of the income taxes generated by each new or rehabilitated housing development. The impact on property taxes would be best determined by the Assessor's Office, due to the aforementioned factors related to property taxes and their value.

Determination of the number of years for a NEZ

Finally, as we indicated in our previous report, Council does in fact have the ability to limit the number of years for a NEZ, given the fact that section 207.782 of the NEZ Act states a neighborhood enterprise zone certificate issued after December 31, 2005, shall remain in effect for 6 to 15 years from the effective date of the certificate as determined by the governing body of the local governmental unit. If the facility is a qualified historic building, the NEZ certificate is in effect for 11 to 17 years. However, Council should keep in mind that curtailing the number of years for a NEZ certificate may risk the viability of the project. The certificate is only requested when the properties are constructed, and the investments are made. This is done this way so the occupant can enjoy the full term of the NEZ benefit. Thereby, a NEZ certificate is nearly equivalent to a certificate of occupancy. This procedural structure is consistent with the underlying purpose of the NEZ program, which is to initiate and incentivize new and rehabilitated housing investment.

Conclusion

Finally, it is important to note that the first phase of NEZs (the district phase) is when each individual developer multi-unit housing development is reviewed, discussed and scrutinized. Once an affirmative vote is secured by a developer at this phase, a developer then moves forward in good faith with an investment in new or rehabilitated housing. The investments are based upon the projected tax savings of the NEZ recommendations. The NEZ program is consistent with the goals of Detroit and the other municipalities that advocated for it in the first place, to create and retain housing. Given this fact, developers make their investments and await the time when they may apply for their NEZ certificates, which allow for housing occupants to secure the program's tax savings for the prescribed period of time secured in good faith at the district phase. **However, even though the Council has the authority to reduce the term of NEZ certificates, doing so may not only affect the viability of the project, but could also lead to a chilling effect on future housing development in the city of Detroit.**

Please contact us if we can be of any further assistance.