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## County Planning; Its Legal Authority and Coordinated Planning

A county planning commission has a unique role to play in Michigan. It is the main planning body which has a statutory coordination role and specific planning and zoning review procedures.<sup>1</sup> This pamphlet will discuss how an adopted county plan can be effective in coordinating land use among local governments and will discuss the direct review and authority between county, city, village, and township planning and zoning. First, this pamphlet will review what a county plan is and its content.

### The County Plan

There are a number of different types of plans which might be prepared by a county planning commission.

A county plan is the same “master plan” referred to and authorized to be adopted by the Michigan Planning Enabling Act. A county plan is the county planning commission’s recommendations for the development of the county (for land use, zoning, infrastructure, economy, housing, and so on) and for coordination with municipalities, county departments, the county road commission, state, Native American, Federal governments and others. A master plan is the formal policy of the county, and its statement of goals, objectives, and intended strategies.

A county plan should also be the “plan” referred to in the Michigan Zoning Enabling Act.

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<sup>1</sup> Section 41(2) of P.A. 33 of 2008 (the Michigan Planning Enabling Act, M.C.L. 125.3801 *et seq.*); Section 307(1) of P.A. 110 of 2006, as amended (the Michigan Zoning Enabling Act, M.C.L. 125.3101 *et seq.*). (This footnote used to cite the following acts, each repealed as of September 1, 2008: P.A. 282 of 1945, as amended (the County Planning Act (M.C.L. 125.101 *et seq.*); section 7b(3) and 7b(5) of P.A. 184 of 1943, as amended, (being the Township Planning Act, M.C.L. 125.287b(3) and 125.287b(5)); and section 7b(3) and 7b(5) of P.A. 285 of 1931, as amended, (being the Municipal Planning Act, M.C.L. 125.37b(3) and 125.37b(5)).)

That section reads “The zoning ordinance shall be based upon a plan . . .”<sup>2</sup> A county plan can also be, in part or in whole, the “master plan” which is adopted by a township, city, or village in the same county. (To use a county Plan as a part or all of the master plan for incorporated municipalities (city or village), it must first, in whole or in part, be adopted as part or all of that city’s or village’s official master plan.<sup>3</sup> That adoption must be done by the city or village in accordance with the procedures contained in the Michigan Planning Enabling Act.)

A county plan is the document which should be used for purposes of the county planning commission reviewing township zoning<sup>4</sup> and township, city and village master plans.<sup>5</sup>

With the passage of the Michigan Planning Enabling Act, state law was clarified regarding the elements that should be included in a master plan (see Sections 7(2) and 33(2)). Still, the statute lacks specifics regarding the exact master plan requirements for each type of community.

Case law has been inconsistent in what it requires for the “plan” which zoning must be based upon. Some courts have even held the zoning map is adequate to serve as that “plan.” Through the years there have been several authors which have

presented an outline of what should be in a plan and what should be the minimum for purposes of the basis of a zoning ordinance. More recently, a group of professional planners reached a consensus on this issue. That consensus – by no means a universal consensus – is reflected in a proposed *Coordinated Planning Act*. This proposal was developed by the Michigan Chapter of the American Planning Association (now the Michigan Association of Planning (MAP)). This reflects the most comprehensive effort to date. It is presented here as one – not the only – list of what a master plan’s content should be. The proposal was not adopted into statute, but it might be viewed as an indication of “Best Planning Practice.”

The “Best Planning Practice” presents several different types of plans:

- The first or most basic is a county “General Plan.” It is a policy-based plan with generalized future land use maps, which would only be adopted by a county planning commission.
- “Future Land Use Plan.” This plan would be the minimum type of plan required if the plan is intended for a county, township, city, or village to adopt for the basis of its zoning.
- “Comprehensive Plan.” If a more complete planning program is desired, a Comprehensive Plan should be prepared.
- Special planning efforts: There are any number of special purpose (neighborhood, lake, downtown, or special topic) plans that may be desired for a particular community or county.
- “Growth Management Plan” or “Redevelopment Plan.” This type of plan should be prepared if one desires to phase growth, initiate redevelopment efforts, use Transfer of Development Rights, Purchase of Development Rights, and so on.
- Any plan can incorporate, by reference, relevant portions of other plans adopted by other agencies and governments.

All of these plans can be combined into one document, and/or can be broken into separate documents by geography or by topic area, e.g. land use, infrastructure (utilities), economic

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<sup>2</sup> Section 203(1) of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3203(1)). (This footnote used to cite the following act which was repealed as of July 1, 2006: Section 3 of P.A. 183 of 1943, as amended, (being the County Zoning Act, M.C.L. 125.203).)

<sup>3</sup> Section 47(1) of P.A. 33 of 2008, (being the Michigan Planning Enabling Act, M.C.L. 125.3847(1)). (This footnote used to cite the following act which was repealed as of September 1, 2008: Section 5(10), P.A. 282 of 1945, as amended, (being County Planning Act, M.C.L. 125.105(10)).)

<sup>4</sup> Pursuant to section 307 of P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3307). (This footnote used to cite the following act which was repealed as of July 1, 2006 Section 10 of P.A. 184 of 1943, as amended, (being Township Zoning Act, M.C.L. 125.280).

<sup>5</sup> Pursuant to section 41(2) of P.A. 33 of 2008 (being the Michigan Planning Enabling Act, M.C.L. 125.3841(2)). (This footnote used to cite the following acts which were repealed as of September 1, 2008: section 7b(5) of P.A. 168 of 1959, as amended, (being Township Planning act, M.C.L. 125.327b(5)); and section 7b(5) of P.A. 285 of 1931 (being Municipal Planning Act, M.C.L. 125.37b(5)).)

development, housing, human services, transportation, recreation, natural resources, and government.

See the pamphlet *Land Use Series* “Check List #1G: For Adoption of a Plan in Michigan” available from Michigan State University Extension, for a listing of the content of each of the plans listed here.

A county plan can be adopted in part or as a single plan. The main plan document should list other published components and selected special reports, studies, and so on. If the county adopts the plan in part, then the main part (usually land use) should be controlling. That should be clearly stated in the main plan. This is done so if other components of the county’s plan, adopted separately from the main (controlling) part of the plan, conflicts or contradicts with the main part of the plan, then the controlling plan shall supercede the other plan(s).

### Review of Public Works

**After** a county plan is adopted, the county planning commission has a potentially powerful tool which should be used to accomplish intergovernmental coordination:

“Following adoption of the county plan or any part of a county plan and the certification by the county planning commission to the county board of commissioners of a copy of the plan, work shall not be initiated on any project involving the expenditure of money by a county board, department, or agency for the acquisition of land, the erection of structures, or the extension, construction, or improvement of any physical facility by any county board, department, or agency unless a full description of the project, including, but not limited to, its proposed location and extent, has been submitted to the county planning commission and the report and advice of the planning commission on the proposal have been received by the county board of commissioners and by the county board, department, or agency submitting the proposal. However, work on the project may

proceed if the planning commission fails to provide in writing its report and advice upon the proposal within 35 days after the proposal is filed with the planning commission. The planning commission shall provide copies of the report and advice to the county board, department, or agency sponsoring the proposal.”<sup>6</sup>

Many County Planning Commissions do not exercise this duty. They should.

### Review of Local Plans and Zoning

Also, **after** a county plan is adopted, it should be used by the county planning commission when reviewing township, village, and city plans; and township zoning ordinances. A township, village, and city is required by statute to submit a new plan or amendment to the county planning commission for review. A township is required by statute to submit a new zoning ordinance, or amendment, to the county planning commission for review. In addition to submitting the plan, comments by townships, villages, cities, and regional planning agencies within or contiguous to the planning area may be submitted to the county planning commission for review. Without an adopted county plan, the county should seriously consider reducing

**“Following adoption of the county plan . . . work shall not be initiated . . . involving the expenditure of money by a county board, department, or agency . . . unless a full description of the project . . . has been submitted to the county planning commission and the report and advice of the planning commission on the proposal have been received by the county board . . . or agency submitting the proposal . . .”**

<sup>6</sup> Section 61(2) of P.A. 33 of 2008, as amended, (being the Michigan Planning Enabling Act, M.C.L. 125.3861(2)). (This footnote used to cite the following act, repealed September 1, 2008: Section 5(9) of P.A. 282 of 1945, as amended, (being County Planning Act, M.C.L. 125.105(9)).)

its review to just a review of the comments from other governments within or contiguous to the planning area. Without an adopted plan, there is no way for a local government to have an idea what is needed to do to achieve county approval. Before a local government is subject to approval or disapproval, it is reasonable to first have developed (with a large amount of input from local governments) and adopted the county plan.

## Review of Local Plans

The county planning commission should take an active role in conducting its reviews of local plans and zoning. The review of a township, village, and city plan should consider the following points:

- First: Is it consistent with adopted county plans?
- Second: Is the review and response to comments submitted by other governments reviewing the plan favorable, and are those comments with merit (if comments were optionally submitted to the county planning commission)?
- Third: Does it avoid inconsistencies with each adjacent (both in and out of your county) municipal plans? (If the adjacent plan complies with the county plan and the proposed plan complies with the county plan, then there should not be any conflict between the two municipal plans.)
- Fourth: Does it avoid inconsistencies with other governmental agency plans?

If the answer to any of these is “no,” then the county planning commission’s review should not be favorable.

**With an adopted county plan, the county planning commission should take an active role in conducting its reviews of local plans and zoning.**

In conducting the review of plans, it is not enough to say there is a conflict at the boundary. Just because there is a conflict, it is not always correct to say the plan submitted for review is the

problem. The problem may be the adjacent, older, plan. How does one tell which one is in conflict or “out of step”? The “tiebreaker” should be the county plan, by determining which most closely complies with the county plan.

## Plan Review Process

The review of plans by the county planning commission is important. The process of planning coordination is a part of the Michigan Planning Enabling Act. The process is in place, so it is a matter of adopting the attitude to make it work. In brief, the steps to adopt a plan (in a coordinated fashion) are:

1. At the start of the planning process, the municipal or county planning commission must first send out an “I am starting to plan” notice. This notice is sent to a large list of municipalities within and adjacent to the area the plan is for and other government agencies. This is the “coordinated planning notification list” to send notices to:
  - A. For municipalities and counties: The planning commission, or if there is no planning commission, the legislative body of each city, village, and township located within or contiguous to the municipal or county government.
  - B. For municipalities and counties: The regional planning commission for the region in which the municipal government is located, if there is not a county planning commission. (If there is a county planning commission, submission by a municipality to the regional planning agency is optional.)
  - C. For municipalities: The county planning commission, or if there is no county planning commission, the county board of commissioners, for the county in which municipal government is located.
  - D. For municipalities and counties: Each public utility company and railroad company owning or operating a public utility or railroad within the county or municipal government and any government entity, that

registers its name and mailing address for this purpose with the county or municipal planning commission.

- E. For counties: The regional planning commission, if any, for the region in which the county government is located.
- F. For counties: The county planning commission, or if there is no county planning commission, the county board of commissioners, for each county located contiguous to the county.

The legislature's list might not include everyone. Coordination should possibly include more organizations, such as:

- G. For municipalities: The planning commission or, if there is no planning commission, the county board of commissioners of each county contiguous to the municipality and other governments within the municipality.
- H. For municipalities and counties: Each state, federal, Native American tribal government, government agency which owns more than 10 acres of land within the municipality or county, downtown development authorities, tax increment finance authorities, brownfield authorities, school districts, historic commission, parks commission, airport authority and others.
- I. For municipalities and counties: Other special interest groups (chamber, farm bureau, property owners association, lake association, youth group, conservation district, environmental organization, etc.)

The planning acts require sending out the notice. However, you can use this to establish a system of communication that leads to coordination with other governments. The notice can include events such as joint meetings, study committees on "issues of greater than local concern," or particularly for a county, formation of a committee to prepare the plan who's membership includes representatives of all those receiving the notice.

- 2. The municipality or county commission studies and assembles background material to prepare a draft plan. Here is where the planning commission and the county planning commission can be proactive in identifying topics for coordination. The county planning commission will have received the notice in step number 1, above, so the county will know work on a plan has started in a local government.
- 3. The planning commission prepares a draft plan.
- 4. The planning commission submits the draft plan to the legislative body (elected officials), which approves the distribution of the draft plan.
- 5. A copy of the draft plan is sent to the "coordinated planning notification list" (same list as in number 1, above) including the county planning commission<sup>7</sup>.
  - A. Everyone receiving the draft plan should review the draft plan. The review should be based on their own plans, if any. If they do not have their own plan, then any comments should be brief, or not made at all.
  - B. Each comment made should include a list of facts and reasons behind the comment. It is not enough to say one does not like or agree with some aspect of the plan. What carries the weight are the facts and reasons behind the statements.
  - C. For municipal plans: Each comment by a township, village, and city may be duplicated and sent to **both** the municipality submitting the plan **and** the county planning

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<sup>7</sup> If there is no county planning commission, the central coordination role is not lost. First, with no county planning commission, materials are sent to the county board of commissioners. Also, if there is no county planning commission, materials must be sent to the regional planning commission (instead of being optional). It is possible for the regional planning commission to perform the county planning role in an advisory capacity to the county board. As used here, "county board of commissioners" means (1) the county executive in a county organized under P.A. 293 of 1966, as amended (M.C.L. 45.501 *et seq.*) or (2) the elected county board of commissioners or a subcommittee of the county board which has been assigned the review responsibility.

commission (recommended). Comments need to be made within 63 days from the draft plan being sent in number 5, above (42 days if a draft of a plan amendment).

6. The municipal planning commission receives the county's comments and everyone else's comments. These comments should be reviewed with great care. For each comment made, one of two things should be done:
  - A. Respond by changing the draft plan to address the concern in the comment.
  - B. Respond by listing the municipal planning commissions facts and reasons why the concern raised is not valid. You will want your facts and reasons to present a preponderance of information to support your position. If that is not the case, reconsider changing the draft plan.
  - C. Remember, the comments received are advisory only, however, do not dismiss them lightly. Coordination and cooperation is still the goal.
8. The municipal or county planning commission holds at least one public hearing on the revised draft plan, after complying with specific notice requirements.
9. After the hearing and any further modifications to the revised draft plan, the municipal or county planning commission adopts the plan. (The municipal or county legislative body also adopts the plan if they assert the right to do so.)
10. A copy of the adopted plan is sent to the "the coordinated planning notification list" (same as listed in number 1, above).

The intent to have a system for coordination is clear. Every government has the responsibility to coordinate planning in their community and to cooperate for implementation of the plan.

The county planning commission has an important role to make coordinated planning happen. The county is positioned to see the big picture. County planning is at the center, ideally receiving other's comments and responsible for making plans for a relatively large geographic area. The county planning commission's coordination

role includes responsibility to initiate coordination opportunities, be proactive, and provide detailed substantiated comments with facts and reasons.

For further information on making comments on another community's plan see MSU Extension's *Land Use Series* "How Governments Make Submissions on a Neighbor's or County's Proposed Plan." For further information on responding to a community's comments see "How a Planning Commission Should Respond to Submissions."

## Review of Local Zoning

Only **after** a county plan is adopted should it be used by the county planning commission to review local zoning ordinances. A township is required by statute to submit a zoning ordinance, or zoning amendment, to the county planning commission for review. (Villages and cities do not have to submit a new zoning ordinance or zoning amendments to a county for review, but the county can choose to still submit comment at the city or village's hearing on the zoning.) If the county does not have an adopted plan, the county should consider waiving its review or acting to make no comment because there is no previously written indication of what is expected for approval.

Review of township zoning – just like submitting comment at a city or village zoning hearing – is purely advisory. The township, village, and city can choose to ignore the county planning commission's comment. The township, however, is required by statute to submit its zoning, or zoning amendment, to the county planning commission for review.

**Review of township zoning is purely advisory. The township, village, and city can choose to ignore the county planning commission's comment.**

The county should review a proposed township zoning ordinance by considering the following points:

- First: Are legal adoption procedures followed

(ask for an attorney's opinion)? (Note: this step should be skipped when reviewing city and village zoning.)

- Second: Is it inconsistent with the adopted township land use plan? (State statute requires a zoning ordinance to be based on a plan.)
- Third: Is it inconsistent with the adopted county general plan and/or land use plan? (If the proposed zoning complies with the township land use plan, and the county found no conflict with and approved the township land use plan, then the zoning should not be a problem with the county land use plan.)
- Fourth: Is there a conflict created with an adjacent municipality (both in and out of your county)? (If the adjacent zoning complies with the county land use plan, and the proposed zoning complies with the county land use plan, then there should not be any boundary conflicts.)

In conducting the review of zoning, it is not enough to say there is a conflict at the boundary. Just because there is a conflict, it is not always correct to say the zoning submitted for review is the problem. The problem may be the adjacent older zoning. How does one tell which one is in conflict, or "out of step"? The "tiebreaker" should be the county plan, by determining which zoning most closely follows the county plan.

### Cooperation is Important

There should not be a confrontation over these reviews. The process of adopting a county plan should involve local governments from the very start so that:

- Townships, cities, and villages want to be in compliance with county plans.
- Townships, cities, and villages have a sense of ownership and support of the county plan.
- The review and issue of compliance is seen as a good thing.

No one wins when this process is approached in a confrontational manner.

### Coordination is Important

Coordination is clearly needed and the legislature intended it to be a part of the planning and zoning process in Michigan.

The concept of some role for county review and coordination of planning and zoning is a good idea. Best Planning Practice should require communities to be aware of and take into account how their planning and zoning will impact an area greater than their own boundaries.

The Michigan legislature made it clear, coordinated planning is a priority that townships, villages, cities, counties, and regions are responsible for, and in particular, county planning commissions have a major role in, making coordinated planning happen.

Coordination and cooperation is not something the legislature can very effectively make happen by passing laws. However, the legislature can and did create a mechanism for coordinated planning and cooperation. Coordination is an attitude thing. If people want to make it happen it will work. The issue now is for this to become the new practice in Michigan.

The *Relative Risk Analysis Project* (1992) concluded "lack of integrated and coordinated land use planning" was one of the top environmental problems in Michigan.<sup>8</sup> There are many issues and topics which can not be dealt within a small area, such as a village, city or township. To be effective in planning for many issues, it must be done at a larger geographic scale.

For example, the issue of economic development involves a larger areas than a municipality (village, township, and most cities). The creation of jobs, and the location of people employed come from a labor market area which is often an entire county or multiple counties. To be truly as effective as possible, coordinated planning for economic development needs to deal with worker training, housing, and new industrial sites, in

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<sup>8</sup> Michigan Department of Natural Resources (Public Sector Consultants, Inc.); *Relative Risk Analysis Project*; July 30, 1992.

the entire labor market area – not just a township.

Groundwater and surface water protection is another example. One community can have a very good system in place to protect a river, lake or groundwater. But those water resources do not stop at the political boundary. Here, planning at a watershed (or ground-watershed) level is critical for long term success. Even planning and government cooperation so a single lake or river is treated the same in the multiple local governments around the lake or along the river is critically important.

Other topics that demand a multi-government cooperative planning approach include:

1. Economic hinterlands: Nearly always include areas in territories of many municipalities. To be effective economic planning, for example, must be done at the same geographic scale as the labor market area; Often, one or more counties.
2. Watersheds: Nearly always include areas in territory of many municipalities.
3. Groundwater – our drinking water: Cross political boundaries.
4. Natural features (lakes, rivers): Often touch more than one municipality.
5. Technology for farming, mining, pipelines, radio transmissions: Cross municipal boundaries.
6. Transportation networks (billboards, parking, scenic vistas): Include multiple municipalities.
7. Major developments: Have impacts on more than just one municipality (traffic, lights, etc.) reference, relevant portions of other plans adopted by other agencies and governments.

Every local government in Michigan should identify those “bigger than just local concern” issues and put that list on the table for coordinated planning discussion. The county planning commission has an opportunity to be the leader in this effort. Those issues can be identified for the entire county and:

- Made a part of the discussion and policies of a county plan,
- Prioritized for proactive effort to foster coordination between governments. (For

example, the county planning commission initiating meetings and discussions between groups.)

- Facilitate cooperation between local governments.
- Use the planning act process of coordination to the entire area’s benefit.

One of the functions of a county plan should be to outline a single county-wide coordinated planning approach to these types of issues.

### Base it all on Your County Plan

Use of an adopted county plan is important. It is especially important in a county where local governments create and administer zoning and land use planning but county agencies have the power to make decisions which can undermine or enhance local government efforts. A county plan should provide an outline of future development. The plan is intended to guide public decisions for new home development, for placement of zoning ordinance district boundaries, new road building construction, etc. so each agency and government is coordinated with each other.

**With many planning issues, it is not responsible or realistic for a single municipality to address the issues without the full cooperation and approval of surrounding municipalities and the county (or counties).**

Also, a county plan is an important tool for lobbying at the state and Federal government level. In a county where there is land owned by state and national governments, it is even more important. For example, the management of state or federal forests have an impact on land use and local planning. As much as possible, local government and the county should be working to influence decisions made, for example, by the Michigan Department of Natural Resources and the United

States Forest Service.

Coordination at a county level is needed. An overall policy from the county which provides direction and creates a point of cooperation between townships and municipalities in the county is

important. Such cooperation is necessary for any progress to be made in the development of an area or in a wise and unified approach to land use controls.

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