

Revised: May 1, 2008
(Original: December 14, 2004)

Bringing
Knowledge
to Life!

#1N

How a Planning Commission Should Respond to Submissions

In 2002 Michigan Planning Commissions received a new duty – to review the plans of neighboring governments and their county’s plans, as well as the review of submissions made by others on your community’s proposed plan or plan amendment. This should be considered one of the major responsibilities of a planning commission – equally as important as adopting/updating your plan, recommendations on adopting/amending your zoning ordinance, acting upon special use permits, planned unit developments, site plans, and the coordination function of the commission.

This publication outlines the action a planning commission should take regarding submissions received from others in reference to your proposed plan. Another *Land Use Series* publication, “#1M: How Governments Make Submissions on a Neighbor’s or County’s Proposed Plan,” outlines the duties and tasks associated with review of the plans of neighboring governments as well as plans of your county.

The Review Duty

In 2001, three amendments were made to the state’s planning enabling acts, becoming effective January 9, 2002.¹ The amendments require notification be sent to all adjacent governments, as well as governments within the territory of a government for which a community is starting the planning process. In 2008, the three Planning Enabling Acts were consolidated into a single act – P.A. 33 of 2008, as amended, (the Michigan Planning Enabling Act, M.C.L. 125.3801 *et seq.*).

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The authors would like to thank the following individuals for their review and assistance with this publication:

- Jason Ball, MSU GRADUATE STUDENT
- Lincoln Sweet, MSU GRADUATE STUDENT

The authors would also like to acknowledge the work of one of the first counties in Michigan to adopt a plan using the coordinated planning procedures - Wexford County Planning Commission - for trying various approaches in receiving and reviewing submissions. Their experience was used in the development of this flyer.

“Thirty seven million
acres is all the Michigan
we will ever have.”

Former Governor
William G. Milliken

Michigan State University
Extension Land Use Team

<http://ntweb11a.ais.msu.edu/luaoe/index.asp>

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¹HB 5038, being P.A. 263 of 2001 amended PA 168 of 1959, as amended, (the Township Planning Act, M.C.L. 125.321 *et seq.*); HB 5267, being P.A. 264 of 2001 amended PA 285 of 1931, as amended, (the Municipal (city, village, and some pre-1959 township planning) Planning Act, M.C.L. 125.31 *et seq.*); HB 5252, being P.A. 265 of 2001 amended PA 282 of 1945, as amended, (the County Planning Act, M.C.L. 125.101 *et seq.*).

The Michigan Planning Enabling Act retains the notification requirements established by the 2001 amendments. Those amendments require your government to notify all adjacent governments as well as governments within the territory in which your government is starting the planning process. The statute or *Land Use Series* “Check List # 1G For Adoption of a Plan in Michigan” and *Land Use*

Series “Check List # 1I For Adoption of an Amendment to a Plan” should be consulted to determine the exact list of whom those notices should be sent to. Other publications concerning planning and the new planning act are listed in the sidebar box on this page.

When your government starts a planning process or a plan amendment process, your planning commission will send a notice to the following:

- your county (if a city, village, or township);
- contiguous counties (if a county);
- a contiguous county(ies) (if a city, village, or township is located on the county line);
- contiguous municipalities;
- all municipalities located within your local unit of government;
- the regional planning commission (if a county, or if a city, village, or township and there is no county planning commission);
- each public utility or railroad operating in the area covered by the proposed plan and any government entity that registers with the planning commission for this purpose;
- a Native American tribal government owning 10 or more acres of land in the area covered by the proposed plan (recommended); and
- others who have requested to conduct a review.

When a draft of the new plan or amendment to the plan is done, a copy of that draft is also sent to the same list.² When your draft plan is received by others, they are supposed to review and make comments on your draft plan. In this publication those comments are called “submissions.”

²Section 41(2) of PA 33 of 2008, as amended, (the Michigan Planning Enabling Act, M.C.L. 125.3841(2)).

Related Publications

There are also separate procedural checklists for performing other planning and zoning functions. They are:

- *Land Use Series*: “Check List #1A; To Create a Planning Commission or Amend an Existing Planning Ordinance.”
- *Land Use Series*: “#1B; Sample Ordinance to create a planning commission”
- *Land Use Series*: “#1C; Summary of changes between new Michigan Planning Enabling Act and the three old planning acts: Municipal Planning Act, County Planning Act, and Township Planning Act.”
- *Land Use Series*: “Checklist #1D; Steps to Transition an Existing Planning Commission to Comply with the Michigan Planning Enabling Act”
- *Land Use Series*: “#1E; Sample Bylaws for a planning commission.”
- *Land Use Series*: “Checklist #1F; What Should be in a Master Plan”
- *Land Use Series*: “Checklist #1G; For Adoption of a Plan in Michigan”
- *Land Use Series*: “Checklist #1H; The Five Year Plan Review.”
- *Land Use Series*: “Checklist #1I; For Adoption of an Amendment to a Plan”
- *Land Use Series*: “Checklist #1J; Adopting and Updating a Capital Improvement Program”
- *Land Use Series*: “Checklist #1K; Review of Infrastructure and Public Capital Expenditure”
- *Land Use Series*: “Checklist #1L; Adoption or Amendment of Subdivision Rules”
- *Land Use Series*: “#1M; How Governments Make Submissions on a Neighbor’s or County’s Proposed Plan”
- *Land Use Series*: “#1N; How a Planning Commission Should Respond to Submissions”
- *Land Use Series*, “Checklist #2; for Adoption of a Zoning Ordinance in Michigan.”
- *Land Use Series*, “Checklist #3; for Adoption of an Interim Zoning Ordinance in Michigan.”
- *Land Use Series*, “Checklist #4; for Adoption of a Zoning Ordinance Amendment (Including PUD) in Michigan”
- *Land Use Series*, “Checklist #5: for Processing a Special Use Permit (Including PUD) Application in Michigan.”
- *Land Use Series*, “Checklist #6: for Processing a

Timing: How Long Do You Wait?

Your community will need to wait up to 63 days to receive all the submissions on your draft of a new plan. If it is a draft of an amendment to your plan, then your community will need to wait up to 42 days.

If the submissions are coming from:

- a planning commission³ for a city, village, township, county, contiguous county, regional planning commission; or
- a representative of a state, federal, or Native American tribal government which owns 10 or more acres of land in the area covered by the proposed plan; or
- a representative of a public utility, railroad; or
- others.

There is a 63 day time period for proposed city, village, township, and county plans in which others are to review and send submissions on the draft of your plan. The review period for an amendment to an existing plan is 42 days for all plans. Copies of the written submissions should be sent to your planning commission.

The county planning commission's review of the proposed plan (or plan amendment) is for consistency or inconsistency to county plans **and** consistency or inconsistency with other government plans.

What to do With Comments on Your Plan

Remember, all submissions received are advisory; they are not binding. However, they might be used in the future to call into question some parts of your plan. Because the submissions received are a matter of public record, others will have access to them. Thus, your planning

commission should take time to review each submission received, and decide if the comment is:

1. appropriate and make corresponding changes to the plan, or
2. without merit, and explain why the plan should not be changed.

Part of the purpose of the review is to identify inconsistency between plans. This leads to the question of what inconsistency is. The Michigan Association of Planning's "Guideline Number _; Draft Determining Whether a Proposed Plan Is 'Inconsistent'"⁴ reads:

"the following standard ... would have required 'consistency' ... with adopted plans ...:

(d) The proposed plan shall be consistent. A proposed plan is consistent if both of the following apply:

(i) The goals, policies, and program of implementation for each element of the plan would further, or at least not interfere with, the goals, policy, and program of implementation of other elements of the same plan.

(ii) The goals, policy, and program of implementation of the plan and each element thereof would further, or at least not interfere with, the goals, policy, and program of implementation of a plan of the reviewing entity adopted under this act or under an enabling act in effect at the time of adoption of the reviewing entity's plan. Circumstances that violate the requirements of this subparagraph include, but are not limited to, all of the following:

(A) If the jurisdictional area of the reviewing planning commission and the jurisdictional area of the proposing planning commission are contiguous, land use intensity, land use density, or capital facilities in the jurisdictional area of the proposing planning commission and near the

³If there is not a city, village, township, or county planning commission then the draft plan should be sent to the legislative body (village council, city council, township board of trustees, county board of commissioners) and the legislative body is responsible for conducting the review and sending submissions back.

⁴Planning Law Committee of the Michigan Association of Planning Board of Directors; "Guideline Number _; Draft Determining Whether a Proposed Plan Is 'Inconsistent'". Available at the Society's web site at http://www.planningmi.org/downloads/consistency_guideline.pdf.

common border are incompatible with or would conflict with land use intensity, land use density, or capital facilities in the jurisdictional area of the reviewing planning commission and near the common border.

(B) If the reviewing entity is the planning commission of a local unit or a regional planning commission, the proposed plan would create 1 or more specific, verifiable threats to the health or safety of individuals within the local unit or region.

(C) If the reviewing entity is the planning commission of a local unit or a regional planning commission, cumulative effects of the proposed plan or element are likely to reduce the existing or planned quality of life in the proposed local unit or region in reasonably identifiable and verifiable ways.'

By analogy, a plan is 'inconsistent' if it is not 'consistent' as described above."

Michigan State University Extension's (2001 Planning and Zoning Amendments training outline item number 6.F.7. (page 14)) recommended procedure for a community to review submissions/comments about its proposed plan, and respond to those submissions reads:

"7. ...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 your 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 – but do not dismiss them lightly. Coordination and cooperation is still the goal."

Examples of Submissions and Responses

The following are several examples of submissions on a draft plan and the planning commission's review and response to those submissions.

Urban Issue Example; where response is not to change the draft plan:

Submission: "In general, an Urban Growth Area may be a good concept, but we have not liked the idea of an Urban Growth Boundary. Our planning commission feels such a Boundary is too constrictive and could stunt the progress and growth of our community."

Response: For the following reasons the *Plan* will **not** be changed:

- An "Urban Growth Area" and an "Urban Growth Boundary" are **not** the same thing. In the *Plan* care was taken to use the term "Urban Growth Area" as a generic non-specific term to refer to the urban boundaries shown on the Future Land Use Map (p.24). The intent was not to use specific concepts to outline an Urban Growth Boundary, nor other specific programs (Urban Growth Limit, Urban Greenbelts, etc.).
- What an "Urban Growth Area" will be for our community does not have details worked out yet. This is because the details and program beyond what is outlined in the *Plan* (chapter F10), if any, should be worked out with an out-of-state facilitator as outlined in strategy E2.1.2.1.
- The Urban Growth Area concept has received public support with submissions received during the *Plan*'s government review period.
- 89.8% of residents in our community support better coordination of planning and zoning (*Plan Background Fact Book* p. 331).
- Currently, in our community 3.82 square miles of land is zoned as commercial or office (*Plan* K2., p. 96).
- Currently, in our community 2.1 square miles of land is actually used for commercial or office land uses (*Plan* K2., p. 96).
- Projected additional need for commercial land is 18.7 to 61.2 acres by 2010, and 37.3 to 117.5 acres by 2020 – not including external/regional shopping needs (*Plan Background Fact Book*, p. 195).
- The proposed *Plan* provides for 5.08 square miles of land as commercial and office, and an additional 4.31 square miles as "transition" which may become residential, commercial, office, or industrial (*Plan* K2., p. 96). The *Plan* provides for more than adequate commercial/office area.

- If one provides too little area for commercial development, the consequences are:
 - Not enough opportunity for small business
 - High rents
 - Unmet market demand
 - Market leakage
 - Shopping preferences begin to change
 - Residents will have to drive farther for shopping
 - Loss of commercial tax base because of lost opportunities
- If planning and zoning provides **too much** commercial development, the consequences are:
 - Strip, sprawled development, linear forms
 - Vacancies
 - Undervalued commercial properties
 - Less attractive commercial development
 - Unprofitable businesses
 - Loss of commercial tax base because of declining property values
- The symptoms listed under **“too much”** commercial appear to be more prevalent in the greater urban area at this time.
- The balance between too little and **too much** is important to maintain and the “transition” concept provides that flexibility.
- A commercial Market Analysis was done and used to reflect the appropriate amount of commercial, transition, and the Urban Growth Area shown in the Future Land Use Map.

Urban Issue Example; where response is to change the draft plan:

Submission: “We would like to see the industrial sites in our township zoned as commercial. The current operations could then be grandfathered in as a nonconforming use for this area.”

Response: For the following reasons the *Plan* will be changed:

- Whether a pre-existing legal land use is non-conforming or not does not depend on how land is zoned (Court cases establishing this principle are too numerous to list here).
- A nonconformity has rights to limited expansion, renewal, replacement, and continuation (Court cases establishing this principle are too numerous to list here).
- Under our zoning, a nonconformity exists with the same rights to limited expansion, renewal, replacement, and continuation regardless which zoning classification it is in.
- Creating commercial districts at each point where an industrial land use currently exists does not bestow any additional status on the nonconformity under our zoning.
- There is a small spot of industrial, surrounded by all “commercial” in section _ of _ Township, near the freeway interchange.

The Future Land Use Map is changed to remove the “industrial” area, changing it to

“commercial”.

Groundwater Issue Example; where no response is necessary:

Submission: “Groundwater protection has been an important part of planning and zoning in _ Township (See pages 156-157 of our Plan). Our township is “downstream” from your community in terms of direction of much of the groundwater flow along our boundary. The groundwater protection provisions in your Plan are consistent with our Plan and those provisions in your plan are supported.”

Response: Thank you.

Rural Issue Example; where response is not to change the draft plan:

Submission: “Does the small area labeled ‘Agricultural-Forest Production’ on the map in section 31 and 32 of your community really merit Agricultural preservation? Our township has similar soil regimes as that part of your community. Soil survey data found only a small area of our township with better farm soils. However, the area was not large enough to create a critical mass of agricultural activity within a definable service area to support various agriculture-dependant businesses and services to warrant the additional regulation and property owner burden of having agricultural preservation regulations. By allowing, without restriction, agriculture and farming in rural areas such farms can continue. This stance is consistent with our Plan (p. 148).”

Response: For the following reasons the *Plan* will **not** be changed:

- The small areas shown are a result of a natural feature analysis done by use of Geographic Information System technology, highlighting areas which were:
 - Prime farm land soils,
 - Prime forest land soils, and prime forest land rated areas
 - When these areas were less than 40 acres in size, they were not shown.
 - When these areas overlapped areas shown as residential, special and unique, office service, resort, commercial, or industrial, they were not shown.
 - Boundaries of areas shown were snapped to the nearest section, quarter, or sixteenth public land survey lines; natural features; roads; or parcel boundaries.
- The result was reviewed by the Map Subcommittee of the Plan Committee of the

Planning Commission. The issue raised in the submission was raised and discussed at length by the subcommittee, which decided to retain and show areas larger than 40 acres in size.

The important point, as seen with these examples, is to have a preponderance of evidence/facts to substantiate not changing a plan if an issue is pointed out in a submission, or, to support changing the plan.

It is advisable for these submissions and your planning commission's responses to be included in an appendix of the final version of your community's plan. It is also appropriate to send a copy of the proposed appendix to everyone submissions were received from, prior to the public hearing on the plan. This courtesy facilitates two-way communication and provides an opportunity for face-to-face discussion or joint meeting on a topic, or for discussion at the hearing.

The Michigan Association of Planning's "Guideline Number _; Draft What Should Local Comments on a Proposed Plan Consist of? and What Should a Local Government Do With Comments it Receives on a Proposed Plan?"⁵ presents, on page 4, more detail on how to respond to submissions received. That document suggests a reply to the person who prepared each submission received. The reply might include a thank-you for the review and submission; identify other reviewers of the submission; indicate whether the submission resulted in any changes to the draft plan (enclose a copy of the changes); note any disagreements with the submission and why the plan will not be changed; a desire to meet to further discuss the submission; and contact information (who to contact, and when) for further follow-up.

⁵Planning Law Committee of the Michigan Association of Planning Board of Directors; "Guideline Number _; Draft What Should Local Comments on a Proposed Plan Consist of? and What Should a Local Government Do With Comments it Receives on a Proposed Plan?"; page 4. Available at the Association's web site at http://www.planningmi.org/downloads/commentsfromreviewi_word.pdf.

Be Polite

Through all this, it is important to be polite, courteous, and professional. To be effective, submissions and reviews of submissions about plans of another government should be done professionally. The Michigan Association of Planning Guideline⁶ also presents, on page 5, suggestions on tone and focus of the review of submissions. Their suggestions focus on four major points:

- **Efficiency:** Respect the fact that the submission and review stage are near the end of a plan adoption process. A community may be ready to adopt, and others may be waiting for the task to be done. Do not extend the adoption more than necessary.
- **Substantive review:** Focus only on significant issues, in a clear and well documented way. Suggest solutions, rather than only pointing out what is wrong.
- **Productive:** Be clear and document statements. The idea is to improve the quality of planning for the entire area. This process is intended to improve coordinated planning, not undermine relationships or exacerbate tensions between governments.
- **Professional:** Submissions and review of submissions should be done with mutual respect of others. They should be factual, objective, and based on sound planning principles. Submissions and reviews of submissions should be polite, constructive, and politically sensitive. Do not be defensive. Prepare materials for others in a way that you would appreciate receiving them.

⁶Planning Law Committee of the Michigan Association of Planning Board of Directors; "Guideline Number _; Draft What Should Local Comments on a Proposed Plan Consist of? and What Should a Local Government Do With Comments it Receives on a Proposed Plan?"; page 5. Available at the Association's web site at http://www.planningmi.org/downloads/commentsfromreviewi_word.pdf.

What Next?

Your planning commission should start to prepare the next draft of the proposed plan. The second draft plan is the version of the plan for which a 15 day public comment period and public hearing are held. That public process – for citizens rather than adjacent governments – will also result in more comments on the plan. Those public comments should also be reviewed carefully. The result should be to make changes to the plan, or to prepare a list of reasons why a comment should not result in a change to the plan.

It is advisable for all submissions, comments,

and your planning commission's responses to be included in an appendix of the final version of the plan.

The adopted, final version of your plan is then also sent to the same list the starting to plan notice and draft plan were sent. As a result, everyone will have a copy of other's plans to consult, use, and hopefully continue a process of coordinated planning.

[April 30, 2008;C:\Documents and Settings\Kurt Schindler\My Documents\wp\Presentation Handouts\2008MiPlanningEnablingAct\pamphlet1N PInReview ResponseToSubmission.wpd]