

FREQUENTLY ASKED QUESTIONS

MPEA QUESTIONS

Annual Report

1. What is the annual report supposed to cover and who is it to be sent to?

The MPEA states, “*A planning commission shall make an annual written report to the legislative body concerning its operations and the status of planning activities, including recommendations regarding actions by the legislative body related to planning and development.*” (§19(2) PA 33 of 2008, M.C.L. 125.3819(2))

Typically the annual report includes the following information on the planning commission’s operations: the number of times the planning commission met, how many zoning matters they handled by type, how many plats by type, how many and which public improvements they reviewed and commented on, what sections of the master plan they reviewed, what amendments to the zoning ordinance they processed, what adjoining community plans they reviewed and commented on, what educational or training workshops the planning commission attended or sponsored (or both), etc.

The section concerning recommendations typically includes: requests for a budget with a proposed work program, support for various new programs and educational initiatives, and any sections of the plan, zoning ordinance or subdivision regulations the planning commission wants the legislative body to make changes to.

However, it is wise to include additional information. Consider preparing the annual report so it might also be used as a general education piece on planning in your community. Furthermore, by including the annual report (or a summary of it) in the community newsletter or on the community website it may serve as a public relations tool.

2. When are annual reports due?

§ 19(2) of the Michigan Planning Enabling Act (MPEA, PA 33 of 2008, M.C.L. 125.3801, et seq) does not specify a date for the annual report to be submitted, but the annual report is mandatory. The bylaws of the planning commission should state that an annual report must be prepared and may include a required date of submittal. Another approach to consider is to submit the annual report to the legislative body at the same time the work program and budget for the coming year is submitted. This should fit into the standard budget process of the legislative body.

The production of an annual report should be discussed by the planning commission and written into the bylaws. It may be included in the ordinance that creates the planning commission and sets forth its duties and responsibilities, if deemed necessary, but it is not required by the MPEA. (See *Land Use Series #1E: Sample Bylaws for a Planning Commission* <http://web5.msue.msu.edu/lu/pamphlet/Bclsam/pamphlet1E%20PlanComm%20ByLaws.pdf>)

Planning Commission Membership—Employees Serving

3. Is the city planner considered an employee and therefore cannot serve on the planning commission?

Yes, the city (as well as the township, village, and county) planner is not eligible to serve on the planning commission, so long as he or she is a non-contract employee and the city charter does not specifically allow for employees on the planning commission. (§ 81(2)(a) PA 33 of 2008, M.C.L. 125.3881(2)(a)) In addition, a local planner serving on the planning commission could be an incompatible office according to the Incompatible Offices Act (PA 566 of 1978, M.C.L. 15.181 to 15.185), and thus would be prohibited from serving in both capacities. But more importantly, the professional planner is the chief advisor to the planning commission and it would be inappropriate to serve in that capacity and also as a member of the planning commission.

Many questions regarding the status of specific local officials and employees were asked during the training programs. § 15(5) of the MPEA states, “*Except as provided in this subsection, an elected officer or employee of the local unit of government is not eligible to be a member of the planning commission.*” (M.C.L. 125.3815(5) emphasis added) This was not included in any of the former planning acts and has generated substantial discussion. Strictly interpreting the law, anyone paid as an employee by the local unit of government for rendering services, or serving as an officer of the local unit, excluding those eligible to serve as ex officio members, **may not** serve on the planning commission. If there is a question regarding a planning commissioner’s status as an employee or volunteer, consult your municipal attorney for guidance.

Other than charter provisions, the only exception to elected officers and employees being prohibited from planning commission membership is ex officio membership. Ex officio membership varies according to jurisdiction:

- In townships where the planning commission was originally formed under the Township Planning Act (PA 168 of 1959), one member of the legislative body **must** be appointed to the planning commission, but he or she is the only township employee or official eligible for ex officio membership.
- In townships with a planning commission formed under the Municipal Planning Act (PA 285 of 1931), one member of the legislative body and/or the chief elected official **may** serve on the planning commission, but

again, they are the only township employees or officials eligible for ex officio membership.

- In cities, villages, and counties the chief administrative official, or a person designated by the chief administrative official; the chief elected official; and one or more members of the legislative body or any combination thereof, **may** serve as ex officio members. However, no more than 1/3 of these planning commissions may be made up of ex officio members. Therefore, the chief administrative official (city manager), or a person designated to serve in the place of the chief administrative official (this could be an employee) may serve on city, village, and county planning commissions. Members of the legislative body may serve on city, village, and county planning commissions as well. The chief elected official may also serve on these planning commissions. (§ 15(5) PA 33 of 2008, M.C.L. 125.3815(5))

However, any other employee receiving payment from the local unit for services rendered is **not** eligible to serve on the planning commission (this includes all non-contract employees: city planner, local librarian, part-time employees, firefighters, cemetery workers, police officers, and zoning administrators, among others).

Additionally, the status of those working with the local unit of government on a contract basis, and the status of volunteer firefighters is not so clear. The question then becomes: what constitutes an employee? This is a question for municipal attorneys, and they should be consulted when making a determination about the status of planning commissioners who may be employees within your local unit of government. See also question 4.

4. I am a firefighter, trustee of the township, and chairman of the Planning Commission. How many of these posts can I retain?

This is dependent on how the position of firefighter is set up in the township, which is based on IRS rules for determining employee status. Some volunteer firefighters are considered employees and others are not, the municipal attorney should be consulted.

Assuming you are a paid firefighter in the same township in which you are a trustee and planning commissioner and assuming your status as firefighter makes you an employee of the township, then you have one position in conflict with the MPEA and one not. If the firefighter position is completely volunteer and there is no compensation then you may not be an employee. Consult the township attorney for guidance. (§ 15(5) PA 33 of 2008, M.C.L. 125.3815(5)) In addition, the MPEA specifically prohibits ex officio members from serving as chairperson of the planning commission (§ 17(1) PA 33 of 2008, M.C.L. 125.3817(1)).

If you resign your position as firefighter, or the position is determined not to be an employee, you could remain a trustee and a planning commission member, but could no longer serve as chairperson of the planning commission.

5. Can a city employee act as secretary to the PC?

A city, township, village, or county employee can serve as recording secretary, but cannot serve as the elected secretary of the planning commission (§15(5) PA 33 of 2008, M.C.L. 125.3815(5)), with two exceptions: 1) if the city or village charter specifically allows for employees to serve on the planning commission (§81(2)(a) PA 33 of 2008, M.C.L. 125.3881(2)(a)), or 2) if the employee is an ex officio member of the planning commission (see questions 12-14).

However, a local unit of government may also employ a person to transcribe meeting discussion and take minutes in public meetings if deemed necessary (this is a **recording** secretary), but this person is **not** a member of the planning commission, and has no voting rights; and therefore may be a city employee. The first draft of the minutes taken by the recording secretary is submitted to the elected secretary of the planning commission for final editing and submission at the next planning commission meeting (see *Land Use Series #1E: Sample Bylaws for a Planning Commission* <http://web5.msue.msu.edu/lu/pamphlet/Bclsam/pamphlet1E%20PlanComm%20ByLaws.pdf>). See question 13 for more information on the planning commission secretary.

6. Does the PC member who is an employee of a city department have to step down by September 1, 2008?

The short, safe answer is yes. § 15(5) of the MPEA clearly states that employees of a local unit of government may not serve on the same unit's planning commission, and the MPEA goes into effect on September 1, 2008. However, there is a possibility that § 83(1), which allows for the continuation of a planning commission, and § 81(2), which allows for the continuation of charter provisions, would permit employees serving on the planning commission to serve the remainder of their term. The best course of action is to consult your municipal attorney and follow his or her recommendations.

7. Is an elected official (i.e. clerk, drain commissioner, treasurer) considered an employee of a legislative body? Can they serve on the PC or ZBA (Zoning Board of Appeals)?

An elected official is not considered an employee of the legislative body, but all elected officials not specifically permitted to serve as an ex officio member on the planning commission are ineligible for planning commission membership (§ 15(5) PA 33 of 2008, M.C.L. 125.3815(5)). See question 4.

The requirements for the ZBA are different. One member of the legislative body may be an ex officio member or alternate member of the ZBA, but a member of the legislative body cannot serve as chairperson of the ZBA (§ 601(6) PA 110 of 2006, as amended, M.C.L. 125.3601(6)). An employee or contractor of the legislative body is not eligible to serve on the ZBA (§ 601(6) PA 110 of 2006, as amended, M.C.L. 125.3601(6)), but the Michigan Zoning Enabling Act (MZEA) is silent regarding the status of other officials serving on the ZBA. Therefore, local officials not serving on the legislative body are eligible to serve on the ZBA, so long as doing so is not a violation of the Incompatible Offices Act (PA 566 of 1978, M.C.L. 15.181 to 15.185). Again, consult your local municipal attorney if you are unsure of an individual's eligibility for membership on any board.

8. Can a county employee serve on a city planning commission?

The MPEA is silent on this subject; § 15(5) states, “...*an elected officer or employee of the **local unit of government** is not eligible to be a member of the planning commission.*” (M.C.L. 125.3815(5) emphasis added) The act prohibits local government employees from serving on the planning commission in the planning jurisdiction in which they are employed, but says nothing about local governmental employees serving on other planning commissions. However, again your municipal attorney should consult the Incompatible Offices Act and the scores of Attorney General opinions on this subject. The same would be true for a county employee serving on a village or township planning commission.

Planning Commission Membership—Representing Local Interests

9. Is it “*required*” to state an interest that we represent and can we represent more than one interest when appointed to the planning commission?

Importantly, planning commissioners are not required to represent interests; they are required to represent *segments* of the community in accordance with the major interests that exist in the community (as determined by the governing body) (§15(3) PA 33 of 2008, M.C.L. 125.3815(3)). As a planning commissioner one is not required to state the interests he or she represents, but the legislative body must appoint members to represent major segments of the community (see question 9) and should inform each planning commissioner of the areas they represent.

The more formal the relationship between members of the planning commission and the segments of the community they represent the better; however, there is a practical balance that must be struck. *Land Use Series* “#1 Sample Planning Commission Ordinance”

<http://web5.msue.msu.edu/lu/pamphlet/Bclsam/pamphlet1B%20PlanComm%20Ordinance.pdf> provides three different levels of formality for making appointments based on representation. Regardless of the formality, the “*important segments of the community*” must be identified and assigned to seats

on the planning commission. Furthermore, it is possible that more than one segment will be associated with a seat or member of the planning commission.

For example, if tourism is a major segment within your community, at least one planning commissioner should represent tourism interests. He or she should attend and/or be familiar with the desires and needs of the local Chamber of Commerce, visitor/convention bureau, hotel/motel owners; tourist business owners; and so on. (See *Land Use Series* “#1E Sample Planning Commission Bylaws”, 2008, pg. 4)

<http://web5.msue.msu.edu/lu/pamphlet/Bclsam/pamphlet1E%20PlanComm%20ByLaws.pdf>.

Finally, the membership of the planning commission must also be representative of the entire geography of the local unit of government “*to the extent practicable*”. (§15(3) PA 33 of 2008, M.C.L. 125.3815(3)) This implies that geography is a secondary consideration, and should be a lower priority than representing important segments of the community. Keep in mind that in many cities and counties there is already a geographic representation requirement on the legislative body (i.e. wards or districts) which may either be redundant or desirable to duplicate when considering appointments to the planning commission.

10. Isn't identifying what interest you represent on the PC contradictory to the fact that you must represent the entire community?

No, the purpose of requiring planning commissions to represent the various segments of a community is to maintain a balanced and accurate representation of community values and stakeholder interests on the planning commission. A planning commissioner can be mindful of the interests of the construction industry while still being conscious of the environmental concerns of the whole community.

Moreover, it is unreasonable to expect one person to represent the interests of the entire community because communities are too diverse. However, having a body of planning commissioners, each representing one or more of all the major segments of a community, makes the planning commission more representative of the community as a whole. Still, every action a planning commissioner takes should be made in the best interest of the whole community, not any one interest, group or geographic area.

11. In order to have a representative make-up on our PC, can we simply wait and do it through gradual replacements following a present commissioner's end of office?

Yes, until your planning commission adopts an amendatory or new ordinance under the MPEA. If an amendment or new ordinance is adopted, the ordinance

creating the planning commission will have to be amended to conform to the MPEA (§ 81(2)(b) PA 33 of 2008, M.C.L. 125.3881(2) (b)). At this time, the important segments of the community may be allocated to the current planning commissioners for the remainder of their term, or new planning commissioners may be appointed who are representative of the important segments of the community.

Planning Commission Membership—Secretary of the Planning Commission

- 12.** We don't have a Legislative Body member on the Planning Commission. Does this mean we have to kick someone off the Planning Commission by September 1st to make room for the Legislative Body member?

Again, the answer varies with jurisdiction. In townships with a planning commission formed under the Township Planning Act, one member of the planning commission has always been required to be a member of the township board. In all other jurisdictions (township planning commissions formed under the Municipal Planning Act, cities, villages, and counties) ex officio membership is an option, the MPEA says ex officio members "*may*" serve on the planning commission. (§ 15(5) PA 33 of 2008, M.C.L. 125.3815(5))

So, if you are in a township with a planning commission formed under the Township Planning Act, there must be a member of the legislative body on the planning commission already. If there isn't, then replace a member whose term is expiring with a member of the township board. When you convert the resolution creating the planning commission to an ordinance, that is a great time to bring the membership on the planning commission up to statutory standards. § 81(3) requires the former resolution creating the planning commission to be replaced by an ordinance that conforms to the new act by July 1st, 2011. Your municipal attorney should be consulted for further guidance.

If you are in a county, city, village, or township created under the Municipal Planning Act, it depends on when the legislative body adopts a new ordinance, or amends the existing ordinance creating a planning commission. § 81(3) requires the ordinance creating the planning commission to be updated or replaced by an ordinance which conforms to the new act. The new ordinance must be updated when it is first amended after September 1, 2008, or by July 1, 2011, whichever comes first (M.C.L. 125.3881(3)). Your municipal attorney should be consulted for further guidance.

A sample ordinance for creating a planning commission can be found at <http://web5.msue.msu.edu/lu/pamphlet/Bclsam/pamphlet1B%20PlanComm%20Ordinance.pdf>.

- 13.** "*There must be a secretary on the PC.*" How does he / she interface with the clerk / stenographer who had always taken notes and recorded minutes?

The MPEA requires planning commissions to elect a secretary, but does not assign specific duties to the position (§ 17(1) PA 33 of 2008, M.C.L. 125.3817(1)). It is thus left to the planning commission to determine the secretary's duties in the bylaws. The clerk/stenographer/recording secretary may continue to take notes and record minutes, but the elected secretary of the planning commission should be responsible for reviewing and editing the minutes, and then distributing the minutes for approval at the next planning commission meeting. Some typical duties of the elected secretary of the planning commission are: receiving all petitions, reports, and communications addressed to the commission; keeping attendance records; providing meeting and hearing notice to planning commission members; and working with the chairperson to prepare the agenda. See page 8 in *Land Use Series* "#1E Sample Planning Commission Bylaws."

<http://web5.msue.msu.edu/lu/pamphlet/Bclsam/pamphlet1E%20PlanComm%20ByLaws.pdf>

Planning Commission—General

14. Can a member of the appointing body (the legislative body) who serves on the planning commission serve as chair?

No, members of the legislative body, or any ex officio member for that matter, cannot serve as chairperson of the planning commission, "*An ex officio member of the planning commission is not eligible to serve as chairperson.*" (§ 17(1) PA 33 of 2008, M.C.L. 125.3817(1))

15. Is it required for one person to be on both the PC and the ZBA? If so, how many people can be on both boards simultaneously? Can a planning commission member be chairperson of the ZBA?

In counties and townships one member of the ZBA **must** be a planning commission member. In cities and villages one member of the ZBA **may** be a member of the planning commission. (§ 601(4) PA 110 of 2006, as amended, M.C.L. 125.3601(4)) Therefore, only one person may be on the planning commission and the ZBA simultaneously.

A planning commission member may be chairperson of the ZBA, however, a legislative body member sitting on the ZBA cannot be chairperson. (§ 601(6) PA 110 of 2006, as amended, M.C.L. 125.3601(6)) Furthermore, only one member of the legislative body may be a member of the ZBA. (§ 601(6) PA 110 of 2006, as amended, M.C.L. 125.3601(6))

16. Can the ordinance that created the planning commission substitute for bylaws?

No. All planning commissions must adopt their own bylaws for the transaction of business. (§ 19(1) PA 33 of 2008, M.C.L. 125.3819(1)) See *Land Use Series* “#1E Sample Planning Commission Bylaws” for detailed guidance on creating effective bylaws.

<http://web5.msue.msu.edu/lu/pamphlet/Bclsam/pamphlet1E%20PlanComm%20ByLaws.pdf>

Master Plan Adoption

17. If a new master plan, subplan, or plan amendment has been initiated under one of the existing Planning Enabling Acts, but is not finalized until after September 1, 2008, which act governs its adoption?

Any master plan adopted after September 1, 2008 must be adopted in a manner consistent with the MPEA. However, the adoption process has changed very little as a result of the consolidation of the planning enabling acts (See *Michigan Planning Acts Comparison Table* training booklet CD). The process of initiation and adoption that has been conducted to this point should be reviewed and evaluated. If any inconsistencies exist between the process to this point and MPEA requirements, the process should be altered to conform with the new MPEA to protect the master plan, or amendment to the master plan, from any challenges. The municipal attorney should be consulted with any questions regarding inconsistencies between the adoption process and MPEA requirements. Although the adoption process has remained relatively unchanged, content requirements are likely to have changed, at least slightly. The entire plan should be reviewed to ensure that it is in compliance with the new MPEA.

18. How do we find out if our township is organized under the Municipal Planning Act or Township Planning Act?

The MPEA allows any local unit of government to adopt an ordinance that creates a planning commission. (§ 11(1) PA 33 of 2008, M.C.L. 125.3811(1)) A municipality needs to find the ordinance or resolution that created their planning commission to find out how it was created and under which of the repealed planning enabling acts. Planning commissions were created by ordinance under the Municipal Planning Act (PA 285 of 1931) and County Planning Act (PA 282 of 1945) and by resolution under the Township Planning Act (PA 168 of 1959). (§ 81(3) PA 33 of 2008, M.C.L. 125.3881(3)) This usually requires researching the minutes of the legislative body as far back as it takes to find the ordinance or resolution. If it is not found, when adopting a new ordinance (use the model found at

<http://web5.msue.msu.edu/lu/pamphlet/Bclsam/pamphlet1B%20PlanComm%20Ordinance.pdf>) be sure to repeal the prior ordinance or resolution, even if you have not been able to find it.

19. How often must a new master plan be adopted or is it just updated when needed?

The MPEA requires master plans to be reviewed at least every five years to determine if they need to be amended, replaced by a new master plan, or if no change is needed. (§ 45(2) PA 33 of 2008, M.C.L. 125.3845(2)) Reviewing a master plan means looking at it and seeing if its data on current conditions and trends are valid and whether warranted changes are substantial enough to require the preparation of a whole new plan. Under the requirements and procedures of the MPEA, updating a master plan usually means going through the process of actually amending it. See *Land Use Series* “#1H The Five Year Plan Review.”

<http://web5.msue.msu.edu/lu/pamphlet/Bclsam/pamphlet1H%20Plan5yearReview.pdf> It is very important to record the findings of the planning commission about whether the master plan needs updating in the minutes of the planning commission.

20. Is there a way to require the planning commission to prepare a new master plan instead of an update? At what point is it advisable to “start over” with a new master plan? Changes in nature of township development? Years? Request of residents?

Before this question is answered, it is important to give some basic information about the continuation of plans prepared under the original planning acts. The MPEA allows plans, by any name, adopted by any of the old planning acts to continue under the MPEA. The plan remains in effect and all provisions of the MPEA apply except §33. §33 is not applicable until the master plan is first amended under the MPEA. (§ 81(1) PA 33 of 2008, M.C.L. 125.3881(1)) The MPEA also requires local units of government with zoning ordinances to include a zoning plan in the master plan showing how the categories on the future land use map relate to the districts on the zoning map. (§ 33(2)(d) PA 33 of 2008, M.C.L. 125.3833(2)(d))

If someone wants a township to prepare a new master plan instead of amending the existing one, they should talk to a planning commission member or speak at a scheduled planning commission meeting during the comment period. It is recommended that a new master plan be prepared and adopted if 10 or more years have elapsed since the adoption of the existing plan. A new master plan should also be adopted if: 1) there have been changes in the way the local unit of government is developing, especially if this determination happens during the first five-year review after the effective date of the MPEA, or 2) there is a change in thinking as to the basic strategy to use to guide future land use development and/or redevelopment in the community.

See *Land Use Series* “#1H The Five Year Plan Review”

<http://web5.msue.msu.edu/lu/pamphlet/Bclsam/pamphlet1H%20Plan5yearReview.pdf>

21. Can the legislative body still retain the right to approve master plans? Sec 43 (2) just references the planning commission?

The planning commission approves a proposed master plan by resolution and then, sends it to the legislative body, which is a county board of commissioners, township board of trustees, or city or village council. Only if the legislative body has reserved the right to approve or reject master plans does it then proceed to adopt the master plan. If the legislative body did not reserve that right, the planning commission has the final say (however, as a practical matter, if the legislative body did not initially reserve the right to adopt the master plan, and later decides to do so, the action should be warmly greeted by the planning commission, because then the plan becomes the community plan, rather than simply the planning commission’s plan). If the legislative body approves, the master plan is adopted and if it does not the master plan is to be returned to the planning commission with the legislative body’s comments. The process is then repeated until adopted (§ 43(2-3) PA 33 of 2008, M.C.L. 125.3803(e), 125.3843(2-3))

Master Plan Notice

22. Notification of master plan: To what other agencies are we required to send notice? Jurisdictions that abut ours? Our county government? State government? Is a newspaper notice official enough?

§ 39 (2) of the MPEA requires notice of the preparation of a master plan to be sent by first-class mail or personal delivery. Newspaper notice is required, but it alone is not sufficient. Individual notice must be sent to:

1. The planning commission, or legislative body if there is no planning commission, of all municipalities (cities, villages, and townships) within or contiguous to the local unit of government in question.
2. Each public utility company and railroad company owning or operating a public utility or railroad within the local unit of government in question.
3. Any government entity that registers its name and mailing address with the planning commission of the local unit of government in question.
4. If the master plan will include a master street plan, it must be sent to the county road commission and the state transportation department.
5. If a county master plan, the regional planning commission for the county’s region,
6. Counties must also give notice to the county planning commission, or board of commissioners if there is no planning commission, of each county contiguous to the county in question.
7. For cities, villages, and townships, the notice must be sent to the appropriate county planning commission, or the county’s board of

commissioners if no county planning commission exists, and to the regional planning commission for the municipality's region, if there is no county planning commission for the municipality's county.

Municipal planning commissions may consult with the regional planning commission whether or not there is a county planning commission, but they are not required to do so. (§ 39(2) PA 33 of 2008, M.C.L. 125.3839(2))

23. Does an email (to those who have email) suffice as "*written notice*"?

The MZEA does not allow any of the notices required under it to be sent electronically.

The MPEA authorizes notices regarding a draft master plan, after the approval of its distribution by the legislative body, and notices regarding a public hearing on that plan, to be sent electronically to the entities notified of the initial intent to prepare a master plan. However, if any of those entities objected to receiving future notices electronically after receipt of the first notice, they must thereafter be notified by mail. (§ 39(3) PA 33 of 2008, M.C.L. 125.3839(3)) There is no authorization for posting notices on the internet, posting notices of public hearings in place of newspaper notices, or putting submittals on CDs and mailing them. Furthermore, the Michigan Planning Enabling Act states that the notice of a special meeting of the planning commission must be written. (§ 21(1) PA 33 of 2008, M.C.L. 125.3821(1)) The Open Meetings Act has similar restrictions.

Further distribution by email, web site, and other electronic forms could be done in addition to the required notice, and may be a good idea.

24. For a subplan, is the 63 day comment and review period required, even if only one neighboring jurisdiction requests notice?

Yes. A planning commission is allowed to adopt a subplan for an area within the local unit of government smaller than the whole local unit of government. That adoption must be by majority vote of the planning commission. (§ 35 PA 33 of 2008, M.C.L. 125.3835) Notice of intent to prepare a subplan, as for a master plan, must be sent to all required entities. The notice and period of review only applies to those adjacent units of government that request future notice of subplans. (§ 45(1)(c) PA 33 of 2008, M.C.L. 125.3845(1))

Subplans, again, must be for areas smaller than the whole planning jurisdiction. This might include a plan for the downtown, a corridor, or an environmentally sensitive area.

Master Plan Amendment

25. If an existing master plan does not have a zoning plan does it need to be amended now?

The MZEA does not require a local unit of government to have a zoning ordinance, but any local unit of government may adopt one. (§ 201(1) PA 110 of 2006, as amended, M.C.L. 125.3201(1)) If a zoning ordinance is adopted (or already in place), it must be based on a plan prepared by a zoning board or zoning commission and that plan must include a zone plan; or it must be based on a master plan prepared by the planning commission which must have a zone plan element. See also §203 (1), 301(1) and 305 of PA 110 of 2006, as amended, and the definition of *master plan* in § 3 of PA 33 of 2008. The zone plan element is not a new requirement.

This zoning plan must include an explanation of how the land use categories on the future land use map of the master plan relate to the zoning districts on the zoning map that is part of the zoning ordinance. The future land use map categories are often more general than the zoning districts found on a zoning map. (§ 33(2)(d) PA 33 of 2008, M.C.L. 125.3833(2)(d))

If the existing master plan does not have a zoning plan element and the local unit of government does have a zoning ordinance, it does not have to be amended to include one until after September 1, 2008, when the MPEA takes effect. It should be done the first time the master plan is amended under the MPEA. (§ 81(1) PA 33 of 2008, M.C.L. 125.3881(1)) The longer a community waits, the more at risk of unnecessary litigation the community is.

26. “*Subplans*” seem to have a lower threshold for notification and adoption processes. To what extent could “*changes*” in the zoning plan also “*enjoy*” the lower threshold? Is a change to a “*zoning plan*” in the same category as a “*subplan*”? How can affected persons be safe from “*quick*” changes?

The zoning plan is not a subplan. The zoning plan does not have the “*lower threshold*” for notification and adoption that a subplan does. A zoning plan applies to the whole community, not just a geographic part of it, as a subplan does.

The zoning plan, as a part of the master plan, describes the zoning districts in the zoning ordinance and explains how the categories on the future land use map relate to the districts on the zoning map of the zoning ordinance. Master plans for local units of government without zoning ordinances are not required to have zoning plans. The Michigan Planning Enabling Act states that all initial adoptions and amendments to a master plan have to follow the requirements in §§ 39-43, except for amendments involving grammatical, typographical, or similar editorial changes; title changes; and changes to conform to an adopted plat.

If a planning commission, in its initial notice about master plan preparation, indicates that it will not provide future notice of subplans and an entity does not

request future notice, no future notice of subplans is required to be sent to that entity. (§ 45(2) PA 33 of 2008, M.C.L. 125.3845(2))

The review period for plan amendments is 42 days instead of 63 days. (§ 45(1) PA 33 of 2008, M.C.L. 125.3845(1))

Plats

27. What does the PC do if they need more information prior to approval / disapproval that will take greater than 63 days? (We used to be able to “*table*” the plat until the info was obtained...)

Planning commissions have 63 days to make a decision on plats and no more unless the proprietor authorizes an extension. That is the same in the MPEA as in the Land Division Act. In the subdivision ordinance, or in the planning commission bylaws, include a clause that makes it clear the 63 day deadline does not start until after a complete application for the plat review has been received. This means there must be a system in place locally where the application is reviewed to make sure it is complete almost as soon as it is received. (Often this is done by the zoning administrator.) This also means the subdivision ordinance must clearly spell out what is needed to be included in a subdivision application. Then if the application is incomplete, the zoning administrator (if s/he has plat review/coordination responsibility), sends the application back with a list of what is missing and a note that the 63 day review will start when a complete application is received.

If all of the standards of any subdivision ordinance and the Land Division Act are met, the plat has to be recommended for approval. If the planning commission does not make a decision in that time, the plat is considered to be recommended for approval. There are no exceptions. Thus, planning commissions must use their time wisely. (§ 71(6) PA 33 of 2008, M.C.L. 125.3871(6))

28. What are the basic plat and subdivision requirements?

Planning commissions have the authority to recommend subdivision ordinances or rules be adopted by the legislative body under the Michigan Planning Enabling Act (MPEA). The MPEA’s authority regarding subdivision rules, in turn, comes from §105 of the Land Division Act, PA 288 of 1967.

The MPEA does not authorize the subdivision ordinance or rules to be part of the zoning ordinance. It is a separate document. (§ 71 (1) of PA 33 of 2008, M.C.L. 125.3871(1)) *“Recommendations for a subdivision ordinance or rule may address plat design, including the proper arrangement of streets in relation to other existing or planned streets and to the master plan; adequate and convenient open spaces for traffic, utilities, access of firefighting apparatus, recreation, light, and air; and the avoidance of congestion of population, including minimum width and area of lots. The recommendations may also address the extent to which*

streets shall be graded and improved and to which water and sewer and other utility mains, piping, or other facilities shall be installed as a condition precedent to the approval of a plat.” (§ 71(2) PA 33 of 2008, M.C.L. 125.3871(2))

29. Why is an approved plat under the Land Division Act automatically considered to be an amendment of the master plan?

This is not a new provision. The MPEA requires a plat, approved by a township, city, or village and recorded under § 172 of the Land Division Act, to be considered an amendment to the master plan. It does not mean that all streets and open spaces shown on the plat are automatically accepted by the public for public ownership. (§ 71 (7) of PA 33 of 2008, M.C.L. 125.3871(7)) Incorporating all approved plats into the master plan ensures that the master plan does not conflict with existing public approvals for land divisions, street locations, and development patterns. It also eliminates the need to advertise, distribute, and conduct a separate hearing for a master plan amendment.

30. If site condominiums are used rather than plats, what are the requirements for review and approval?

Two options exist for regulating site condominiums. Neither is addressed in the MPEA. First, regulations and review of site condominium projects may be made subject to the same requirements as subdivisions in a separate ordinance that only regulates site condominiums. This would allow the planning commission to review the project and conduct a public hearing, at which time it would make recommendations to the legislative body, similar to the process for plats (§ 71 PA 33 of 2008, M.C.L. 125.3871). Second, site condominium requirements may also be included in the zoning ordinance. This allows a community to use the site plan review process to evaluate a proposed project.

Capital Improvement Plans

31. Our township is currently considering a sewer district. Must the project be in an adopted capital improvement program and must the planning commission review and approve the project? May the township board delegate Capital Improvement Plan preparation to another entity?

Master plans are required to show the planning commission's recommendations for the physical development of its local unit of government, the general location, character, and extent of sanitary sewers and water supply systems, if there are any, and recommendations for implementing any of the master plan's proposals. Those proposals may (or may not) include creation of a sanitary sewer and/or water supply system. (§ 33(1-2) PA 33 of 2008, M.C.L. 125.3833(1-2)) The legislative body, or another body having jurisdiction, has the final say in sewer decisions, but because sewer systems are capital improvements, they must be reviewed by the planning commission, assuming the planning commission has an adopted master plan currently in effect. (§ 65(1) PA 33 of 2008, M.C.L.

125.3861(1)) The review by the planning commission is to establish conformance or nonconformance with the master plan.

The legislative body (or city/village charter) may delegate the lead role for preparing a capital improvement plan (CIP) to the chief elected official or a nonelected administrative official or the legislative body may retain the responsibility itself. If this occurs, the planning commission should still review the proposed CIP prior to its adoption by the legislative body. If CIP delegation has not occurred, the planning commission has the lead responsibility for the CIP. (§ 65(1) PA 33 of 2008, M.C.L. 125.3861(1))

32. If sewer and water is in your jurisdiction but the infrastructure is owned by a different municipality, must the planning commission still prepare a CIP in a township?

Any township may prepare and adopt a capital improvement program, but only those that own **or operate**, by themselves or with other jurisdictions, water supply or sewer systems are required to do so. Since most townships don't have a public sewer and water system, most township planning commissions are exempt from the CIP requirement. Townships that are exempted from preparing a CIP because they do not own or operate a water or sewer system, but still wish to prepare a CIP, may do so upon initiation by the township board.

Owning a water supply or sewer system means that the township actually owns the equipment and facilities, and operating one means having employees who operate the facilities or equipment. If the sewer and water service is in a township's jurisdiction, but it is not operated or owned by that township, it does not have to prepare and adopt a capital improvement program. (§ 65(2) PA 33 of 2008, M.C.L. 125.3865(2))

33. What can be done if a public project has been completed without planning commission involvement or approvals (after the fact)?

Under the MPEA (as well as prior planning statutes), capital improvement projects are required to be submitted to those planning commissions with an adopted master plan in effect prior to construction of the project. Furthermore, the MPEA makes the planning commission responsible for preparing a capital improvements program, unless exempted (see question 31).

Therefore, if a public project has been completed without planning commission approval, there is very little that can be done. Either the local unit of government does not have a capital improvement program, which the planning commission is responsible for, or the local unit has designated another body responsible for the CIP, and the procedure for approving capital improvements is flawed. Instead of addressing the project that has already been completed, the structural issue of the review process must be addressed to give the planning commission its legal

responsibility to review the project for consistency with the master plan, and to prevent future problems.

If a project has been approved, but work has not started, the project should be stopped as soon as the oversight is discovered and the proposal should be submitted to the planning commission for approval. There is a 35-day review period which must be respected. The MPEA states that the period starts as soon the legislative body, or other body having jurisdiction, submits the proposal to the planning commission for review. (§ 61(1) PA 33 of 2008, M.C.L. 125.3861(1))

School Siting

34. If public works must be reviewed by the planning commission for compliance with master plans, then why are public schools allowed to locate without regard to the master plan? Are schools now brought under authority of the planning commission or are they still exempt?

Review by the planning commission of public works proposals like schools, under section 61 of the MPEA, is completely separate from review of a proposed school project and site plan under the Michigan Zoning Enabling Act. The latter was ruled preempted by the authority of the state Superintendent of Instruction in the Northville Case (*Charter Township of Northville v. Northville Public Schools* 469 Mich. 285, 2003). The former has never been subject to litigation. Planning commission review of public works projects though is limited to use, location and infrastructure considerations (not to site plan review and related zoning requirements); and the decision of the planning commission can be overruled by the school board. The review authority of public works by the planning commission is not new and has not been modified in the MPEA compared to the three prior planning enabling acts.

Conflict of Interest

35. Do the conflict of interest situations (i.e. family member) in the MPEA apply to the zoning board of appeals?

A provision on conflict of interest for ZBA members is also in the Michigan Zoning Enabling Act (MZEAA). ZBA members are required to disqualify themselves from voting on an issue when there is a conflict of interest. Failure to do so is malfeasance in office. (§ 601(9) PA 110 of 2006, as amended, M.C.L. 125.3601(9)) Conflict of interest rules should be in ZBAs' rules of procedure and in planning commissions' bylaws. (See *Land Use Series* publications on Sample planning Commission Bylaws <http://web5.msue.msu.edu/lu/pamphlet/Bclsam/pamphlet1E%20PlanComm%20ByLaws.pdf> and Sample Zoning Board of Appeals Rules of Procedure <http://web5.msue.msu.edu/lu/pamphlet/Bclsam/pamphlet7ZBA-Rules.pdf>) The

community may also include conflict of interest provisions in the zoning ordinance or in a separate ordinance. (§ 601(2) PA 110 of 2006, as amended, M.C.L. 125.3601(2)), (§ 19(1) PA 33 of 2008, M.C.L. 125.3819(1))

The legislative body is charged with removing ZBA and planning commission members for malfeasance, (which includes conflicts of interest), misfeasance, and nonfeasance in office upon written charges and after a public hearing. (§ 601 (9) of PA 110 of 2006, as amended, M.C.L. 125.3601(9)) and (§ 15 (9) of PA 33 of 2008, M.C.L. 125.3815(9)) One example of a conflict of interest is when a planning commissioner (or a ZBA member) reviews a site plan submitted by his or her employer. The planning commissioner may feel his/her job security will be affected by any vote other than approval of the request, and consequently, feels s/he cannot consider the request without a bias. Failure to disclose the conflict of interest to the rest of the planning commission would constitute malfeasance. However, once the situation is disclosed, it is up to the planning commission to determine if the situation constitutes a conflict of interest. It is best to practice hypothetical conflict of interest situations as a group, prior to addressing a real one in a public meeting. The body as a whole, minus the member with the potential conflict of interest, has the final say.

36. Can a planning commissioner vote on a variance as a member of a ZBA if he or she voted to approve a site plan on the planning commission?

A person who is a member of a ZBA and a member of the planning commission or legislative body must not participate in a public hearing or vote on the same issue as a member of both bodies. (§ 601(13) PA 110 of 2006, as amended, M.C.L. 125.3601(13)) See Question 37.

Yes, the planning commissioner can vote on the site plan and the variance, as long as he or she is considering two separate issues involving the same property. If the matter were an appeal to the ZBA of the approval or denial of the site plan by the planning commission, that would not be permissible as the commissioner would be voting twice on the same issue. But if it were a variance involving the same property, it would be permissible because the planning commission has no authority to consider and decide variances, but the ZBA does.

Also, if a planning commission does not approve a site plan because it does not meet the requirements of the zoning ordinance and then, the applicant asks for a variance from the same zoning ordinance provision, the same issue is being decided, and the planning commissioner/ZBA member should not participate in the hearing on the variance request.

37. If a conflict of interest arises, may the individual involved participate in the discussion and abstain from voting, or should he excuse himself entirely?

Planning commission members are required to make the whole planning commission aware of a conflict of interest, preferably before the meeting with the public hearing in question, but at least before the start of the agenda item for which there is a conflict of interest. The planning commission will discuss the issue per the local ordinance requirements and/or the planning commission bylaw requirements. If a majority of the remaining members of the planning commission vote a conflict of interest exists, then the member is disqualified from discussing, participating, debating and voting on the matter. (§ 15(9) PA 33 of 2008, M.C.L. 125.3815(9)) It is recommended that a member with a conflict of interest leave the room and not even participate in the discussion in, or out of the meeting, before or during the meeting, or be in the audience. The problem is that even an appearance of impropriety can hurt the credibility and defensibility of a planning commission's decisions.

38. If the township supervisor is a business person, can the supervisor apply for site plan review? If not, how does the supervisor obtain approval of a site plan?

An elected or administrative official must be careful when he or she is an applicant before their local unit of government's decision bodies. If they are a member on a body hearing their case, they must avoid participating in the discussion or voting on the matter. That is a clear conflict of interest. (§ 15(9) PA 33 of 2008, M.C.L. 125.3815(9)) and (§ 601(9) PA 110 of 2006, as amended, M.C.L. 125.3601(9)). The official can be represented before the decision-making body by an attorney or other designated business agent, but the official should not vote on the matter, or present the matter, or be present in the room.

The supervisor must take care to avoid the appearance of undue influence on the planning commission (or ZBA). The issue could be interpreted as one of intimidation because of the role of the township supervisor in appointing members of the planning commission (and ZBA).

Consequences of Failure to Conform to the New Acts

39. What happens (penalty) if a city, village, township, or county doesn't comply with a specific statutory requirement?

There are no provisions in the MPEA or MZEA for enforcement of the Acts. However, this does not mean there are no consequences for failing to follow the act's provisions. Acts of this type are enforced by litigation. If a municipality or county does not make a good faith effort to conform to the requirements of the MZEA or MPEA, it greatly increases the likelihood of lawsuits and decreases its chances of winning such suits. Litigation of this kind seriously undermines the authority of the planning commission and legislative body, causing citizens to distrust their local government or question their competency.

MZEA QUESTIONS [based on amendments to PA 110 of 2006, by PA 12 of 2008]

40. What is the legal status of a ZBA decision? Can the legislative body review or overturn a ZBA decision?

The zoning board of appeals has the responsibility to hear: 1) appeals of administrative decisions of the planning commission, decisions of the person charged with enforcing the zoning ordinance, and decisions of the legislative body when it makes administrative zoning decisions such as special use permits and PUDs, but only if the ordinance specifically so permits; 2) variance requests; and 3) ordinance interpretation requests.

The ZBA does not have the ability to hear appeals of legislative decisions (zoning amendments), or of special use permits, and PUDs if the zoning ordinance does not specifically provide for the ZBA to have review of such administrative matters.

All zoning board of appeals decisions are final. An appeal of a ZBA decision can only be made to the circuit court, not to the legislative body. (§ 605 PA 110 of 2006, M.C.L. 125.3605) A legislative body may amend the zoning ordinance (after a public hearing before the planning commission) if they are unhappy with a decision made by the ZBA, but they may not hear that case again or overrule the decision of the ZBA.

41. The zoning board of appeals approves a variance for a cellular tower. Have neighbors a right to appeal to circuit court before minutes are approved?

Yes, but only if the decision of the ZBA has been formally issued in writing and signed. If no decision has been issued and signed, and the minutes have not been approved, a stay may be sought in circuit court if construction of the cellular tower is proceeding.

According to the MZEA, an appeal of a ZBA decision must be made within 30 days after the decision is issued in writing and signed, or 21 days after the approval of the minutes (§ 606(3) PA 110 of 2006, as amended, M.C.L. 125.3606(3)). So if a decision is signed on March 1st, appeals may be filed until March 31st, regardless of when the minutes are approved; if the minutes are approved March 2nd, appeals may still be filed until March 31st. However, if the minutes aren't approved until April 1st of the same year, and no decision is issued, an appeal may be filed until April 22nd. Because of many possible nuances, please consult with your municipal attorney for further advice.

42. For public hearing notices, our ordinance states that property owners within 1000 feet shall receive notice. The MZEA now allows for those within 300 feet to receive notice. Which do you follow? Should you amend your

ordinance to reflect the new MZEA requirements? Do the notices need to be sent via certified mail or regular mail?

The MZEA states that notice must be sent to all owners **and occupants** within 300 feet of the subject property. (§ 103(2) PA 110 of 2006, as amended, M.C.L. 125.3103(2)) Notification to more owners and occupants in a larger area (such as 1000 feet) is not prohibited and is common in rural areas.

Additionally, the statute only says “*within 300 feet of the subject property*” and, traditionally, a parcel ends at the property lines. Thus, the 300 feet should be measured directly from all the property lines to indicate all property to be sent notice, regardless of right-of-ways.

Notice shall be considered “*given*” when personally delivered or deposited for delivery with the United States Postal Service, or other public or private delivery service during normal business hours. The MZEA does not require it to be sent as certified mail. (§ 103(3) PA 110 of 2006, as amended, M.C.L. 125.3103(3))

43. How should notices be sent to commercial properties? (i.e. strip mall with one owner, but several tenants or offices with one owner, but several tenants)

§ 103 (2) of the MZEA states, “*...if a structure contains more than 1 dwelling unit or spatial area owned or leased by different persons, 1 occupant of each unit or spatial area shall be given notice.*” (M.C.L. 125.3103(2)) However, the section also states, “*If a single structure contains more than 4...distinct spatial areas owned or leased by different persons, notice may be given to the manager or owner of the structure.*” (M.C.L. 125.3103 (2)) Therefore, if a single structure contains 4 or less distinct spatial areas notice must be given to one occupant of each spatial area. If a single structure contains 5 or more distinct spatial areas owned or leased by different persons, then notice only needs to be given to the manager or owner of the structure (to be posted at the primary entrance), and notice does not need to be given to each occupant of each distinct spatial area.

44. Regarding public hearing notices for 11 or more adjacent parcels: do parcels separated by a street or road still qualify as adjacent?

The answer is probably found in the zoning ordinance definition of “*lot.*” Most Michigan ordinances use one of two common definitions. One considers lots separated by a right-of-way as contiguous, or in some cases even as the same “*zoning lot.*” The other considers the right-of-way as a parcel and thus the two lots separated by the right-of-way not as contiguous, even when both lots are owned by the same party. If this does not solve the problem, then consider consulting a dictionary.

The MZEA does not define “*adjacent,*” “*contiguous,*” or “*abutting.*” The **Merriam-Webster Online Dictionary** defines adjacent as “*nearby,*” “*having a common*

endpoint or border", and *"immediately preceding or following"*. It defines contiguous, in this context, as *"being in actual contact"* or *"touching along a boundary or at a point"*. Abutting is defined as *"adjoining"* or *"bordering"*. In relation to properties, adjacent properties are ones next to each other, often with one common border, but may be separated by an easement or road, and contiguous or abutting properties are actually next to each other and touching. At this point the dictionary is not a help, so contact the municipal attorney and/or request the ZBA to make an ordinance interpretation if necessary. The ZBA should not make a decision without a written opinion on the matter from the municipal attorney. Most communities will find the definition of *"lot"* in their zoning ordinance resolves the problem. (§ 202(3) PA 110 of 2006, as amended, M.C.L. 125.3202(3))

45. What if the zoning administrator has an interpretation question – Are public hearing and notice required before the ZBA meets? Can it be added to the agenda?

Yes, a public hearing and notice regarding any interpretation questions by the ZBA are required. Notice is required to be published in a newspaper of general circulation in the local unit of government, and if the interpretation involves a specific property, sent to the owner of the subject property, and sent to the owners and occupants of all property within 300 feet of the subject property 15 days before the hearing. If the interpretation does not involve a specific parcel, notice only needs to be sent to the person requesting the interpretation and published in a newspaper of general circulation in the local unit of government. (§§ 103(1-2) and 604(5) PA 110 of 2006, as amended, M.C.L. 125.3103(1-2), 125.3604(5))

Simply adding the interpretation question to the agenda of the ZBA at the last minute for a decision should never be allowed to happen.

46. Is a regular scheduled and noticed meeting required to approve ZBA minutes?

The MZEA requires ZBA meetings to be held at the call of the chairperson and at other times specified by the ZBA's rules of procedure. ZBAs are also required to maintain a record of their proceedings in the office of the clerk of the legislative body. (§602 PA 110 of 2006, as amended, M.C.L. 125.3602) The record of proceedings is in the form of minutes. The Open Meetings Act (OMA) requires approval of the minutes at the next regular meeting of the ZBA, a draft of minutes be available within 8 days. Minutes should be required in the ZBA rules of procedure, and be prepared consistent with the OMA. The only place that the MZEA mentions ZBA minutes is where the statute specifies that an appeal of a ZBA decision is required to be filed within 21 days after the ZBA approves the minutes of its decision subject to appeal. (§ 606(3) PA 110 of 2006, M.C.L. 125.3606(3)) Under the OMA, any official act of a public body needs to be taken

at a public meeting, open to the public and with a proper quorum of the ZBA present.

47. For the public hearing notice, what if the property does not have a street address (farmland)?

The MZEA requires street addresses to be listed in a public hearing notice, but addresses do not need to be created just for the notice. If there are no street addresses, other means of identification are to be used. (§ 103(4)(b) PA 110 of 2006, as amended, M.C.L. 125.3103(4)(b)) This is especially applicable to farmland. Other forms of identification for property include: its legal description, tax parcel number, or a statement like "*farmland between address x and y*".