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The Michigan Planning Enabling Act - What You MUST Know!

By now you have heard of the new planning statute that ALL local units of government will soon be following. Michigan Public Act 33 of 2008 (being the Michigan Planning Enabling Act, M.C.L. 125.3801 et seq.) becomes effective September 1, 2008. Beginning September 1, 2008 you should no longer refer to any of the former planning enabling acts and should follow all procedures in the Michigan Planning Enabling Act (MPEA). There are numerous changes in the new statute that many communities will need to make and this short article is an overview of those important changes. This article is not a substitute for reading and understanding the statute, nor is it a substitute for your municipal attorney's opinion. Additionally, this article is intended to point you in the direction of helpful resources for your planning commission to make the necessary changes to come into compliance with the MPEA. It is based on the MSU Extension Land Use Series "Check List #1C: Summary of changes between the new MPEA and the three old planning acts."

First Step: Update Ordinance

One of the very first things every planning commissioner should do is read and understand the new statute. The MPEA is not difficult to read. In fact, it is quite easy to read over the course of a short evening. The lawyers got their hands on certain sections of the statute, and you will recognize those sections, but the law is pretty clear and your responsibility, first and foremost, as a planning commissioner is to understand the law under which you are enabled to plan for the uses of land.

In terms of changes, soon after the effective date of the statute (September 1, 2008), you need to update your planning commission ordinance. If you are from a township, all resolutions creating a planning commission will have to be replaced with a new ordinance. Even cities, villages, and counties with planning commissions created by ordinance will likely have to update those ordinances to be consistent with the requirements of the MPEA. It is important to get those new ordinances on the books sooner rather than later because there are refined membership requirements for all planning commissions and those membership requirements must be met by July 1, 2011. If your planning commission does not currently meet the membership requirements in the new MPEA and you want a gradual progression of change on the planning commission, take advantage of the fact that about 1/3 of planning commission membership rolls over each year. With a nine member planning commission, depending on how your membership needs to change, it could take three years to meet the membership requirements - that's 2011! You are encouraged to start with the sample planning commission ordinance in the MSU Extension Land Use Series; "Check List #1B: Sample Planning Commission Ordinance" and edit the sample as appropriate.

Second Step: Update Bylaws

The planning commission must also update its bylaws. Your planning commission should have adopted 'rules for the transaction of business' in the past, but now you must have 'bylaws' and those bylaws MUST address at a minimum: conflicts of interest, election of officers, meeting minutes, the transaction of business, and the process of calling a special meeting. There is much more that should be in a planning commission's bylaws outside of what is required by statute. You are encouraged to start with the sample bylaws in the MSU Extension Land Use Series; "Check List #1E: Sample Bylaws for a Planning Commission" and edit the sample, as needed.

Annual Report

Previously, only township planning commissions were required to prepare an annual report. Preparation of a planning commission annual report is now required in cities, villages, townships, and counties. This is not a difficult task and is a very important communication tool between the planning commission and the legislative body (the township board, the city/village council, or the board of commissioners). Include important items, such as operations of the commission (i.e. number of permits issued/denied), status of planning activities (i.e. where the commission is with a master plan update), recommendations to the legislative body related to planning, zoning, and development (e.g. ordinance amendments), and fiscal needs for next year.

Preparation of an annual report in combination with a budget and work program is especially helpful for establishing the planning commission's next year's activities. Of course the budget will include per diem expenses and mileage for planning commissioners, but have you ever thought about paying for a recording secretary, or money for attending trainings? A work program, a short document of specific tasks the planning commission feels are necessary to implement the master plan, should also be submitted annually with priority work tasks included in the budget request.

Subdivision Regulations

Probably the most significant changes in the MPEA relates to subdivision regulations. The provisions regarding planning commission adoption of subdivision rules and review of proposed subdivisions were redrafted to be consistent with the Land Division Act (P.A. 288 of 1967, as amended, being M.C.L. 560.101 et seq.). Subdivision rules or ordinances can

now only be adopted by the legislative body (formerly under the Municipal Planning Act, the planning commission could adopt subdivision rules). If your planning commission had rules regarding the subdivision of land before the MPEA, those rules can remain, however they must be organized under an ordinance (and adopted by the legislative body) if any changes to those rules are made. For all municipalities the MPEA details new procedures for adopting subdivision ordinances and reviewing proposed plats. You are encouraged to carefully read and understand this significantly changed portion of the new statute and to review the MSU Extension Land Use Series; "Check List #1L: Adoption or Amendment of Subdivision Rules."

Capital Improvement Plan

The preparation of a Capital Improvement Program (CIP) is now required by all local units of government after adoption of a master plan. However, there is an exemption from this requirement for townships that do not entirely or partially own or operate public sewer or water. A CIP is a prioritized list of proposed new public facilities or infrastructure improvements in a community. The legislative body of a city, village, township, or county can also exempt the planning commission from the preparation of a CIP, but must prepare a CIP themselves or assign the duty to a nonelected administrative official in order to satisfy the letter of the law. You are encouraged to review the MSU Extension Land Use Series; "Check List #1J: Adopting and Updating a Capital Improvement Program." Once a planning commission has completed a master plan, they are responsible for reviewing proposed public works (major new infrastructure and capital improvements). This is NOT a new requirement. The planning commission is most familiar with the land use and infrastructure needs of the community because of its involvement with the master plan.

Therefore, it is reasonable that the planning commission take the time to review proposed public works expenditures before the legislative body exercises its 'power of the purse'. The only change with public works review is the time allotted for the planning commission to make the review - now 35 days (previously 60 days). You are encouraged to review the MSU Extension Land Use Series; "Check List #1K: Review of Infrastructure and Public Capital Expenditure."

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Zoning Plan

Another refinement in the MPEA is more clarity regarding the requirement for a zoning plan. This is NOT the zoning ordinance. A zoning plan is an element often within the master plan that includes a description of each of the zoning districts (including proposed new ones), a proposed schedule of regulations by district, a proposed zoning map, the criteria to be used to consider rezoning consistent with the master plan, and an explanation of how the land use categories on the future land use map relate to the districts on the zoning map. The requirement for a zoning plan has existed in every zoning enabling act since the first City-Village Zoning Act in 1921. For more on the newly clarified requirement for a zoning plan, see sections 203 (1) and 305 of the Michigan Zoning Enabling Act and sections 3(g)(2) and 33(2)(d) of the MPEA. Also, review the MSU Extension Land Use Series; "Check List #1F: What Should be in a Master Plan."

Meeting Requirement

A welcome change for many small cities and villages is the new requirement that a planning commission shall hold not less than 4 regular meetings each year (under the Municipal Planning Act, planning commissions were required to meet monthly). This change to meeting schedules is accompanied by the requirement that the all planning commissions must by resolution determine the time and place of their meetings. You are encouraged to review the MSU Extension Land Use Series; "Check List #1D: Steps to, Transition from an Existing Planning Commission to Comply with the MPEA."

All of the MSU Extension Land Use Series checklists referenced in this article (and more) are available at the MPEA portion of Schindler's Land Use Page (www.msue.msu.edu/lu). And remember, the Michigan Zoning Enabling Act of 2006 (M.C.L. 125.3101 et seq.) was amended on February 29, 2008 by Public Act 12 of 2008. Most importantly, there are public notice changes (and other minor changes) in the MZEA that local governments must now be following.

Adapted from Brad Neuman, Extension Educator-Land Policy, St. Joseph County

First Steps to Compliance

The Michigan Planning Enabling Act (MPEA) is in effect as of September 1, and your community should be looking at what needs to be done to meet the requirements of PA 33.

It is likely that the most critical and time sensitive action you now need to take is to determine if the legislative body must adopt a new ordinance reestablishing their planning commission.

When your local unit of government first started planning and zoning, the legislative body if you are a county, city or village adopted an ordinance, or if you are a township a resolution that created the planning commission. That ordinance or resolution may have been changed from time to time.

It is important that a copy of this ordinance or resolution, with all of its amendments, be found. A careful review of these documents will determine what updates are needed to comply with the Michigan Planning Enabling Act. Also the planning commission's bylaws, as amended, will need to be found and updated for the same purpose.

If the ordinance or resolution or bylaws cannot be found, then now is the time to adopt a new document. You must also repeal previous resolutions, ordinances or bylaws if you do this.

If you do have your ordinance and bylaws you should review them to see if you are in compliance with the new laws. You need to check provisions for selection of officers, meetings, adoption of bylaws, record keeping, appointment of employees, contracts for service and expenditures.

You then can decide if you will amend your current ordinance or if you will repeal the ordinance and adopt a new ordinance with provisions that comply with the MPEA.

Some townships may be using the MTA bylaws book as their bylaws. This can serve as the model for bylaws if it is revised to comply with the MPEA, but you also must adopt you own set of bylaws.

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Also, if your ordinance has established a zoning board or zoning commission you need to transfer all powers and duties of the board/commission to the planning commission.

Your ordinance creating a planning commission should have specific provisions for the following points:

- ◆ Organization: statement of creation of a planning commission and the statutory authority to do so (Michigan Planning Enabling Act) §11(1)
- ◆ Membership (who, representation) §15(2)-15(8)
- ◆ Membership appointment process §15(1)
- ◆ Membership, fill a vacancy §15(2)
Provisions on the powers and duties the planning commission will have
- ◆ Provision to transfer zoning board or zoning commission powers and duties or a statement saying the planning commission does not have zoning authority §83(2), §83(3), M.C.L. 125.3301(2)
- ◆ (For counties only) provision stating the planning commission has the powers and authority of a metropolitan planning commission (or not) §37(1)
- ◆ Provision for liaisons (non-voting) members (optional)
- ◆ Requirement for continuing education (optional)
- ◆ Provisions for transition of membership from how it was done to the new system which complies with the new act
- ◆ Provision on member compensation §23(1) (optional)
- ◆ Provision on meetings §21
- ◆ Provision on keeping records §19, §43, §45(2)

Introducing MTA's Reformatted Fall District Meetings

Join us this September where the topic of discussion is preserving our future. Let's explore a positive approach to building Michigan's economy. This full-day workshop is designed to help you understand the economic challenges facing Michigan, and offer redevelopment strategies, techniques and approaches. We'll highlight best practices of successful communities along with tools and strategies from across the nation.

Pursuing a 'Sense of Place' for Your Township

Learn to identify and promote the assets that make your community a unique place to live, work and recreate. Explore ways to preserve your community's character, enhance natural resources and improve your residents' quality of life. Techniques for engaging your community and success stories will also be shared.

Townships Leading Michigan to Prosperity

We will help you identify potential partners in neighboring townships, outlining ways to work together, opening lines of communication and building trust. Put the vision into action as you leave this session empowered with ways to improve your community.

Building prosperous communities is our ultimate goal and one that will take many hands to accomplish. We can do it together, one township at a time.

Dates and Locations:

Wednesday, September 17 - Western Michigan University, Kalamazoo (Districts 19 and 23)

Friday, September 19 - Holiday Inn, Spring Lake (District 15)

Thursday, September 25 - Holiday Inn West, Lansing (Districts 16 and 20)

Please contact www.michigantownships.org or call 517.321.6467 for more information.



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