CITY OF HILLSDALE

Zoning Board of Appeals
97 North Broad Street
Hillsdale, Michigan 49242-1695
(517) 437-6449 Fax: (517) 437-6450

Zoning Board of Appeals Agenda
February 7, 2018

I. Call to Order 5:30pm
A. Pledge of Allegiance
B. Roll Call

II. Public Comment – agenda items

III. Consent Items/Communications
A. Approval of agenda - **Action**
B. Approval of November 8, 2017 minutes – **Action**

IV. New Business
A. Officer Elections
B. Member Packet Review

V. Adjournment

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ZONING BOARD of APPEALS
SPECIAL MEETING
CITY HALL, 97 N. BROAD ST. 3rd FLOOR, COUNCIL CHAMBERS
November 8, 2017 at 5:30 PM

I. Call to Order 5:30 pm

A. Pledge of Allegiance

B. Members present: Eric Swisher (Chair), Richard Smith, Richard Curtis, Kerry Laycock, John DeBacker

C. Others present: Alan Beeker (Zoning Administrator), Brian DuBois, Jack McLain, Jeff Rogers, Ken Weidinger, Dan Poole

D. Members absent: Adam Stockford (unexcused)

II. Consent Items/Communications

A. Kerry Laycock moved to accept the consent items and agenda as proposed, John DeBacker seconded. Motion passed

B. John DeBacker moved to accept minutes from September 13, 2017 meeting, Richard Curtis seconded. Motion passed.

III. Public Comment

Jack McLain – asked about the location of the packet on the website. Mr. Beeker told him where the packet link was located for future reference.

IV. New Business

A. 352 Hillsdale St.

The owner is requesting a variance to the 8'-0" side yard setback requirement listed in the RM-1 district of Sec. 36-411. The variance would include a 1'-0" exception along the south side of the proposed residential structure and a 7'-0" exception along the south side of the proposed car port.

B. Public Discussion

a. Mr. DuBois, owner of DuBois Trucking, spoke to the narrow rectangular lot and mentioned that with the size of the desired house, the house and carport would need to encroach into the side

setbacks in order to allow for a drive in the north side. Mr. DuBois stated that he had spoken to the neighbors and no one he spoke to had any issues.

b. Eric Swisher asked if it was to be a private residence or a college rental. Mr. DuBois understood that the owner's daughter would be living there along with friends.
c. Mr. Laycock asked if the stair shown on the drawings was to the second floor, Mr. DuBois confirmed that there would be a front entrance at the front door, main floor and an exit from the rear second floor.
d. Richard Curtis asked about the distance from the retaining wall to the carport, approx. 2.5 feet. His concern was that the carport would impede future development of the neighboring property as well as make maintenance behind the carport difficult.
e. Mr. DeBacker asked about rotating the structure and Mr. DuBois said it would be much more expensive to do that.
f. Mr. Smith stated that the Board of Key Opprotunities had no objections.
g. Mr. Laycock and Mr. Swisher both agreed with Mr. Curtis's concerns.
h. Brian DuBois spoke to the design of the carport which is essentially open framing with a roof.
i. Mr. Beeker addressed the area required for maneuvering a vehicle behind the carport and told the Board that 24' is the minimum requirement and that there would be plenty of space if the carport were lined up with the residential structure.
j. The Board asked if the variance had to be allowed as presented, Mr. Beeker told the Board that they could make conditional requirements to the requested variance.

C. Facts and Findings: Chair Swisher read through the Facts and Findings questions with the Board. (See Attached).

D. Motion – Richard Curtis made a motion to approve a variance of 1'-0" along the full south property line side setback, Richard Smith seconded. Roll call vote;

a. Richard Smith – aye
b. Richard Curtis – aye
c. Eric Swisher – aye
d. Kerry Laycock – aye
e. John DeBacker – aye

Motion passed 5 ayes, 0 nays, unanimous vote, the variance was approved.

V. Public Comment

Mr. DuBois thanked the Board for their time.

VI. Adjournment at 6:20 pm

Mr. Laycock moved to adjourn, Mr. DeBacker seconded, motion passed.

Zoning Board of Appeals
97 N. Broad Street
Hillsdale, Michigan 49242
517.437.6449

Zoning Board of Appeals Findings

Case #: **ZBA-2017-03**
Address: **352 Hillsdale St.**
Parcel #: **222-229-21**
Parcel Owner: **Prestige Real Properties Holdings LLC**
Ken Weidinger (Agent)

A. The Zoning Board of Appeals for the City of Hillsdale hereby makes the following findings as to whether each of the following factors are or are not present based on the facts presented by the appellant seeking the variance.

1. **Will the proposed variance impair an adequate supply of light and air to adjacent property?**

   NO

2. **Will the proposed variance unreasonably increase congestion in public streets?**

   NO

3. **Will the proposed variance request increase the danger of fire?**

   NO

4. **Will the proposed variance endanger the public safety?**

   NO

5. **Will the proposed variance unreasonably diminish or impair established property values within the surrounding area?**

   NO

6. **Will the proposed variance in any other respect impair the public health, safety, comfort, morals or welfare?**

   NO

B. If each of the above determinations is answered in the negative and supported, the ZBA must then determine whether each of the following facts and conditions exist beyond a reasonable doubt.

1. **That there are exceptional or extraordinary circumstance or conditions applicable to the property or to its intended use that do not apply generally to other properties or uses in the same district or zone.**

   YES

2. **That the variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity.**

   YES

3. **That the granting of the variance will not be materially detrimental to the public welfare.**

   YES

4. **That the granting of the variance will not be materially injurious to the property or improvements in the zone or district in which the property is located.**

   YES

5. **That granting of the variance will not adversely affect the purposes or objectives of the City's future land use plan.**

   YES

BASED ON THE FACTS PRESENTED IN THE RECORD BEFORE THE ZBA AND ON THE FOREGOING DETERMINATION AND FINDINGS, THE ZBA HEREBY:

1. **Grants the variance as requested: _____**
2. **Denies the variance as requested: _____**
3. **Grants the variance subject to the following conditions and safeguards: __X__**
   a) **Conditions:** ***the variance will only be allowed as a 1'-0" setback variance allowed along the south property side lot line for the house and car port.***

   b) **Safeguards:**

Note:
All of the Zoning Board of Appeal's discussions, determinations and findings must be based on the record before it and undertaken and made in open session.

Hillsdale, Michigan
Code of Ordinances

PART II
CHAPTER 2
ADMINISTRATION
DIVISION 3
BOARD OF APPEALS

DIVISION 3. - BOARD OF APPEALS

Sec. 36-81. - Membership generally.

There is established a zoning board of appeals which shall perform its duties and exercise its powers as provided in section 5 of Public Act No. 207 of 1921 (MCL 125.585), and in such a way that the objectives of this chapter shall be observed, public safety secured and substantial justice done. The zoning board of appeals shall consist of seven members, all appointed by the city council. Each member of the zoning board of appeals shall hold office for a three-year term. Two members of the zoning board of appeals shall be appointed, one each from the membership of the city council and the planning commission. The councilmember so appointed shall not be a member of the planning commission. Each member of the zoning board of appeals shall have been a resident of the city for at least one year prior to the date of his appointment and shall be a qualified and registered elector of the city on such date and throughout his term of office. Appointed members may be removed for cause by the city council only after consideration of written charges and a public hearing. Any appointive vacancies in the zoning board of appeals shall be filled by the city council for the remainder of the unexpired term. The zoning board of appeals shall annually elect its own chair, vice-chair and secretary. The compensation of the appointed members of the zoning board of appeals shall be fixed by the city council.

Sec. 36-82. - Meetings.

All meetings of the board of appeals shall be held at the call of the chair and at such times as such board may determine. All hearings conducted by the board of appeals shall be open to the public. The board of appeals shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent, or failing to vote, indicating such fact; and shall also keep records of its hearings and other official action. Four voting members of the board of appeals shall constitute a quorum for the conduct of its business. The board of appeals shall have the power to subpoena and require the attendance of witnesses, administer oaths, compel testimony and the production of books, papers, files and other evidence pertinent to the matters before it.

Sec. 36-83. - Powers and duties.

(a) The board of appeals shall have the powers set forth in sections 36-85 through 36-87, and it shall be its duty:
    (1) To hear and decide on all matters referred to it upon which it is required to pass under this chapter;
    (2) To hear and decide appeals where it is alleged there is error of law in any order, requirement, decision, or determination made by the building inspector in the enforcement of this chapter.

(b) Nothing contained in this chapter shall be construed to give or grant to the board of appeals the power or authority to alter or change this chapter or the zoning map, such power and authority being reserved to the city council in the manner hereinafter provided by law.

Sec. 36-84. - Appeal procedure.

(a) An appeal may be taken to the board of appeals by any person, firm or corporation, or any officer, department, board or bureau affected by a decision of the building inspector. Such appeal shall be taken within such time as shall be prescribed by the board of appeals, by general rule, by filing with the building inspector and with the board of appeals a notice of appeal, specifying the grounds thereof. The building inspector shall forthwith transmit to the board of appeals all of the papers constituting the record upon which the action appealed from was taken.

(b) An appeal shall stay all proceedings in furtherance of the action appealed from, unless the building inspector certifies to the board of appeals after the notice of appeal has been filed with him that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property; in which case the proceedings shall not be stayed, otherwise than by a restraining order, which may be granted by the board of appeals or by a court of record on application, on notice to the building inspector, and on due course shown.

(c) The board shall select a reasonable time and place for the hearing of the appeal and give due notice thereof to the parties and shall render a decision on the appeal without unreasonable delay. Any person may appear and testify at the hearing, either in person or by duly authorized agent or attorney.

(d) A fee as currently established or as hereafter adopted by resolution of the city council from time to time shall be paid to the secretary of the board of appeals at the time that notice of appeal is filed, which the secretary shall forthwith pay over to the city treasurer to the credit of the general fund of the city.

Sec. 36-85. - Authority for appeal regarding variance.

In hearing and deciding appeals, the board of appeals shall have the authority to grant such variance therefrom as may be in harmony with their general purpose and intent so that the function of this chapter is observed, public safety and welfare secured, and substantial justice done, including the following:

(1) Interpret the provisions of this chapter in such a way as to carry out the intent and purpose of the plan, as shown upon the zoning map fixing the use districts, accompanying and made a part of the ordinance codified in this chapter, where street layout actually on the ground varies from the street layout as shown on the map;

(2) Permit the reaction and use of a building or use of premises in any use district for the public utility purposes;

(3) Permit the modification of the automobile parking space or loading space requirements where, in the particular instance, such modification will not be inconsistent with the purpose and intent of such requirements;

(4) Permit such modification of the height and area regulations as may be necessary to secure an appropriate improvement of a lot which is of such shape, or so located with relation to surrounding development or physical characteristics that it cannot otherwise be appropriately improved without such modification;

(5) Permit temporary buildings and uses for periods not to exceed two years in undeveloped sections of the city and for periods not to exceed six months in developed sections.

Sec. 36-86. - Special conditions regarding appeal for variance.

Where, owing to special conditions, a literal enforcement of the provisions of this chapter would involve practical difficulties or cause unnecessary hardships, within the meaning of this chapter, the board of appeals shall have power upon appeal in specific cases to authorize such variation or modification of the provisions of this chapter with such conditions and safeguards as it may determine, as may be in harmony with the spirit of this chapter and so that public safety and welfare is secured and substantial justice done. No such variance or modification of the provisions of this chapter shall be granted unless it appears beyond a reasonable doubt that all the following facts and conditions exist:

(1) That there are exceptional or extraordinary circumstances or conditions applicable to the property involved or to the intended use of the property that do not apply generally to other properties or class of uses in the same district or zone;
(2) That such variance is necessary for the preservation and enjoyment of a substantial property right possessed by other property in the same zone and vicinity;
(3) That the granting of such variance or modification will not be materially detrimental to the public welfare, or materially injurious to the property or improvements in such zone or district in which the property is located;
(4) That the granting of such variance will not adversely affect the purposes or objectives of the future land use plan of the city.

Sec. 36-87. - Restrictions regarding appeal for variance.

In consideration of all appeals and all proposed variations to this chapter, the board of appeals shall, before making any variations from this chapter in a specific case, first determine that the proposed variation will not impair an adequate supply of light and air to adjacent property, or unreasonably increase the congestion in public streets, or increase the danger of fire or endanger the public safety, or unreasonably diminish or impair established property values within the surrounding area, or in any other respect impair the public health, safety, comfort, morals or welfare of the inhabitants of the city. The concurring vote of four members of the board of appeals shall be necessary to reverse any order, requirements, decision, or determination of the building inspector, or to decide in favor of the applicant any matter upon which it is authorized by this chapter to render a decision, except that a concurring vote of five members of the board of appeals is necessary to grant a variance for uses of land permitted in this chapter.

Sec. 36-88. - Flood hazard area zone variances.

(a) Variances from the provisions of article VI of this chapter, regarding floodplain controls, shall only be granted by the zoning board of appeals upon a determination of compliance with the general standards for variances contained in this section and each of the following specific standards.
    (1) A variance shall not be granted within a regulatory floodway where the result would be any increase in flood levels during a base flood discharge, except upon certification by a registered professional engineer or the state department of environment quality that the

cumulative effect of the proposed development will not harmfully increase the water surface elevation of a base flood. In determining whether a harmful increase will occur, compliance with part 31 of Public Act No. 451 of 1994 (MCL 324.3101 et seq.), shall be required, provided that the allowable increase, including the increase used as the design standard for delineating the floodway, shall not exceed one foot.

(2) A variance shall be granted only upon:
   a. A showing of good and sufficient cause;
   b. A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
   c. A determination that the granting of a variance will not result in flood heights in excess of those permitted by this chapter, additional threats to public safety, or extraordinary public expense, or create nuisances, cause fraud on or victimization of the public, or conflict with existing laws or ordinances.

(3) The variance granted shall be the minimum necessary, considering the flood hazard, to afford relief to the applicant.

(b) The zoning board of appeals may attach conditions to the granting of a variance to ensure compliance with the standards contained in this section.

(c) Variances may be granted for the reconstruction, rehabilitation or restoration of structures listed on the National Register of Historic Places or the Michigan Historic Marker listing of historic sites, or any other state register of historic places without regard to the requirements of this section governing variances in flood hazard areas.

Sec. 36-89. - Exercising powers.

In exercising the powers set forth in this chapter, the board of appeals may reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed from, and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the building inspector from whom the appeal is taken.

Sec. 36-90. - Recommendation; hearing and notice.

The board of appeals shall make no recommendation except in a specific case and after a hearing conducted by the board. The board of appeals shall fix a reasonable time for the hearing of the appeal and give notice of the appeal to the persons to whom real property within 300 feet of the premises in question is assessed, and to the occupants of single-family and two-family dwellings within 300 feet. The notice shall be delivered personally or by mail addressed to the respective owners and tenants at the address given in the last assessment roll. If a tenant's name is not known, the term "occupant" may be used.

Sec. 36-91. - Orders; term of validity.

(a) No order of the board of appeals permitting the erection or alteration of a building shall be valid for a period longer than one year, unless a building permit for such erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

(b) No orders of the board of appeals permitting a use of a building or premises shall be valid for a period longer than one year unless such use is established within such period; provided, however, that where such use permitted is dependent upon the erection or alteration of a building, such order shall continue in force and effect if a building permit for the erection or alteration is obtained within such period and such erection or alteration is started and proceeds to completion in accordance with the terms of such permit.

Secs. 36-92—36-110. - Reserved.

QUASI-JUDICIAL DECISIONS MADE BY THE ZONING BOARD OF APPEALS

Three types of zoning decisions are characterized as quasi-judicial: text and map interpretation, variances and appeals. All three are the province of the zoning board of appeals (ZBA).

Membership of the ZBA shall be three or more people if the community's population is less than 5,000. Membership shall be five or more people if the community's population is 5,000 or more. Each member *shall* be electors within the zoning jurisdiction and representative of population distribution and various interests in the local unit of government. Up to one member of the ZBA *shall* be an ex officio, a member of the county or township planning commission.

Facts about ZBA membership and voting	the legislative bod
Number of members	At least three in communities of fewer than 5,000 persons At least five in communities of more than 5,000 persons
Who may be appointed	Electors within the zoning jurisdiction who are representative of the population distribution and various interests in the local government
Who may not be a member	An employee or contractor of the legislative body
Alternate members	One or two serve with the same power as a regular member who is absent or has a conflict of interest
Term of office	Three years, staggered
Quorum (the number of members required in order to conduct business)	Simple majority (more than half) of the members
Vote required to act on appeals	Simple majority of the entire ZBA membership (not only those present)
Vote required to act on use variances (In jurisdictions where the ZBA is permitted to consider use variances)	2/3 vote of the ZBA membership
Vote required to act on non-use variances	Simple majority of the entire ZBA membership (not only those present)
Other	The legislative body may be the ZBA in cities and villages; otherwise, a member of the legislative body may serve on the ZBA but cannot be its chair

Up to one member of the ZBA *may* be an ex officio, a member of the city or village planning commission. Up to one member of the ZBA *may* be a member of the legislative body who may be on ZBA (but cannot be chair of the ZBA). Membership of the ZBA includes the unique possibility of having alternate members. Facts about membership and the votes required for making decisions are shown in the table above.

In a perfect world, once a zoning ordinance is adopted, all requests for zoning permits or site plan reviews would be approved because all development projects would be created within the rules set forth in the ordinance.

But the world is not perfect, and many properties have unusual characteristics, such as an odd shape or an existing wetland. Communities need ways to allow property owners the opportunity to appeal decisions, to vary the rules when necessary and simply to understand what the ordinance

means when it does not appear to fit the circumstances: This is why the zoning ordinance has provisions for appeals, variances and Interpretations.

First, the ZBA must remember that the zoning process is designed to balance preserving property rights with protecting the public interest. Therefore, it's critical to maintain a high standard of ethics.

Second, the ZBA must consider the facts for each case and make decisions based on individual circumstances. Further, the decisions must be supported. The record must show sufficient facts to back up the findings made according to the ordinance standards. It is not enough to state that the variance should be approved because it is a "good idea" or that it will "not be a problem."

Most ZBA cases also have a set of standards in the zoning ordinance, or court set criteria. If the facts show that all the standards are met, the ZBA case must be approved. If the standards have not been met, the ZBA case should not be approved. If a standard(s) is (are) not met approval would be with conditions that mitigate the unmet standards.

Last, the findings and decisions - whether for or against - must be documented sufficiently. This requires the ZBA to make individual findings regarding each review standard, rather than simply stating that the standard was met or not met. This allows the applicant to understand the information on which the decision was based.

The decision to deny, approve or approve with conditions must be incorporated into a statement of findings (finding of fact, recitation of reasons, and the action). The decision-making body or official must make a statement of finding, stating its conclusions on the ZBA case, the basis for the decision and any conditions imposed. A decision on a site plan may be appealed to the ZBA.

If an applicant is unhappy with a decision of the ZBA, he or she may file a complaint with the circuit court within 21 days of the date the minutes of the meeting where the decision was made are approved or within 30 days of a written decision signed by the ZBA chair or signed by all ZBA members present, whichever comes first.

If the ZBA's decision is challenged, the importance of using the ordinance standards becomes self-evident. A well-supported decision provides the background needed to build a solid legal defense.

Interpreting the Zoning Text and Map

The ZBA can be asked to interpret how the text of the zoning ordinance applies to a specific property or situation when it is unclear, or when it is difficult to see from the zoning map which zoning district applies to a particular property. The zoning administrator may have already reached a decision and the petitioner is asking the ZBA to determine whether the interpretation is correct, either In general or as applied to a specific property or proposed development. In other cases, the zoning administrator seeks the interpretation from the ZBA.

The ZBA must examine all the relevant sections of the zoning ordinance, especially the definitions section, as well as any past ZBA decisions concerning the section, term or phrase in question and the history of the zoning administrator's action in applying that section, term or phrase. The decision of the ZBA should also consider the written opinion of the municipal attorney on the issue, and unless new facts of relevance are revealed after that opinion is issued, the ZBA should follow the attorney s advice.

ZBA interpretation decisions often set precedents, so the decision should be narrowly focused to avoid unintended consequences from occurring in future situations because of the decision. Decisions should also be narrowly focused to avoid the .effect of amending the ordinance. Give weight to past Interpretations of the sections in question. Where there is no clear answer, give the applicant the benefit of the doubt. If the request is to interpret a proposed use that does not appear to be listed in the ordinance, the ZBA should conclude that the ordinance is silent on the proposed use and say so. The ZBA should not amend the ordinance by Interpretation. Saying "no" to a proposed use still permits the applicant to seek a text amendment to the ordinance.

Questions on map interpretation usually revolve around a missing label, zoning district boundary or color. To reach an informed decision, the ZBA typically must review all relevant historical documents, such as prior editions of the zoning map and minutes of past meetings. In addition, many zoning ordinances will have some rules on zoning map interpretation that the ZBA should also follow.

The text and map must be interpreted carefully as the decision of the ZBA is the local law unless or until the relevant section of the zoning ordinance is amended by the legislative body or a court reaches a different decision.

Acting on Variance Requests

A variance is a license to break the zoning ordinance. Variances should be difficult to obtain and granted rarely.

The ordinance must establish procedures for review and standards for approval of all variance requests.

There are two types of variances: use variances and non-use variances. To obtain a variance from dimensional requirements of the ordinance (such as setbacks and height restrictions), a person requests a *non-use variance* (also known as a dimensional variance). The non-use variance may be granted only if a "practical difficulty" exists. A person requests a *use variance* when he or she wishes to deviate from the list of permitted uses or special uses in a zoning district. The use variance may be granted only if an "unnecessary hardship" exists. In both types of variances, the ZBA must ensure "that the spirit of the zoning ordinance is observed, public safety secured, and substantial justice done." (MCl 125.3604(7))

Let's focus first on the most common type of variance, the *non-use variance.* Suppose you want to make an addition to your house, but doing so would violate the yard setbacks required by the zoning ordinance. Rather than forego building the addition, you can ask for a variance.

This makes the variance process sound simple; actually, it is not. The applicant must show that the characteristics of the property are unique and the ordinance requirements cannot reasonably be met. At times, changing an ordinance (through text amendment or rezoning) is a better solution than granting a variance. This is particularly true when the requested variance reflects a situation that will occur frequently. For example, rather than hear dozens of requests for side yard variance on lakefront lots, you might solve the problem by creating a more realistic side yard setback requirement.

When hearing after-the-fact variance requests, members of the ZBA tend to sympathize with property owners who build something that violates the ordinance.

They often assume that the owner was unaware of the requirements and should not have to bear the expense of moving or changing anything. But when the variance request is before it, the ZBA must treat it as if the structure had never been built. That allows the ZBA to review the request as a true variance, rather than an attempt to correct a violation. If the review standards are met, the variance should be granted.

If not, the request should be denied. Approving a variance simply because the owner may incur costs in correcting his or her mistake can invite other violations by those who believe it's easier to ask for forgiveness than for permission.

Over time, courts have created the concept of *practical difficulty*, a set of standards to be met before a non-use variance is issued. In addition, the MZEA requires a finding of practical difficulty exists before granting a non-use variance. Those practical difficulty standards are determined through these questions:

- Will strict compliance with the dimensional requirements of the zoning ordinance prevent the applicant from using the property for the permitted purpose?

- Will granting the variance be fair to the applicant, or would a lesser variance work just as well?

- Is the need for the variance due to a situation that is unique to the property and would not generally be found elsewhere in the same zoning district?

- If granted, will the variance uphold the spirit and intent of the ordinance and be fair to neighboring properties?

- Has the need for the variance been created by some action of the applicant (including actions of former owners of the land)?

Now let's consider use *variances,* which ask for a variance in how the land is used. For example, a house is typically a permitted use, or use permitted by right, in a residential district. A person who wants to change the primary use of a house to a business (not simply a home-based occupation) could request a use variance in areas that offer the option. This would be contrary to permitted uses in residential districts and it would be difficult to meet the usual standards for a use variance. Consequently, the request should be denied. Instead, if there is any merit to the request, it should be considered as a zoning amendment request so the legislative body can decide. As with any zoning amendment, the planning commission recommends to the legislative body whether the zoning should be amended or not.

Only the rarest of situations should qualify for a use variance. Such situations generally involve a parcel where the application of zoning regulations would be so severe that no reasonable use of the property remains. In that unusual circumstance, a use variance should be granted to prevent a court from declaring a taking.

Over time, courts have created the concept of *unnecessary hardship,* a set of standards to be met before a use variance is issued. In addition, the MZEA requires a finding of unnecessary hardship exists before granting a use variance. Those unnecessary hardship standards include:

- The property owner must show credible proof his property will not yield a reasonable return if used only for a purpose allowed by the ordinance.

- The property owner must show the zoning ordinance gives rise to hardship amounting to confiscation, or the disadvantage must be so great as to deprive the owner of all reasonable use of the property (a difficult standard to meet, the result being that most use variances should be turned down).

- The need for the variance is not created by some action of the applicant (including actions of former owners of the land).

- The need for the variance is due to a situation that is unique to the property and would not generally be found elsewhere in the same zoning district.

- Granting the variance does not alter the character of the neighborhood.

A Michigan Supreme Court decision greatly influenced the importance of considering use variances. In *Paragon Properties v. City of Novi,* 452 Mich. 568 (1996), the court ruled that if the legislative body denies a rezoning request, the applicant must exhaust all its local avenues to obtain approval before it can bring the matter to court. This includes seeking a use variance before appealing the rezoning denial to the circuit court if the community issues use variances. This requires ZBAs to become proficient in handling use variances, if authorized to consider them.

The MZEA limits authority for granting use variances to:

- Cities and villages.

- Townships and counties that, as of February 15, 2006, had an ordinance using the phrase "use variance" or "variances from uses of land" to expressly authorize the ZBA to grant use variances.

- Townships and counties that granted a use variance before February 15, 2006.

The MZEA states that even those communities authorized to grant use variances can treat that authority as optional. That is, nothing prevents a local unit of government to adopt ordinance provisions that indicate use variances are not an option. A growing number of cities, villages, townships and counties specifically indicate in their zoning ordinance that use variances are no longer granted. Those types of issues are handled as zoning amendments in those communities.

Most legislative bodies do not want the ZBA to consider and grant use variances because it usurps the power of the legislative body. In almost all cases, requests for use variance are better handled through the rezoning process, or by changing the text of the zoning district to permit a new use or structure - if warranted.

Considering Appeals of Administrative Decisions

Handling appeals properly is difficult but essential in maintaining the integrity of the zoning ordinance and ensuring that it meets the community's goals. An *appeal* occurs when someone petitions the ZBA with an allegation that an administrative body or official made an error in enforcing the ordinance or in making a decision regarding what it permits. Appeals must be filed within the time period set in the ordinance.

The ZBA hears appeals regarding:

- Decisions made by the zoning administrator on zoning permits or enforcement matters.

- Decisions made by an administrative body on site plan reviews.

- Decisions made by an administrative body on special land uses and planned unit developments, but only if specifically provided for in the zoning ordinance.

The primary role of the ZBA is to enforce the provisions of the zoning ordinance. When considering an appeal, the ZBA decides whether or not the decision of the administrative body or official was reached properly by using the standards and requirements of the ordinance. The ZBA must review the record and the decision of the body or official from whom the appeal is taken. If the body or official applied the procedures and standards of the ordinance properly when making the decision, the ZBA should affirm the decision and deny the appeal, even if members of the ZBA

personally disagree with the decision. If the decision-making body or official did not apply the ordinance standards or procedures correctly, the appeal should be approved. If, however, the ZBA finds that the prior decision was not reached properly, the ZBA is empowered to reverse or affirm, wholly or partly, or modify the prior decision. In the process, however, the ZBA may not create the effect of amending the ordinance.

Process Considerations

The MZEA does not give the ZBA the authority or even a reviewing role in determining planning policies or creating zoning regulations. Accordingly, it is not the role of the ZBA to attempt to change those regulations or policies through its decisions. A decision being appealed has already been made. The job of the ZBA is to review that decision, not the original request, nor the propriety of the zoning ordinance.

In brief, a typical process for an appeal and variance follows:

1. A demand for an appeal/variance is received.

2. The zoning administrator (usually) reviews the appeal/variance to make sure it is complete.

3. The zoning administrator (usually) verifies what is sought is within the jurisdiction of the zoning board of appeals.

4. The zoning board of appeals fixes a time for a hearing on the appeal/variance (sometimes done by the zoning administrator, or the appeal/variance is placed on the agenda of a standing meeting of the zoning board of appeals).

5. Send out notices for a public hearing on the appeal/variance (may include notice to those within 300 feet of the parcel in question).

6. Zoning Board of Appeals holds the hearing.

7. Zoning Board of Appeals deliberates and makes a decision on the appeal, or makes a decision to approve, approve with conditions, or deny the variance.

(See *Land Use Series:* "Check List #6 For Processing a Zoning Appeal and Variance in Michigan" at lu.msue.msu.edu

Voting to pass a motion on an appeal or a use variance includes two important points:

- The vote must be a majority of the *total* membership of the ZBA, regardless how many are at the meeting. A three-member ZBA will always need two votes to adopt a motion. A five-member ZBA will always need three votes to adopt a motion.

- The motion to approve a use variance requires a two-thirds vote. A three member ZBA needs two votes to approve a use variance. A five-member ZBA needs four votes to approve a use variance.

Decisions of the ZBA may be appealed to circuit court to ensure that the decision:

- Complies with the constitution and statutory law.
- Is based on proper procedure.
- Is supported by competent, material and substantial evidence on the record.
- Represents reasonable discretion.

If the record of the ZBA is inadequate, the court can order it to conduct further proceedings. Deadlines to appeal a ZBA decision to circuit court are 30 days from a certified written record of the decision or 21 days from the approval of the minutes of the meeting where the decision was made, whichever is first.

MICHIGAN PLANNING ENABLING ACT
Act 33 of 2008

AN ACT to codify the laws regarding and to provide for county, township, city, and village planning; to provide for the creation, organization, powers, and duties of local planning commissions; to provide for the powers and duties of certain state and local governmental officers and agencies; to provide for the regulation and subdivision of land; and to repeal acts and parts of acts.

History: 2008, Act 33, Eff. Sept. 1, 2008.

The People of the State of Michigan enact:

ARTICLE I.
GENERAL PROVISIONS

125.3801 Short title.

Sec. 1. This act shall be known and may be cited as the "Michigan planning enabling act".

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3803 Definitions.

Sec. 3. As used in this act:

(a) "Chief administrative official" means the manager or other highest nonelected administrative official of a city or village.

(b) "Chief elected official" means the mayor of a city, the president of a village, the supervisor of a township, or, subject to section 5, the chairperson of the county board of commissioners of a county.

(c) "County board of commissioners", subject to section 5, means the elected county board of commissioners, except that, as used in sections 39 and 41, county board of commissioners means 1 of the following:

(*i*) A committee of the county board of commissioners, if the county board of commissioners delegates its powers and duties under this act to the committee.

(*ii*) The regional planning commission for the region in which the county is located, if the county board of commissioners delegates its powers and duties under this act to the regional planning commission.

(d) "Ex officio member", in reference to a planning commission, means a member, with full voting rights unless otherwise provided by charter, who serves on the planning commission by virtue of holding another office, for the term of that other office.

(e) "Legislative body" means the county board of commissioners of a county, the board of trustees of a township, or the council or other elected governing body of a city or village.

(f) "Local unit of government" or "local unit" means a county or municipality.

(g) "Master plan" means either of the following:

(*i*) As provided in section 81(1), any plan adopted or amended before September 1, 2008 under a planning act repealed under section 85.

(*ii*) Any plan adopted or amended under this act. This includes, but is not limited to, a plan prepared by a planning commission authorized by this act and used to satisfy the requirement of section 203(1) of the Michigan zoning enabling act, 2006 PA 110, MCL 125.3203, regardless of whether it is entitled a master plan, basic plan, county plan, development plan, guide plan, land use plan, municipal plan, township plan, plan, or any other term.

(h) "Municipality" or "municipal" means or refers to a city, village, or township.

(i) "Planning commission" means either of the following, as applicable:

(*i*) A planning commission created pursuant to section 11(1).

(*ii*) A planning commission retained pursuant to section 81(2) or (3), subject to the limitations on the application of this act provided in section 81(2) and (3).

(j) "Planning jurisdiction" for a county, city, or village refers to the areas encompassed by the legal boundaries of that county, city, or village, subject to section 31(1). Planning jurisdiction for a township refers to the areas encompassed by the legal boundaries of that township outside of the areas of incorporated villages and cities, subject to section 31(1).

(k) "Population" means the population according to the most recent federal decennial census or according to a special census conducted under section 7 of the Glenn Steil state revenue sharing act of 1971, 1971 PA 140, MCL 141.907, whichever is the more recent.

(*l*) "Public transportation agency" means a governmental entity that operates or is authorized to operate

intercity or local commuter passenger rail service in this state or a public transit authority created under 1 of the following acts:

(*i*) The metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.401 to 124.426.

(*ii*) The public transportation authority act, 1986 PA 196, MCL 124.451 to 124.479.

(*iii*) 1963 PA 55, MCL 124.351 to 124.359.

(*iv*) The home rule city act, 1909 PA 279, MCL 117.1 to 117.38.

(*v*) The revenue bond act of 1933, 1933 PA 94, MCL 141.101 to 141.140.

(*vi*) The charter township act, 1947 PA 359, MCL 42.1 to 42.34.

(*vii*) The urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.

(m) "Public transportation facility" means that term as defined in section 2 of the metropolitan transportation authorities act of 1967, 1967 PA 204, MCL 124.402.

(n) "Street" means a street, avenue, boulevard, highway, road, lane, alley, viaduct, or other public way intended for use by motor vehicles, bicycles, pedestrians, and other legal users.

History: 2008, Act 33, Eff. Sept. 1, 2008;—Am. 2010, Act 134, Imd. Eff. Aug. 2, 2010;—Am. 2010, Act 306, Imd. Eff. Dec. 17, 2010.

125.3805 Assignment of power or duty to county officer or body.

Sec. 5. The assignment of a power or duty under this act to a county officer or body is subject to 1966 PA 293, MCL 45.501 to 45.521, or 1973 PA 139, MCL 45.551 to 45.573, in a county organized under 1 of those acts.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3807 Master plan; adoption, amendment, and implementation by local government; purpose.

Sec. 7. (1) A local unit of government may adopt, amend, and implement a master plan as provided in this act.

(2) The general purpose of a master plan is to guide and accomplish, in the planning jurisdiction and its environs, development that satisfies all of the following criteria:

(a) Is coordinated, adjusted, harmonious, efficient, and economical.

(b) Considers the character of the planning jurisdiction and its suitability for particular uses, judged in terms of such factors as trends in land and population development.

(c) Will, in accordance with present and future needs, best promote public health, safety, morals, order, convenience, prosperity, and general welfare.

(d) Includes, among other things, promotion of or adequate provision for 1 or more of the following:

(*i*) A system of transportation to lessen congestion on streets and provide for safe and efficient movement of people and goods by motor vehicles, bicycles, pedestrians, and other legal users.

(*ii*) Safety from fire and other dangers.

(*iii*) Light and air.

(*iv*) Healthful and convenient distribution of population.

(*v*) Good civic design and arrangement and wise and efficient expenditure of public funds.

(*vi*) Public utilities such as sewage disposal and water supply and other public improvements.

(*vii*) Recreation.

(*viii*) The use of resources in accordance with their character and adaptability.

History: 2008, Act 33, Eff. Sept. 1, 2008;—Am. 2010, Act 134, Imd. Eff. Aug. 2, 2010.

ARTICLE II.
PLANNING COMMISSION CREATION AND ADMINISTRATION

125.3811 Planning commission; creation; adoption of ordinance by local unit of government; notice required; exception; adoption of charter provision by city or home rule village; effect of repeal of planning act; continued exercise or transfer of powers and duties of zoning board or zoning commission.

Sec. 11. (1) A local unit of government may adopt an ordinance creating a planning commission with powers and duties provided in this act. The planning commission of a local unit of government shall be officially called "the planning commission", even if a charter, ordinance, or resolution uses a different name such as "plan board" or "planning board".

(2) Within 14 days after a local unit of government adopts an ordinance under subsection (1) creating a planning commission, the clerk of the local unit shall transmit notice of the adoption to the planning

commission of the county where the local unit is located. However, if there is not a county planning commission or if the local unit adopting the ordinance is a county, notice shall be transmitted to the regional planning commission engaged in planning for the region within which the local unit is located. Notice under this subsection is not required when a planning commission created before the effective date of this act continues in existence under this act, but is required when an ordinance governing or creating a planning commission is amended or superseded under section 81(2)(b) or (3)(b).

(3) If, after the effective date of this act, a city or home rule village adopts a charter provision providing for a planning commission, the charter provision shall be implemented by an ordinance that conforms to this act. Section 81(2) provides for the continuation of a planning commission created by a charter provision adopted before the effective date of this act.

(4) Section 81(3) provides for the continuation of a planning commission created under a planning act repealed under section 85.

(5) Section 83 provides for the continued exercise by a planning commission, or the transfer to a planning commission, of the powers and duties of a zoning board or zoning commission.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3813 Planning commission; effect of township ordinance; number of days; petition requesting submission of ordinance to electors; filing; petition subject to Michigan election law; violation.

Sec. 13. (1) Subject to subsection (2), a township ordinance creating a planning commission under this act shall take effect 63 days after the ordinance is published by the township board in a newspaper having general circulation in the township.

(2) Subject to subsection (3), before a township ordinance creating a planning commission takes effect, a petition may be filed with the township clerk requesting the submission of the ordinance to the electors residing in the unincorporated portion of the township for their approval or rejection. The petition shall be signed by a number of qualified and registered electors residing in the unincorporated portion of the township equal to not less than 8% of the total vote cast for all candidates for governor, at the last preceding general election at which a governor was elected. If such a petition is filed, the ordinance shall not take effect until approved by a majority of the electors residing in the unincorporated portion of the township voting thereon at the next regular or special election that allows reasonable time for proper notices and printing of ballots or at any special election called for that purpose, as determined by the township board. The township board shall specify the language of the ballot question.

(3) Subsection (2) does not apply if the planning commission created by the ordinance is the successor to an existing zoning commission or zoning board as provided for under section 301 of the Michigan zoning enabling act, 2006 PA 110, MCL 125.3301.

(4) If a township board does not on its own initiative adopt an ordinance under this act creating a planning commission, a petition may be filed with the township clerk requesting the township board to adopt such an ordinance. The petition shall be signed by a number of qualified and registered electors as provided in subsection (2). If such a petition is filed, the township board, at its first meeting following the filing shall submit the question to the electors of the township in the same manner as provided under subsection (2).

(5) A petition under this section, including the circulation and signing of the petition, is subject to section 488 of the Michigan election law, 1954 PA 116, MCL 168.488. A person who violates a provision of the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992, applicable to a petition described in this section is subject to the penalties prescribed for that violation in the Michigan election law, 1954 PA 116, MCL 168.1 to 168.992.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3815 Planning commission; membership; appointment; terms; vacancy; representation; qualifications; ex-officio members; board serving as planning commission; removal of member; conditions; conflict of interest; additional requirements.

Sec. 15. (1) In a municipality, the chief elected official shall appoint members of the planning commission, subject to approval by a majority vote of the members of the legislative body elected and serving. In a county, the county board of commissioners shall determine the method of appointment of members of the planning commission by resolution of a majority of the full membership of the county board.

(2) A city, village, or township planning commission shall consist of 5, 7, or 9 members. A county planning commission shall consist of 5, 7, 9, or 11 members. Members of a planning commission other than ex officio members under subsection (5) shall be appointed for 3-year terms. However, of the members of the planning commission, other than ex officio members, first appointed, a number shall be appointed to 1-year or

2-year terms such that, as nearly as possible, the terms of 1/3 of all the planning commission members will expire each year. If a vacancy occurs on a planning commission, the vacancy shall be filled for the unexpired term in the same manner as provided for an original appointment. A member shall hold office until his or her successor is appointed.

(3) The membership of a planning commission shall be representative of important segments of the community, such as the economic, governmental, educational, and social development of the local unit of government, in accordance with the major interests as they exist in the local unit of government, such as agriculture, natural resources, recreation, education, public health, government, transportation, industry, and commerce. The membership shall also be representative of the entire territory of the local unit of government to the extent practicable.

(4) Members of a planning commission shall be qualified electors of the local unit of government, except that the following number of planning commission members may be individuals who are not qualified electors of the local unit of government but are qualified electors of another local unit of government:

(a) 3, in a city that on September 1, 2008 had a population of more than 2,700 but less than 2,800.

(b) 2, in a city or village that has, or on September 1, 2008 had, a population of less than 5,000, except as provided in subdivision (a).

(c) 1, in local units of government other than those described in subdivision (a) or (b).

(5) In a township that on September 1, 2008 had a planning commission created under former 1931 PA 285, 1 member of the legislative body or the chief elected official, or both, may be appointed to the planning commission, as ex officio members. In any other township, 1 member of the legislative body shall be appointed to the planning commission, as an ex officio member. In a city, village, or county, the chief administrative official or a person designated by the chief administrative official, if any, the chief elected official, 1 or more members of the legislative body, or any combination thereof, may be appointed to the planning commission, as ex officio members, unless prohibited by charter. However, in a city, village, or county, not more than 1/3 of the members of the planning commission may be ex officio members. 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. The term of an ex officio member of a planning commission shall be as follows:

(a) The term of a chief elected official shall correspond to his or her term as chief elected official.

(b) The term of a chief administrative official shall expire with the term of the chief elected official that appointed him or her as chief administrative official.

(c) The term of a member of the legislative body shall expire with his or her term on the legislative body.

(6) For a county planning commission, the county shall make every reasonable effort to ensure that the membership of the county planning commission includes a member of a public school board or an administrative employee of a school district included, in whole or in part, within the county's boundaries. The requirements of this subsection apply whenever an appointment is to be made to the planning commission, unless an incumbent is being reappointed or an ex officio member is being appointed under subsection (5).

(7) Subject to subsection (8), a city or village that has a population of less than 5,000, and that has not created a planning commission by charter, may by an ordinance adopted under section 11(1) provide that 1 of the following boards serve as its planning commission:

(a) The board of directors of the economic development corporation of the city or village created under the economic development corporations act, 1974 PA 338, MCL 125.1601 to 125.1636.

(b) The board of a downtown development authority created under 1975 PA 197, MCL 125.1651 to 125.1681, if the boundaries of the downtown district are the same as the boundaries of the city or village.

(c) A board created under the tax increment finance authority act, 1980 PA 450, MCL 125.1801 to 125.1830, if the boundaries of the authority district are the same as the boundaries of the city or village.

(8) Subsections (1) to (5) do not apply to a planning commission established under subsection (7). All other provisions of this act apply to a planning commission established under subsection (7).

(9) The legislative body may remove a member of the planning commission for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing. Before casting a vote on a matter on which a member may reasonably be considered to have a conflict of interest, the member shall disclose the potential conflict of interest to the planning commission. The member is disqualified from voting on the matter if so provided by the bylaws or by a majority vote of the remaining members of the planning commission. Failure of a member to disclose a potential conflict of interest as required by this subsection constitutes malfeasance in office. Unless the legislative body, by ordinance, defines conflict of interest for the purposes of this subsection, the planning commission shall do so in its bylaws.

(10) An ordinance creating a planning commission may impose additional requirements relevant to the subject matter of, but not inconsistent with, this section.

History: 2008, Act 33, Eff. Sept. 1, 2008;—Am. 2010, Act 105, Imd. Eff. June 29, 2010.

125.3817 Chairperson, secretary, and other offices; election; terms; appointment of advisory committees.

Sec. 17. (1) A planning commission shall elect a chairperson and secretary from its members and create and fill other offices as it considers advisable. An ex officio member of the planning commission is not eligible to serve as chairperson. The term of each officer shall be 1 year, with opportunity for reelection as specified in bylaws adopted under section 19.

(2) A planning commission may appoint advisory committees whose members are not members of the planning commission.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3819 Bylaws; adoption; public record requirements; annual report by planning commission.

Sec. 19. (1) A planning commission shall adopt bylaws for the transaction of business, and shall keep a public record of its resolutions, transactions, findings, and determinations.

(2) 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.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3821 Meetings; frequency; time; place; special meeting; notice; compliance with open meetings act; availability of writings to public.

Sec. 21. (1) A planning commission shall hold not less than 4 regular meetings each year, and by resolution shall determine the time and place of the meetings. Unless the bylaws provide otherwise, a special meeting of the planning commission may be called by the chairperson or by 2 other members, upon written request to the secretary. Unless the bylaws provide otherwise, the secretary shall send written notice of a special meeting to planning commission members not less than 48 hours before the meeting.

(2) The business that a planning commission may perform shall be conducted at a public meeting of the planning commission held in compliance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of a regular or special meeting shall be given in the manner required by that act.

(3) A writing prepared, owned, used, in the possession of, or retained by a planning commission in the performance of an official function shall be made available to the public in compliance with the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3823 Compensation; expenses; preparation of budget; acceptance of gifts.

Sec. 23. (1) Members of a planning commission may be compensated for their services as provided by the legislative body. A planning commission may adopt bylaws relative to compensation and expenses of its members and employees for travel when engaged in the performance of activities authorized by the legislative body, including, but not limited to, attendance at conferences, workshops, educational and training programs, and meetings.

(2) After preparing the annual report required under section 19, a planning commission may prepare a detailed budget and submit the budget to the legislative body for approval or disapproval. The legislative body annually may appropriate funds for carrying out the purposes and functions permitted under this act, and may match local government funds with federal, state, county, or other local government or private grants, contributions, or endowments.

(3) A planning commission may accept gifts for the exercise of its functions. However, in a township, other than a township that on the effective date of this act had a planning commission created under former 1931 PA 285, only the township board may accept such gifts, on behalf of the planning commission. A gift of money so accepted in either case shall be deposited with the treasurer of the local unit of government in a special nonreverting planning commission fund for expenditure by the planning commission for the purpose designated by the donor. The treasurer shall draw a warrant against the special nonreverting fund only upon receipt of a voucher signed by the chairperson and secretary of the planning commission and an order drawn by the clerk of the local unit of government. The expenditures of a planning commission, exclusive of gifts and grants, shall be within the amounts appropriated by the legislative body.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3825 Employment of planning director and other personnel; contract for services; use of information and advice provided by public officials, departments, and agencies.

Sec. 25. (1) A local unit of government may employ a planning director and other personnel as it considers necessary, contract for the services of planning and other technicians, and incur other expenses, within a budget authorized by the legislative body. This authority shall be exercised by the legislative body, unless a charter provision or ordinance delegates this authority to the planning commission or another body or official. The appointment of employees is subject to the same provisions of law as govern other corresponding civil employees of the local unit of government.

(2) For the purposes of this act, a planning commission may make use of maps, data, and other information and expert advice provided by appropriate federal, state, regional, county, and municipal officials, departments, and agencies. All public officials, departments, and agencies shall make available public information for the use of planning commissions and furnish such other technical assistance and advice as they may have for planning purposes.

History: 2008, Act 33, Eff. Sept. 1, 2008.

ARTICLE III.
PREPARATION AND ADOPTION OF MASTER PLAN

125.3831 Master plan; preparation by planning commission; meetings with other governmental planning commissions or agency staff; powers.

Sec. 31. (1) A planning commission shall make and approve a master plan as a guide for development within the planning jurisdiction subject to section 81 and the following:

(a) For a county, the master plan may include planning in cooperation with the constituted authorities for incorporated areas in whole or to the extent to which, in the planning commission's judgment, they are related to the planning of the unincorporated area or of the county as a whole.

(b) For a township that on September 1, 2008 had a planning commission created under former 1931 PA 285, or for a city or village, the planning jurisdiction may include any areas outside of the municipal boundaries that, in the planning commission's judgment, are related to the planning of the municipality.

(2) In the preparation of a master plan, a planning commission shall do all of the following, as applicable:

(a) Make careful and comprehensive surveys and studies of present conditions and future growth within the planning jurisdiction with due regard to its relation to neighboring jurisdictions.

(b) Consult with representatives of adjacent local units of government in respect to their planning so that conflicts in master plans and zoning may be avoided.

(c) Cooperate with all departments of the state and federal governments, public transportation agencies, and other public agencies concerned with programs for economic, social, and physical development within the planning jurisdiction and seek the maximum coordination of the local unit of government's programs with these agencies.

(3) In the preparation of the master plan, the planning commission may meet with other governmental planning commissions or agency staff to deliberate.

(4) In general, a planning commission has such lawful powers as may be necessary to enable it to promote local planning and otherwise carry out the purposes of this act.

History: 2008, Act 33, Eff. Sept. 1, 2008;—Am. 2010, Act 306, Imd. Eff. Dec. 17, 2010.

125.3833 Master plan; land use and infrastructure issues; inclusion of maps, plats, charts, and other related matter; recommendations for physical development; additional subjects; implementation of master street plan or certain elements; specifications; section subject to MCL 125.3881(1); public transportation facilities.

Sec. 33. (1) A master plan shall address land use and infrastructure issues and may project 20 years or more into the future. A master plan shall include maps, plats, charts, and descriptive, explanatory, and other related matter and shall show the planning commission's recommendations for the physical development of the planning jurisdiction.

(2) A master plan shall also include those of the following subjects that reasonably can be considered as pertinent to the future development of the planning jurisdiction:

(a) A land use plan that consists in part of a classification and allocation of land for agriculture, residences, commerce, industry, recreation, ways and grounds, subject to subsection (5), public transportation facilities, public buildings, schools, soil conservation, forests, woodlots, open space, wildlife refuges, and other uses and purposes. If a county has not adopted a zoning ordinance under former 1943 PA 183 or the Michigan

zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702, a land use plan and program for the county may be a general plan with a generalized future land use map.

(b) The general location, character, and extent of all of the following:

(*i*) All components of a transportation system and their interconnectivity including streets and bridges, public transit including public transportation facilities and routes, bicycle facilities, pedestrian ways, freight facilities and routes, port facilities, railroad facilities, and airports, to provide for the safe and efficient movement of people and goods in a manner that is appropriate to the context of the community and, as applicable, considers all legal users of the public right-of-way.

(*ii*) Waterways and waterfront developments.

(*iii*) Sanitary sewers and water supply systems.

(*iv*) Facilities for flood prevention, drainage, pollution prevention, and maintenance of water levels.

(*v*) Public utilities and structures.

(c) Recommendations as to the general character, extent, and layout of redevelopment or rehabilitation of blighted areas; and the removal, relocation, widening, narrowing, vacating, abandonment, change of use, or extension of streets, grounds, open spaces, buildings, utilities, or other facilities.

(d) For a local unit of government that has adopted a zoning ordinance, a zoning plan for various zoning districts controlling the height, area, bulk, location, and use of buildings and premises. The zoning plan shall include an explanation of how the land use categories on the future land use map relate to the districts on the zoning map.

(e) Recommendations for implementing any of the master plan's proposals.

(3) If a master plan is or includes a master street plan or 1 or more elements described in subsection (2)(b)(*i*), the means for implementing the master street plan or elements in cooperation with the county road commission and the state transportation department shall be specified in the master street plan in a manner consistent with the respective powers and duties of and any written agreements between these entities and the municipality.

(4) This section is subject to section 81(1).

(5) The reference to public transportation facilities in subsection (2)(a) only applies to a master plan that is adopted or substantively amended more than 90 days after the effective date of the amendatory act that added this subsection.

History: 2008, Act 33, Eff. Sept. 1, 2008;—Am. 2010, Act 134, Imd. Eff. Aug. 2, 2010;—Am. 2010, Act 306, Imd. Eff. Dec. 17, 2010.

125.3835 Subplan; adoption.

Sec. 35. A planning commission may, by a majority vote of the members, adopt a subplan for a geographic area less than the entire planning jurisdiction, if, because of the unique physical characteristics of that area, more intensive planning is necessary for the purposes set forth in section 7.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3837 Metropolitan county planning commission; designation; powers.

Sec. 37. (1) A county board of commissioners may designate the county planning commission as the metropolitan county planning commission. A county planning commission so designated shall perform metropolitan and regional planning whenever necessary or desirable. The metropolitan county planning commission may engage in comprehensive planning, including, but not limited to, the following:

(a) Preparation, as a guide for long-range development, of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, together with long-range fiscal plans for such development.

(b) Programming of capital improvements based on relative urgency, together with definitive financing plans for the improvements to be constructed in the earlier years of the program.

(c) Coordination of all related plans of local governmental agencies within the metropolitan area or region.

(d) Intergovernmental coordination of all related planning activities among the state and local governmental agencies within the metropolitan area or region.

(2) In addition to the powers conferred by other provisions of this act, a metropolitan county planning commission may apply for, receive, and accept grants from any local, regional, state, or federal governmental agency and agree to and comply with the terms and conditions of such grants. A metropolitan county planning commission may do any and all things necessary or desirable to secure the financial aid or cooperation of a regional, state, or federal governmental agency in carrying out its functions, when approved by a 2/3 vote of the county board of commissioners.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3839 Master plan; adoption; procedures; notice; submittals; use of electronic mail.

Sec. 39. (1) A master plan shall be adopted under the procedures set forth in this section and sections 41 and 43. A master plan may be adopted as a whole or by successive parts corresponding with major geographical areas of the planning jurisdiction or with functional subject matter areas of the master plan.

(2) Before preparing a master plan, a planning commission shall send to all of the following, by first-class mail or personal delivery, a notice explaining that the planning commission intends to prepare a master plan and requesting the recipient's cooperation and comment:

(a) For any local unit of government undertaking a master plan, the planning commission, or if there is no planning commission, the legislative body, of each municipality located within or contiguous to the local unit of government.

(b) For a county undertaking a master plan, the regional planning commission for the region in which the county is located, if any.

(c) For a county undertaking a master plan, the county planning commission, or if there is no county planning commission, the county board of commissioners, for each county located contiguous to the county.

(d) For a municipality undertaking a master plan, the regional planning commission for the region in which the municipality is located, if there is no county planning commission for the county in which that municipality is located. If there is a county planning commission, the municipal planning commission may consult with the regional planning commission but is not required to do so.

(e) For a municipality undertaking a master plan, the county planning commission, or if there is no county planning commission, the county board of commissioners, for the county in which that municipality is located.

(f) For any local unit of government undertaking a master plan, each public utility company, railroad company, and public transportation agency owning or operating a public utility, railroad, or public transportation system within the local unit of government, and any government entity that registers its name and mailing address for this purpose with the planning commission.

(g) If the master plan will include a master street plan, the county road commission and the state transportation department.

(3) A submittal under section 41 or 43 by or to an entity described in subsection (2) may be made by personal or first-class mail delivery of a hard copy or by electronic mail. However, the planning commission preparing the plan shall not make such submittals by electronic mail unless, in the notice described in subsection (2), the planning commission states that it intends to make such submittals by electronic mail and the entity receiving that notice does not respond by objecting to the use of electronic mail. Electronic mail may contain a link to a website on which the submittal is posted if the website is accessible to the public free of charge.

History: 2008, Act 33, Eff. Sept. 1, 2008;—Am. 2010, Act 306, Imd. Eff. Dec. 17, 2010.

125.3841 Preparation of proposed master plan; submission to legislative body for review and comment; approval required; notice; submission of comments; statements as advisory.

Sec. 41. (1) After preparing a proposed master plan, a planning commission shall submit the proposed master plan to the legislative body for review and comment. The process of adopting a master plan shall not proceed further unless the legislative body approves the distribution of the proposed master plan.

(2) If the legislative body approves the distribution of the proposed master plan, it shall notify the secretary of the planning commission, and the secretary of the planning commission shall submit, in the manner provided in section 39(3), a copy of the proposed master plan, for review and comment, to all of the following:

(a) For any local unit of government proposing a master plan, the planning commission, or if there is no planning commission, the legislative body, of each municipality located within or contiguous to the local unit of government.

(b) For a county proposing a master plan, the regional planning commission for the region in which the county is located, if any.

(c) For a county proposing a master plan, the county planning commission, or if there is no county planning commission, the county board of commissioners, for each county located contiguous to the county.

(d) For a municipality proposing a master plan, the regional planning commission for the region in which the municipality is located, if there is no county planning commission for the county in which that local unit of government is located. If there is a county planning commission, the secretary of the municipal planning commission may submit a copy of the proposed master plan to the regional planning commission but is not required to do so.

(e) For a municipality proposing a master plan, the county planning commission, or if there is no county planning commission, the county board of commissioners, for the county in which that municipality is located. The secretary of the municipal planning commission shall concurrently submit to the county planning commission, in the manner provided in section 39(3), a statement that the requirements of subdivision (a) have been met or, if there is no county planning commission, shall submit to the county board of commissioners, in the manner provided in section 39(3), a statement that the requirements of subdivisions (a) and (d) have been met. The statement shall be signed by the secretary and shall include the name and address of each planning commission or legislative body to which a copy of the proposed master plan was submitted under subdivision (a) or (d), as applicable, and the date of submittal.

(f) For any local unit of government proposing a master plan, each public utility company, railroad company, and public transportation agency owning or operating a public utility, railroad, or public transportation system within the local unit of government, and any government entity that registers its name and address for this purpose with the secretary of the planning commission. An entity described in this subdivision that receives a copy of a proposed master plan, or of a final master plan as provided in section 43(5), shall reimburse the local unit of government for any copying and postage costs thereby incurred.

(g) If the proposed master plan is or includes a proposed master street plan, the county road commission and the state transportation department.

(3) An entity described in subsection (2) may submit comments on the proposed master plan to the planning commission in the manner provided in section 39(3) within 63 days after the proposed master plan was submitted to that entity under subsection (2). If the county planning commission or the county board of commissioners that receives a copy of a proposed master plan under subsection (2)(e) submits comments, the comments shall include, but need not be limited to, both of the following, as applicable:

(a) A statement whether the county planning commission or county board of commissioners considers the proposed master plan to be inconsistent with the master plan of any municipality or region described in subsection (2)(a) or (d).

(b) If the county has a county master plan, a statement whether the county planning commission considers the proposed master plan to be inconsistent with the county master plan.

(4) The statements provided for in subsection (3)(a) and (b) are advisory only.

History: 2008, Act 33, Eff. Sept. 1, 2008;—Am. 2010, Act 306, Imd. Eff. Dec. 17, 2010.

125.3843 Proposed master plan; public hearing; notice; approval by resolution of planning commission; statement; submission of copy of master plan to legislative body; approval or rejection by legislative body; procedures; submission of adopted master plan to certain entities.

Sec. 43. (1) Before approving a proposed master plan, a planning commission shall hold not less than 1 public hearing on the proposed master plan. The hearing shall be held after the expiration of the deadline for comment under section 41(3). The planning commission shall give notice of the time and place of the public hearing not less than 15 days before the hearing by publication in a newspaper of general circulation within the local unit of government. The planning commission shall also submit notice of the public hearing in the manner provided in section 39(3) to each entity described in section 39(2). This notice may accompany the proposed master plan submitted under section 41.

(2) The approval of the proposed master plan shall be by resolution of the planning commission carried by the affirmative votes of not less than 2/3 of the members of a city or village planning commission or not less than a majority of the members of a township or county planning commission. The resolution shall refer expressly to the maps and descriptive and other matter intended by the planning commission to form the master plan. A statement recording the planning commission's approval of the master plan, signed by the chairperson or secretary of the planning commission, shall be included on the inside of the front or back cover of the master plan and, if the future land use map is a separate document from the text of the master plan, on the future land use map. Following approval of the proposed master plan by the planning commission, the secretary of the planning commission shall submit a copy of the master plan to the legislative body.

(3) Approval of the proposed master plan by the planning commission under subsection (2) is the final step for adoption of the master plan, unless the legislative body by resolution has asserted the right to approve or reject the master plan. In that case, after approval of the proposed master plan by the planning commission, the legislative body shall approve or reject the proposed master plan. A statement recording the legislative body's approval of the master plan, signed by the clerk of the legislative body, shall be included on the inside of the front or back cover of the master plan and, if the future land use map is a separate document from the text of the master plan, on the future land use map.

(4) If the legislative body rejects the proposed master plan, the legislative body shall submit to the planning commission a statement of its objections to the proposed master plan. The planning commission shall consider the legislative body's objections and revise the proposed master plan so as to address those objections. The procedures provided in subsections (1) to (3) and this subsection shall be repeated until the legislative body approves the proposed master plan.

(5) Upon final adoption of the master plan, the secretary of the planning commission shall submit, in the manner provided in section 39(3), copies of the adopted master plan to the same entities to which copies of the proposed master plan were required to be submitted under section 41(2).

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3845 Extension, addition, revision, or other amendment to master plan; adoption; procedures; review and findings.

Sec. 45. (1) An extension, addition, revision, or other amendment to a master plan shall be adopted by following the procedure under sections 39, 41, and 43, subject to all of the following:

(a) Any of the following amendments to a master plan may be made without following the procedure under sections 39, 41, and 43:

(*i*) A grammatical, typographical, or similar editorial change.

(*ii*) A title change.

(*iii*) A change to conform to an adopted plat.

(b) Subject to subdivision (a), the review period provided for in section 41(3) shall be 42 days instead of 63 days.

(c) When a planning commission sends notice to an entity under section 39(2) that it intends to prepare a subplan, the notice may indicate that the local unit of government intends not to provide that entity with further notices of or copies of proposed or final subplans otherwise required to be submitted to that entity under section 39, 41, or 43. Unless the entity responds that it chooses to receive notice of subplans, the local unit of government is not required to provide further notice of subplans to that entity.

(2) At least every 5 years after adoption of a master plan, a planning commission shall review the master plan and determine whether to commence the procedure to amend the master plan or adopt a new master plan. The review and its findings shall be recorded in the minutes of the relevant meeting or meetings of the planning commission.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3847 Part of county master plan covering incorporated area; adoption by appropriate city or village required; exception.

Sec. 47. (1) Subject to subsection (2), a part of a county master plan covering an incorporated area within the county shall not be recognized as the official master plan or part of the official master plan for that area unless adopted by the appropriate city or village in the manner prescribed by this act.

(2) Subsection (1) does not apply if the incorporated area is subject to county zoning pursuant to the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702, and a contract under the urban cooperation act, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, or 1967 (Ex Sess) PA 8, MCL 124.531 to 124.536.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3849 City or village planning department; authority to submit proposed master plan, or proposed extension, addition, revision, or other amendment.

Sec. 49. (1) This act does not alter the authority of a planning department of a city or village created by charter to submit a proposed master plan, or a proposed extension, addition, revision, or other amendment to a master plan, to the planning commission, whether directly or indirectly as provided by charter.

(2) Subsection (1) notwithstanding, a planning commission described in subsection (1) shall comply with the requirements of this act.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3851 Public interest and understanding; promotion.

Sec. 51. (1) To promote public interest in and understanding of the master plan, a planning commission may publish and distribute copies of the master plan or of any report, and employ other means of publicity and education.

(2) A planning commission shall consult with and advise public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and citizens concerning the promotion or

implementation of the master plan.

History: 2008, Act 33, Eff. Sept. 1, 2008.

ARTICLE IV.
SPECIAL PROVISIONS, INCLUDING CAPITAL IMPROVEMENTS AND SUBDIVISION REVIEW

125.3861 Construction of certain projects in area covered by municipal master plan; approval; initiation of work on project; requirements; report and advice.

Sec. 61. (1) A street; square, park, playground, public way, ground, or other open space; or public building or other structure shall not be constructed or authorized for construction in an area covered by a municipal master plan unless the location, character, and extent of the street, public way, open space, structure, or utility have been submitted to the planning commission by the legislative body or other body having jurisdiction over the authorization or financing of the project and has been approved by the planning commission. The planning commission shall submit its reasons for approval or disapproval to the body having jurisdiction. If the planning commission disapproves, the body having jurisdiction may overrule the planning commission by a vote of not less than 2/3 of its entire membership for a township that on the enactment date of this act had a planning commission created under former 1931 PA 285, or for a city or village, or by a vote of not less than a majority of its membership for any other township. If the planning commission fails to act within 35 days after submission of the proposal to the planning commission, the project shall be considered to be approved by the planning commission.

(2) Following adoption of the county plan or any part of a county plan and the certification by the county planning commission to the county board of commissioners of a copy of the plan, work shall not be initiated on any project involving the expenditure of money by a county board, department, or agency for the acquisition of land, the erection of structures, or the extension, construction, or improvement of any physical facility by any county board, department, or agency unless a full description of the project, including, but not limited to, its proposed location and extent, has been submitted to the county planning commission and the report and advice of the planning commission on the proposal have been received by the county board of commissioners and by the county board, department, or agency submitting the proposal. However, work on the project may proceed if the planning commission fails to provide in writing its report and advice upon the proposal within 35 days after the proposal is filed with the planning commission. The planning commission shall provide copies of the report and advice to the county board, department, or agency sponsoring the proposal.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3863 Approval of construction project before effective date of act; rescission of authorization; failure of planning commission to act within certain period of time.

Sec. 63. If the opening, widening, or extension of a street, or the acquisition or enlargement of any square, park, playground, or other open space has been approved by a township planning commission that was created before the effective date of this act under former 1931 PA 285 or by a city or village planning commission and authorized by the legislative body as provided under section 61, the legislative body shall not rescind its authorization unless the matter has been resubmitted to the planning commission and the rescission has been approved by the planning commission. The planning commission shall hold a public hearing on the matter. The planning commission shall submit its reasons for approval or disapproval of the rescission to the legislative body. If the planning commission disapproves the rescission, the legislative body may overrule the planning commission by a vote of not less than 2/3 of its entire membership. If the planning commission fails to act within 63 days after submission of the proposed rescission to the planning commission, the proposed rescission shall be considered to be approved by the planning commission.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3865 Capital improvements program of public structures and improvements; preparation; basis.

Sec. 65. (1) To further the desirable future development of the local unit of government under the master plan, a planning commission, after adoption of a master plan, shall annually prepare a capital improvements program of public structures and improvements, unless the planning commission is exempted from this requirement by charter or otherwise. If the planning commission is exempted, the legislative body either shall prepare and adopt a capital improvements program, separate from or as a part of the annual budget, or shall delegate the preparation of the capital improvements program to the chief elected official or a nonelected administrative official, subject to final approval by the legislative body. The capital improvements program

shall show those public structures and improvements, in the general order of their priority, that in the commission's judgment will be needed or desirable and can be undertaken within the ensuing 6-year period. The capital improvements program shall be based upon the requirements of the local unit of government for all types of public structures and improvements. Consequently, each agency or department of the local unit of government with authority for public structures or improvements shall upon request furnish the planning commission with lists, plans, and estimates of time and cost of those public structures and improvements.

(2) Any township may prepare and adopt a capital improvement program. However, subsection (1) is only mandatory for a township if the township, alone or jointly with 1 or more other local units of government, owns or operates a water supply or sewage disposal system.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3867 Programs for public structures and improvements; recommendations.

Sec. 67. A planning commission may recommend to the appropriate public officials programs for public structures and improvements and for the financing thereof, regardless of whether the planning commission is exempted from the requirement to prepare a capital improvements program under section 65.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3869 Copy of zoning ordinance and amendments; request by county planning commission for submission by municipal planning commission.

Sec. 69. If a municipal planning commission has zoning duties pursuant to section 83 and the municipality has adopted a zoning ordinance, the county planning commission, if any, may, by first-class mail or personal delivery, request the municipal planning commission to submit to the county planning commission a copy of the zoning ordinance and any amendments. The municipal planning commission shall submit the requested documents to the county planning commission within 63 days after the request is received and shall submit any future amendments to the zoning ordinance within 63 days after the amendments are adopted. The municipal planning commission may submit a zoning ordinance or amendment under this subsection electronically.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3871 Recommendations for ordinances or rules governing subdivision of land; public hearing; notice; action on proposed plat; approval, approval with conditions, or disapproval by planning commission; approval of plat as amendment to master plan.

Sec. 71. (1) A planning commission may recommend to the legislative body provisions of an ordinance or rules governing the subdivision of land authorized under section 105 of the land division act, 1967 PA 288, MCL 560.105. If a township is subject to county zoning consistent with section 209 of the Michigan zoning enabling act, 2006 PA 110, MCL 125.3209, or a city or village is subject to county zoning pursuant to the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702, and a contract under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512, or 1967 (Ex Sess) PA 8, MCL 124.531 to 124.536, the county planning commission may recommend to the legislative body of the municipality provisions of an ordinance or rules governing the subdivision of land authorized under section 105 of the land division act, 1967 PA 288, MCL 560.105. A planning commission may proceed under this subsection on its own initiative or upon request of the appropriate legislative body.

(2) 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.

(3) Before recommending an ordinance or rule described in subsection (1), the planning commission shall hold a public hearing on the proposed ordinance or rule. The planning commission shall give notice of the time and place of the public hearing not less than 15 days before the hearing by publication in a newspaper of general circulation within the local unit of government.

(4) If a municipality has adopted a master plan or master street plan, the planning commission of that municipality shall review and make recommendations on plats before action thereon by the legislative body under section 112 of the land division act, 1967 PA 288, MCL 560.112. If a township is subject to county zoning consistent with section 209 of the Michigan zoning enabling act, 2006 PA 110, MCL 125.3209, or a city or village is subject to county zoning pursuant to the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702, and a contract under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL

124.501 to 124.512, or 1967 (Ex Sess) PA 8, MCL 124.531 to 124.536, and the municipality has adopted a master plan or master street plan, the county planning commission shall also review and make recommendations on plats before action thereon by the legislative body of the municipality under section 112 of the land division act, 1967 PA 288, MCL 560.112.

(5) A planning commission shall not take action on a proposed plat without affording an opportunity for a public hearing thereon. A plat submitted to the planning commission shall contain the name and address of the proprietor or other person to whom notice of a hearing shall be sent. Not less than 15 days before the date of the hearing, notice of the date, time, and place of the hearing shall be sent to that person at that address by mail and shall be published in a newspaper of general circulation in the municipality. Similar notice shall be mailed to the owners of land immediately adjoining the proposed platted land.

(6) A planning commission shall recommend approval, approval with conditions, or disapproval of a plat within 63 days after the plat is submitted to the planning commission. If applicable standards under the land division act, 1967 PA 288, MCL 560.101 to 560.293, and an ordinance or published rules governing the subdivision of land authorized under section 105 of that act, MCL 560.105, are met, the planning commission shall recommend approval of the plat. If the planning commission fails to act within the required period, the plat shall be considered to have been recommended for approval, and a certificate to that effect shall be issued by the planning commission upon request of the proprietor. However, the proprietor may waive this requirement and consent to an extension of the 63-day period. The grounds for any recommendation of disapproval of a plat shall be stated upon the records of the planning commission.

(7) A plat approved by a municipality and recorded under section 172 of the land division act, 1967 PA 288, MCL 560.172, shall be considered to be an amendment to the master plan and a part thereof. Approval of a plat by a municipality does not constitute or effect an acceptance by the public of any street or other open space shown upon the plat.

History: 2008, Act 33, Eff. Sept. 1, 2008.

ARTICLE V.
TRANSITIONAL PROVISIONS AND REPEALER

125.3881 Plan adopted or amended under planning act repealed under MCL 125.3885; effect; city or home rule village charter provision creating planning commission or ordinance implementing provision before effective date of act; ordinance creating planning commission under former law; ordinance or rules governing subdivision of land.

Sec. 81. (1) Unless rescinded by the local unit of government, any plan adopted or amended under a planning act repealed under section 85 need not be readopted under this act but continues in effect as a master plan under this act, regardless of whether it is entitled a master plan, basic plan, county plan, development plan, guide plan, land use plan, municipal plan, township plan, plan, or any other term. This includes, but is not limited to, a plan prepared by a planning commission and adopted before the effective date of this act to satisfy the requirements of section 1 of the former city and village zoning act, 1921 PA 207, section 3 of the former township zoning act, 1943 PA 184, section 3 of the former county zoning act, 1943 PA 183, or section 203(1) of the Michigan zoning enabling act, 2006 PA 110, MCL 125.3203. The master plan is subject to the requirements of this act, including, but not limited to, the requirement for periodic review under section 45(2) and the amendment procedures set forth in this act. However, the master plan is not subject to the requirements of section 33 until it is first amended under this act.

(2) Unless repealed, a city or home rule village charter provision creating a planning commission before the effective date of this act and any ordinance adopted before the effective date of this act implementing that charter provision continues in effect under this act, and the planning commission need not be newly created by an ordinance adopted under this act. However, both of the following apply:

(a) The legislative body may by ordinance increase the powers and duties of the planning commission to correspond with the powers and duties of a planning commission created under this act. Provisions of this act regarding planning commission powers and duties do not otherwise apply to a planning commission created by charter before the effective date of this act and provisions of this act regarding planning commission membership, appointment, and organization do not apply to such a planning commission. All other provisions of this act, including, but not limited to, provisions regarding planning commission selection of officers, meetings, rules, records, appointment of employees, contracts for services, and expenditures, do apply to such a planning commission.

(b) The legislative body shall amend any ordinance adopted before the effective date of this act to implement the charter provision, or repeal the ordinance and adopt a new ordinance, to fully conform to the requirements of this act made applicable by subdivision (a), by the earlier of the following dates:

(*i*) The date when an amendatory or new ordinance is first adopted under this act for any purpose.

(*ii*) July 1, 2011.

(3) Unless repealed, an ordinance creating a planning commission under former 1931 PA 285 or former 1945 PA 282 or a resolution creating a planning commission under former 1959 PA 168 continues in effect under this act, and the planning commission need not be newly created by an ordinance adopted under this act. However, all of the following apply:

(a) Beginning on the effective date of this act, the duties of the planning commission are subject to the requirements of this act.

(b) The legislative body shall amend the ordinance, or repeal the ordinance or resolution and adopt a new ordinance, to fully conform to the requirements of this act by the earlier of the following dates:

(*i*) The date when an amendatory or new ordinance is first adopted under this act for any purpose.

(*ii*) July 1, 2011.

(c) An ordinance adopted under subdivision (b) is not subject to referendum.

(4) Unless repealed or rescinded by the legislative body, an ordinance or published rules governing the subdivision of land authorized under section 105 of the land division act, 1967 PA 288, MCL 560.105, need not be readopted under this act or amended to comply with this act but continue in effect under this act. However, if amended, the ordinance or published rules shall be amended under the procedures of this act.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3883 Transfer of powers, duties, and records.

Sec. 83. (1) If, on the effective date of this act, a planning commission had the powers and duties of a zoning board or zoning commission under the former city and village zoning act, 1921 PA 207, the former county zoning act, 1943 PA 183, or the former township zoning act, 1943 PA 184, and under the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702, the planning commission may continue to exercise those powers and duties without amendment of the ordinance, resolution, or charter provision that created the planning commission.

(2) If, on the effective date of this act, a local unit of government had a planning commission without zoning authority created under former 1931 PA 285, former 1945 PA 282, or former 1959 PA 168, the legislative body may by amendment to the ordinance creating the planning commission, or, if the planning commission was created by resolution, may by resolution, transfer to the planning commission all the powers and duties provided to a zoning board or zoning commission created under the Michigan zoning enabling act, 2006 PA 110, MCL 125.3101 to 125.3702. If an existing zoning board or zoning commission in the local unit of government is nearing the completion of its draft zoning ordinance, the legislative body shall postpone the transfer of the zoning board's or zoning commission's powers, duties, and records until the completion of the draft zoning ordinance, but is not required to postpone the transfer more than 1 year.

(3) If, on or after the effective date of this act, a planning commission is created in a local unit of government that has had a zoning board or zoning commission since before the effective date of this act, the legislative body shall transfer all the powers, duties, and records of the zoning board or zoning commission to the planning commission before July 1, 2011. If the existing zoning board or zoning commission is nearing the completion of its draft zoning ordinance, the legislative body may, by resolution, postpone the transfer of the zoning board's or zoning commission's powers, duties, and records until the completion of the draft zoning ordinance, but not later than until 1 year after creation of the planning commission or July 1, 2011, whichever comes first.

History: 2008, Act 33, Eff. Sept. 1, 2008.

125.3885 Repeal of certain acts.

Sec. 85. (1) The following acts are repealed:

(a) 1931 PA 285, MCL 125.31 to 125.45.

(b) 1945 PA 282, MCL 125.101 to 125.115.

(c) 1959 PA 168, MCL 125.321 to 125.333.

(2) Any plan adopted or amended under an act repealed under subsection (1) is subject to section 81(1).

History: 2008, Act 33, Eff. Sept. 1, 2008.

OPEN MEETINGS ACT

HANDBOOK

Attorney General Bill Schuette

The Handbook is intended to be a quick reference guide. It is not intended to be encyclopedic on every subject or resolve every situation that may be encountered.

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THE BASICS

The Act – the Open Meetings Act (OMA) is 1976 PA 267, MCL 15.261 through 15.275. The OMA took effect January 1, 1977. In enacting the OMA, the Legislature promoted a new era in governmental accountability and fostered openness in government to enhance responsible decision making.[1]

Nothing in the OMA prohibits a public body from adopting an ordinance, resolution, rule, or charter provision that requires a greater degree of openness relative to public body meetings than the standards provided for in the OMA.[2]

What bodies are covered? – the OMA applies to all meetings of a public body.[3] A "public body" is broadly defined as:

> [A]ny state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, that is empowered by state constitution, statute, charter, ordinance, resolution, or rule to *exercise governmental or proprietary authority or perform a governmental or proprietary function*; a lessee of such a body performing an essential public purpose and function pursuant to the lease agreement.[4] [Emphasis added.]

As used in the OMA, the term "public body" connotes a collective entity and does not include an individual government official.[5] The OMA does not apply to private, nonprofit corporations.[6]

Public notice requirements – a meeting of a public body cannot be held unless public notice is given consistent with the OMA.[7] A public notice must contain the public body's name, telephone number, and address, and must be posted at its principal office and any other locations

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[1] *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich 211, 222-223; 507 NW2d 422 (1993).
[2] MCL 15.261.
[3] MCL 15.263. When the Handbook refers to a "board," the term encompasses all boards, commissions, councils, authorities, committees, subcommittees, panels, and any other public body.
[4] MCL 15.262(a). The provision in the OMA that includes a lessee of a public body performing an essential public purpose is unconstitutional because the title of the act does not refer to organizations other than "public bodies." OAG, 1977-1978, No 5207, p 157 (June 24, 1977). Certain boards are excluded "when deliberating the merits of a case." MCL 15.263(7). See also MCL 15.263(8) and (10).
[5] *Herald Co v Bay City*, 463 Mich 111, 129-133; 614 NW2d 873 (2000) – a city manager is not subject to the OMA. *Craig v Detroit Public Schools Chief Executive Officer*, 265 Mich App 572, 579; 697 NW2d 529 (2005). OAG, 1977-1978, No 5183A, p 97 (April 18, 1977).
[6] OAG, 1985-1986, No 6352, p 252 (April 8, 1986) – the Michigan High School Athletic Association is not subject to the OMA. See also *Perlongo v Iron River Cooperative TV Antenna Corp*, 122 Mich App 433; 332 NW2d 502 (1983).
[7] MCL 15.265(1). *Nicholas v Meridian Charter Twp*, 239 Mich App 525, 531; 609 NW2d 574 (2000).

the public body considers appropriate.[8] If a public body is a part of a state department, a public notice must also be posted in the principal office of the state department.[9]

Public notice requirements are specific to the type of meeting:

> (1) For regular meetings of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar or fiscal year a public notice stating the dates, times, and places of its regular meetings.
>
> (2) For a change in schedule of regular meetings of a public body, there shall be posted within three days after the meeting at which the change is made, a public notice stating the new dates, times, and places of its regular meetings.
>
> (3) For a rescheduled regular or a special meeting of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting.
>
> (4) A meeting of a public body which is recessed for more than 36 hours shall be reconvened only after public notice has been posted at least 18 hours before the reconvened meeting.[10]

At their first meeting of the calendar or fiscal year, each board must set the dates, times, and places of the board's regular meetings for the coming year. The OMA does not require any particular number of meetings. The board's schedule of regular meetings is not, of course, set in stone. The board is free to cancel or reschedule its meetings.

The minimum 18-hour notice requirement is not fulfilled if the public is denied access to the notice of the meeting for any part of the 18 hours.[11] The requirement may be met by posting at least 18 hours in advance of the meeting using a method designed to assure access to the notice. For example, the public body can post the notice at the main entrance visible on the outside of the building that houses the principal office of the public body.[12]

A public body must send copies of the public notices by first class mail to a requesting party, upon the party's payment of a yearly fee of not more than the reasonable estimated cost of printing and postage. Upon written request, a public body, at the same time a public notice of a meeting is posted, must provide a copy of the public notice to any newspaper published in the state or any radio or television station located in the state, free of charge.[13]

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[8] MCL 15.264(a)-(c).
[9] MCL 15.264(c).
[10] MCL 15.265(2)-(5).
[11] OAG, 1979-1980, No 5724, p 840 (June 20, 1980).
[12] OAG No 5724.
[13] MCL 15.266.

Agendas and the OMA – while the OMA requires a public body to give public notice when it meets, it has no requirement that the public notice include an agenda or a specific statement as to the purpose of a meeting.[14] No agenda format is required by the OMA.[15]

Penalties for OMA violations – a public official who "intentionally violates" the OMA may be found guilty of a misdemeanor[16] and may be personally liable for actual and exemplary damages of not more than $500 for a single meeting.[17] The exemptions in the OMA must be strictly construed. The "rule of lenity" (i.e., courts should mitigate punishment when the punishment in the criminal statute is unclear) does not apply to construction of the OMA's exemptions.[18]

A decision made by a public body may be invalidated by a court, if the public body has not complied with the requirements of MCL 15.263(1), (2), and (3) [i.e., making decisions at a public meeting] or if failure to give notice in accordance with section 5 has interfered with substantial compliance with MCL 15.263(1), (2), and (3) and the court finds that the noncompliance has impaired the rights of the public under the OMA.

Lawsuits to compel compliance – actions must be brought within 60 days after the public body's approved minutes involving the challenged decision are made publicly available.[19] If the decision involves the approval of contracts, the receipt or acceptance of bids, or the procedures pertaining to the issuance of bonds or other evidences of indebtedness, the action must be brought within 30 days after the approved minutes are made publicly available.[20] If the decision of a state public body is challenged, venue is in Ingham County.[21]

Correcting non-conforming decisions – in any case where a lawsuit has been initiated to invalidate a public body's decision on the ground that it was not made in conformity with the OMA, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with the OMA. A decision reenacted in this manner shall be effective from the date of reenactment and is not rendered invalid by any deficiency in its initial enactment.[22] If the board acts quickly, the reenactment may defeat a claim for attorney's fees, since plaintiffs would not be successful in "obtaining relief in the action" within the meaning of the OMA.[23]

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[14] OAG, 1993-1994, No 6821, p 199 (October 18, 1994). But, as discussed in OAG No 6821, other statutes may require a public body to state in its notice the business to be transacted at the meeting.
[15] *Lysogorski v Bridgeport Charter Twp*, 256 Mich App 297, 299; 662 NW2d 108 (2003).
[16] MCL 15.272.
[17] MCL 15.273.
[18] *People v Whitney*, 228 Mich App 230, 244; 578 NW2d 329 (1998).
[19] MCL 15.270(3)(a).
[20] MCL 15.270(3)(b).
[21] MCL 15.270(4).
[22] MCL 15.270(5).
[23] *Leemreis v Sherman Twp*, 273 Mich App 691, 700; 731 NW2d 787 (2007). *Felice v Cheboygan County Zoning Comm*, 103 Mich App 742, 746; 304 NW2d 1 (1981).

DECISIONS MUST BE MADE IN PUBLIC MEETINGS

All decisions must be made at a meeting open to the public – the OMA defines "decision" to mean "a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy."[24] The OMA provides that "[a]ll decisions of a public body shall be made at a meeting open to the public," and that, with limited exceptions, "[a]ll deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public."[25]

The OMA does not contain a "voting requirement" or any form of "formal voting requirement." A "consensus building process" that equates to decision-making would fall under the act.[26] For example, where board members use telephone calls or sub-quorum meetings to achieve the same intercommunication that could have been achieved in a full board or commission meeting, the members' conduct is susceptible to "round-the-horn" decision-making, which achieves the same effect as if the entire board had met publicly and formally cast its votes. A "round-the-horn" process violates the OMA.[27]

Meeting "informally" to discuss matters – while the OMA "does not apply to a meeting which is a social or chance gathering or conference not designed to avoid this act,"[28] a meeting of a public body must be open to the public. The OMA does not define the terms "social or chance gathering" or "conference," and provides little direct guidance as to the precise scope of this exemption.[29] To promote openness in government, however, the OMA is entitled to a broad interpretation and exceptions to conduct closed sessions must be construed strictly.[30] Thus, the closed session exception does not apply to a quorum of a public body that meets to discuss matters of public policy, even if there is no intention that the deliberations will lead to a decision on that occasion.[31]

Canvassing board members on how they might vote – an informal canvas by one member of a public body to find out where the votes would be on a particular issue does not violate the OMA,

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[24] MCL 15.262(d).
[25] MCL 15.263(2) and (3).
[26] *Booth Newspapers, Inc v Univ of Michigan Bd of Regents*, 444 Mich at 229.
[27] *Booth Newspapers, Inc*, 444 Mich at 229 – "any alleged distinction between the [public body's] consensus building and a determination or action, as advanced in the OMA's definition of 'decision,' is a distinction without a difference."
[28] MCL 15.263(10).
[29] OAG, 1981-1982, No 6074, p 662, 663 (June 11, 1982).
[30] *Wexford County Prosecutor v Pranger*, 83 Mich App 197, 201, 204; 268 NW2d 344 (1978).
[31] OAG, 1977-1978, No 5298, p 434, 435 (May 2, 1978). See also OAG, 1979-1980, No 5444, p 55, 56 (February 21, 1979) – anytime a quorum of a public body meets and considers a matter of public policy, the meeting must comply with the OMA's requirements. Compare OAG, 1979-1980, No 5437, p 36, 37 (February 2, 1979), where members of a public body constituting a quorum come together by chance, the gathering is exempt from the OMA; however, even at a chance meeting, matters of public policy may not be discussed by the members with each other.

so long as no decisions are made during the discussions and the discussions are not a deliberate attempt to the avoid the OMA.[32]

May a quorum of a board gather outside an open meeting without violating the OMA? – yes, in some instances. In addition to a purely social gathering or chance gathering[33] that does not involve discussions of public policy among the members of the board, a quorum may accept an invitation to address a civic organization,[34] listen to the concerns of a neighborhood organization, or observe demonstrations, if the board doesn't deliberate toward, or make, a decision.[35]

A board quorum also may meet for a workshop, seminar, informational gathering, or professional conference designed to convey, to the conference participants, information about areas of professional interest common to all conference participants.[36] These kinds of meetings involve a conference designed primarily to provide training or background information and involve a relatively broad focus upon issues of general concern, rather than a more limited focus on matters or issues of particular interest to a single public body.[37] However, when gatherings are designed to receive input from officers or employees of the public body, the OMA requires that the gathering be held at a public meeting.[38]

The OMA was not violated when several members of the board of county commissioners attended a public meeting of the county planning committee (which had more than fifty members, two who were county commissioners), which resulted in a quorum of the board being present at the meeting (without the meeting also being noticed as a county commission meeting), so long as the nonmember commissioners did not engage in deliberations or render decisions.[39]

Advisory committees and the OMA – the OMA does not apply to committees and subcommittees composed of less than a quorum of the full public body if they "are merely advisory or only capable of making 'recommendations concerning the exercise of governmental authority.'"[40]

Where, on the other hand, a committee or subcommittee is empowered to act on matters in such a fashion as to deprive the full public body of the opportunity to consider a matter, a decision of the committee or subcommittee "is an exercise of governmental authority which effectuates

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[32] *St Aubin v Ishpeming City Council*, 197 Mich App 100, 103; 494 NW2d 803 (1992).
[33] OAG, 1979-1980, No 5437, p 36 (February 2, 1979).
[34] OAG, 1977-1978, No 5183, p 21, 35 (March 8, 1977).
[35] OAG, 1977-1978, No 5364, p 606, 607 (September 7, 1978).
[36] OAG, 1979-1980, No 5433, p 29, 31 (January 31, 1979).
[37] OAG, 1981-1982, No 6074, at p 664.
[38] OAG No 5433 at p 31.
[39] OAG, 1989-1990, No 6636, p 253 (October 23, 1989), cited with approval in *Ryant v Cleveland Twp*, 239 Mich App 430, 434-435; 608 NW2d 101 (2000) and *Nicholas v Meridian Charter Twp*, 239 Mich App at 531-532. If, however, the noncommittee board members participate in committee deliberations, the OMA would be violated. *Nicholas*, 239 Mich App at 532.
[40] OAG, 1997-1998, No 6935, p 18 (April 2, 1997); OAG No 5183 at p 40.

public policy" and the committee or subcommittee proceedings are, therefore, subject to the OMA.[41]

If a joint meeting of two committees of a board (each with less than a quorum of the board) results in the presence of a quorum of the board, the board must comply in all respects with the OMA and notice of the joint meeting must include the fact that a quorum of the board will be present.[42]

Use of e-mail or other electronic communications among board members during an open meeting – e-mail, texting, or other forms of electronic communications among members of a board or commission during the course of an open meeting that constitutes deliberations toward decision-making or actual decisions violates the OMA, since it is in effect a "closed" session. While the OMA does not require that all votes by a public body must be by roll call, voting requirements under the act are met when a vote is taken by roll call, show of hands, or other method that informs the public of the public official's decision rendered by his or her vote. Thus, the OMA bars the use of e-mail or other electronic communications to conduct a secret ballot at a public meeting, since it would prevent citizens from knowing how members of the public body have voted.[43]

Moreover, the use of electronic communications for discussions or deliberations, which are not, at a minimum, able to be heard by the public in attendance at an open meeting are contrary to the OMA's core purpose – the promotion of openness in government.[44]

Using e-mail to distribute handouts, agenda items, statistical information, or other such material during an open meeting should be permissible under the OMA, particularly when copies of that information are also made available to the public before or during the meeting.

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[41] *Schmiedicke v Clare School Bd*, 228 Mich App 259, 261, 263-264; 577 NW2d 706 (1998); *Morrison v East Lansing*, 255 Mich App 505; 660 NW2d 395 (2003); and OAG, 1997-1998, No 7000, p 197 (December 1, 1998) – a committee composed of less than a quorum of a full board is subject to the OMA, if the committee is effectively authorized to determine whether items will or will not be referred for action by the full board, citing OAG, 1977-1978, No 5222, p 216 (September 1, 1977).

[42] OAG, 1989-1990, No 6636, at p 254.

[43] See *Esperance v Chesterfield Twp*, 89 Mich App 456, 464; 280 NW2d 559 (1979) and OAG, 1977-1978, No 5262, p 338 (January 31, 1978).

[44] See *Booth Newspapers, Inc*, 444 Mich at 229; *Schmiedicke*, 228 Mich App at 263, 264; and *Wexford County Prosecutor*, 83 Mich App at 204.

CLOSED SESSIONS

Meeting in closed session – a public body may meet in a closed session *only* for one or more of the permitted purposes specified in section 8 of the OMA.[45] The limited purposes for which closed sessions are permitted include, among others[46]:

> (1) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, or to consider a periodic personnel evaluation of, a public officer, employee, staff member, or individual agent, *if the named person requests a closed hearing*.[47]
>
> (2) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement *if either negotiating party requests a closed hearing*.[48]
>
> (3) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.[49]
>
> (4) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, *but only if* an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.[50]
>
> (5) To review and consider the contents of an application for employment or appointment to a public office *if the candidate requests that the application remain confidential.* However, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act.[51]
>
> (6) To consider material exempt from discussion or disclosure by state or federal statute.[52] But note – a board is not permitted to go into closed session to discuss an attorney's oral opinion, as opposed to a written legal memorandum.[53]

A closed session must be conducted during the course of an open meeting – section 2(c) of the OMA defines "closed session" as "a meeting or part of a meeting of a public body that is

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[45] MCL 15.268. OAG, 1977-1978, No 5183, at p 37.
[46] The other permissible purposes deal with public primary, secondary, and post-secondary student disciplinary hearings – section 8(b); state legislature party caucuses – section 8(g); compliance conferences conducted by the Michigan Department of Community Health – section 8(i); and public university presidential search committee discussions – section 8(j).
[47] MCL 15.268(a) (Emphasis added.)
[48] MCL 15.268(c) (Emphasis added.)
[49] MCL 15.268(d).
[50] MCL 15.268(e) (Emphasis added.)
[51] MCL 15.268(f) (Emphasis added.)
[52] MCL 15.268(h).
[53] *Booth Newspapers, Inc v Wyoming City Council*, 168 Mich App 459, 467, 469-470; 425 NW2d 695 (1988).

closed to the public."[54] Section 9(1) of the OMA provides that the minutes of an open meeting must include "the purpose or purposes for which a closed session is held."[55]

Going into closed session – section 7(1) of the OMA[56] sets out the procedure for calling a closed session:

> A 2/3 roll call vote of members elected or appointed and serving is required to call a closed session, except for the closed sessions permitted under section 8(a), (b), (c), (g), (i), and (j). The roll call vote and the purpose or purposes for calling the closed session shall be entered into the minutes of the meeting at which the vote is taken.

Thus, a public body may go into closed session only upon a motion duly made, seconded, and adopted by a 2/3 roll call vote of the members appointed and serving[57] during an open meeting for the purpose of (1) considering the purchase or lease of real property, (2) consulting with their attorney, (3) considering an employment application, or (4) considering material exempt from disclosure under state or federal law. A majority vote is sufficient for going into closed session for the other OMA permitted purposes.

We suggest that every motion to go into closed session should cite one or more of the permissible purposes listed in section 8 of the OMA.[58] An example of a motion to go into closed session is:

> I move that the Board meet in closed session under section 8(e) of the Open Meetings Act, to consult with our attorney regarding trial or settlement strategy in connection with [the name of the specific lawsuit].

Another example is the need to privately discuss with the public body's attorney a memorandum of advice as permitted under section 8(h) of the OMA – "to consider material exempt from discussion or disclosure by state or federal statute."[59] The motion should cite section 8(h) of the OMA and the statutory basis for the closed session, such as section 13(1)(g) of the Freedom of Information Act, which exempts from public disclosure "[i]nformation or records subject to the attorney-client privilege."[60]

Leaving a closed session – the OMA is silent as to how to leave a closed session. We suggest that you recommend a motion be made to end the closed session with a majority vote needed for

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[54] MCL 15.262(c).
[55] MCL 15.269(1).
[56] MCL 15.267(1).
[57] And not just those attending the meeting. OAG No 5183 at p 37.
[58] MCL 15.268.
[59] MCL 15.268(h). Proper discussion of a written legal opinion at a closed meeting is, with regard to the attorney-client privilege exemption to the OMA, limited to the meaning of any strictly legal advice presented in the written opinion. *People v Whitney*, 228 Mich App at 245-248.
[60] MCL 15.243(1)(g).

approval. Admittedly, this is a decision made in a closed session, but it certainly isn't a decision that "effectuates or formulates public policy."

When the public body has concluded its closed session, the open meeting minutes should state the time the public body reconvened in open session and, of course, any votes on matters discussed in the closed session must occur in an open meeting.

Decisions must be made during an open meeting, not the closed session – section 3(2) of the OMA requires that "[a]ll decisions of a public body shall be made at a meeting open to the public."[61] Section 2(d) of the OMA defines "decision" to mean "a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy."[62]

Avoid using the terms "closed session" and "executive session" interchangeably – we suggest that a public body not use the term "executive session" to refer to a "closed session." The term "executive session" does not appear in the OMA, but "closed session" does. "Executive session" is more of a private sector term and is often used to describe a private session of a board of directors, which is not limited as to purpose, where actions can be taken, and no minutes are recorded.

Staff and others may join the board in a closed session – a public body may rely upon its officers and employees for assistance when considering matters in a closed session. A public body may also request private citizens to assist, as appropriate, in its considerations.[63]

Forcibly excluding persons from a closed session – a public body may, if necessary, exclude an unauthorized individual who intrudes upon a closed session by either (1) having the individual forcibly removed by a law enforcement officer, or (2) by recessing and removing the closed session to a new location.[64]

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[61] MCL 15.263(2). *St Aubin v Ishpeming City Council*, 197 Mich App at 103. See also, OAG, 1977-1978, No 5262, at p 338-339 – the OMA prohibits a voting procedure at a public meeting which prevents citizens from knowing how members of the public body have voted and OAG, 1979-1980, No 5445, p 57 (February 22, 1979) – a public body may not take final action on any matter during a closed meeting.

[62] MCL 15.262(d).

[63] OAG, 1979-1980, No 5532, p 324 (August 7, 1979).

[64] OAG, 1985-1986, No 6358, p 268 (April 29, 1986), citing *Regents of the Univ of Michigan v Washtenaw County Coalition Against Apartheid*, 97 Mich App 532; 296 NW2d 94 (1980).

PUBLIC ATTENDING OPEN MEETINGS

Excluding individuals – no one may be excluded from a meeting otherwise open to the public except for a breach of the peace actually committed at the meeting.[65]

Identifying public attendees – no one may be required to register or otherwise provide his or her name or other information or otherwise to fulfill a condition precedent to attend a public meeting.[66]

Building security at the meeting site may cause issues. Members of the public might object, based on the OMA, to signing in to gain access to the building where a public meeting is being held.[67] We, therefore, recommend that public bodies meet in facilities or areas not subject to public access restrictions.

If the public body wishes the members of the public to identify themselves at the meeting, we suggest the board chair announce something like this:

> The Board would appreciate having the members of the public attending the meeting today identify themselves and mention if they would like the opportunity to speak during the public comment period. However, you do not need to give your name to attend this meeting. When the time comes to introduce yourself and you do not want to do so, just say pass.

Since speaking at the meeting is a step beyond "attending" the public meeting and the OMA provides that a person may address the public body "under rules established and recorded by the public body," the board may establish a rule requiring individuals to identify themselves if they wish to speak at a meeting.[68]

Limiting public comment – a public body may adopt a rule imposing individual time limits for members of the public addressing the public body.[69] In order to carry out its responsibilities, the board can also consider establishing rules allowing the chairperson to encourage groups to designate one or more individuals to speak on their behalf to avoid cumulative comments. But a rule limiting the period of public comment may not be applied in a manner that denies a person the right to address the public body, such as by limiting all public comment to a half-hour period.[70]

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[65] MCL 15.263(6).
[66] MCL 15.263(4).
[67] In addition, "[a]ll meetings of a public body . . . shall be held in a place available to the general public." MCL 15.263(1).
[68] MCL 15.263(5). OAG, 1977-1978, No 5183, at p 34.
[69] OAG, 1977-1978, No 5332, p 536 (July 13, 1978). The rule must be duly adopted and recorded. OAG, 1977-1978. No 5183, at p 34.
[70] OAG No 5332 at p 538.

Meeting location – the OMA only requires that a meeting be held "in a place available to the general public;" it does not dictate that the meeting be held within the geographical limits of the public body's jurisdiction.[71] However, if a meeting is held so far from the public which it serves that it would be difficult or inconvenient for its citizens to attend, the meeting may not be considered as being held at a place available to the general public. Whenever possible, the meeting should be held within the public body's geographical boundaries.

Timing of public comment – a public body has discretion under the OMA when to schedule public comment during the meeting.[72] Thus, scheduling public comment at the beginning[73] or the end[74] of the meeting agenda does not violate the OMA. The public has no right to address the commission during its deliberations on a particular matter.[75]

Taping and broadcasting – the right to attend a public meeting includes the right to tape-record, videotape, broadcast live on radio, and telecast live on television the proceedings of a public body at the public meeting.[76] A board may establish reasonable regulations governing the televising or filming by the electronic media of a hearing open to the public in order to minimize any disruption to the hearing, but it may not prohibit such coverage.[77] And the exercise of the right to tape-record, videotape, and broadcast public meetings may not be dependent upon the prior approval of the public body.[78]

[71] OAG, 1979-1980, No 5560, p 386 (September 13, 1979). Of course, local charter provisions or ordinances may impose geographical limits on public body meetings.
[72] MCL 15.263(5).
[73] *Lysogorski v. Bridgeport Charter Twp*, 256 Mich App at 302.
[74] OAG, 1979-1980, No 5716, p 812 (June 4, 1980).
[75] OAG, 1977-1978, No 5310, p 465, 468 (June 7, 1978).
[76] MCL 15.263(1).
[77] OAG, 1987-1988, No 6499, p 280 (February 24, 1988).
[78] MCL 15.263(1).

MINUTES

What must be in the minutes – at a minimum, the minutes must show the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes must include all roll call votes taken at the meeting.[79] The OMA does not prohibit a public body from preparing a more detailed set of minutes of its public meetings if it chooses to do so.[80]

When must the minutes be available – proposed minutes must be made available for public inspection within eight days after the applicable meeting. Approved minutes must be made available for public inspection within five days after the public body's approval.[81]

When must the minutes be approved – at the board's next meeting.[82] Corrected minutes must show both the original entry and the correction (for example, using a "strikethrough" word processing feature).

Closed session minutes – a separate set of minutes must be taken for closed sessions. While closed session minutes must be approved in an open meeting (with contents of the minutes kept confidential), the board may meet in closed session to consider approving the minutes.[83]

Closed session minutes shall only be disclosed if required by a civil action filed under sections 10, 11, or 13 of the OMA.[84] The board secretary may furnish the minutes of a closed session of the body to a board member. A member's dissemination of closed session minutes to the public, however, is a violation of the OMA, and the member risks criminal prosecution and civil penalties.[85] An audiotape of a closed session meeting of a public body is part of the minutes of the session meeting and, thus, must be filed with the clerk of the public body for retention under the OMA.[86]

Closed session minutes may be destroyed one year and one day *after approval of the minutes of the regular meeting at which the closed session occurred*.[87]

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[79] MCL 15.269(1).
[80] Informational letter to Representative Jack Brandenburg from Chief Deputy Attorney General Carol Isaacs dated May 8, 2003.
[81] MCL 15.269(3).
[82] MCL 15.269(1)
[83] OAG, 1985-1986, No 6365, p 288 (June 2, 1986). This, of course, triggers the need for more closed session minutes.
[84] MCL 15.270, 15.271, and 15.273; *Local Area Watch v Grand Rapids*, 262 Mich App 136, 143; 683 NW2d 745 (2004); OAG, 1985-1986 No 6353, p 255 (April 11, 1986).
[85] OAG, 1999-2000, No 7061, p 144 (August 31, 2000).
[86] *Kitchen v Ferndale City Council*, 253 Mich App 115; 654 NW2d 918 (2002).
[87] MCL 15.267(2).

Inadvertent omissions from the minutes – the OMA does not invalidate a decision due to a simple error in the minutes, such as inadvertently omitting the vote to go into closed session from a meeting's minutes.[88]

[88] *Willis v Deerfield Twp*, 257 Mich App 541, 554; 669 NW2d 279 (2003).

PARLIAMENTARY PROCEDURES

Core principle – for the actions of a public body to be valid, they must be approved by a majority vote of a quorum, absent a controlling provision to the contrary, at a lawfully convened meeting.[89]

QUORUM

Quorum – is the minimum number of members who must be present for a board to act. Any substantive action taken in the absence of a quorum is invalid. If a public body properly notices the meeting under OMA, but lacks a quorum when it actually convenes, the board members in attendance may receive reports and comments from the public or staff, ask questions, and comment on matters of interest.[90]

What is the quorum? – look to the statute, charter provision, or ordinance creating the board. On the state level, the Legislature in recent years has taken care to set the board quorum in the statute itself. The statute will often provide that "a majority of the board appointed and serving shall constitute a quorum." For a 15-member board, that means eight would be the quorum, assuming you have 15 members appointed and serving. Without more in the statute, as few as five board members could then decide an issue, since they would be a majority of a quorum.[91] But, be careful, recent statutes often provide that "voting upon action taken by the board shall be conducted by majority vote of the members appointed and serving." In that instance, the board needs at least eight favorable votes to act.[92] The Legislature has a backstop statute, which provides that any provision that gives "joint authority to 3 or more public officers or other persons shall be construed as giving such authority to a majority of such officers or other persons, unless it shall be otherwise expressly declared in the law giving the authority."[93]

Disqualified members – a member of a public body who is disqualified due to a conflict of interest may not be counted to establish a quorum to consider that matter.[94]

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[89] OAG, 1979-1980, No 5808, p 1060 (October 30, 1980). Robert's Rules of Order Newly Revised (RRONR) (10th ed.), p 4. We cite to Robert's Rules in this Handbook as a leading guide on parliamentary procedures. This is not to imply that public bodies are, as a general rule, bound by Robert's Rules.

[90] OAG, 2009-2010, No 7235, p __ (October 9, 2009).

[91] See OAG, 1977-1978, No 5238, p 261 (November 2, 1977).

[92] See OAG, 1979-1980, No 5808, at p 1061.

[93] MCL 8.3c. *Wood v Bd of Trustees of the Policemen and Firemen Retirement System of Detroit*, 108 Mich App 38, 43; 310 NW2d 39 (1981).

[94] OAG, 1981-1982, No 5916, p 218 (June 8, 1981). But see MCL 15.342a, which provides a procedure for disqualified public officials to vote in some limited circumstances where a quorum is otherwise lacking for a public body to conduct business.

Losing a quorum – even if a meeting begins with a quorum present, the board loses its right to conduct substantive action whenever the attendance of its members falls below the necessary quorum.[95]

Resigned members – the common law rule in Michigan is that a public officer's resignation is not effective until it has been accepted by the appointing authority (who, at the state level, is usually the governor). Acceptance of the resignation may be manifested by formal acceptance or by the appointment of a successor.[96] Thus, until a resignation is formally accepted or a successor appointed, the resigning member must be considered "appointed and serving," be counted for quorum purposes, and be permitted to vote.

[95] RRONR (10th ed.), p 337-338.
[96] OAG, 1985-1986, No 6405, p 429, 430 (December 9, 1986), citing *Clark v Detroit Bd of Education*, 112 Mich 656; 71 NW 177 (1897).

VOTING

Abstain – means to refuse to vote. Thus, a board member does not "vote" to abstain. If a vote requires a majority or a certain percentage of the members present for approval, an abstention has the same effect as a "no" vote.[97]

Adjourning the meeting - a presiding officer cannot arbitrarily adjourn a meeting without first calling for a vote of the members present.[98]

Chairperson voting – perhaps as a spillover from the well-known constitutional rule that the vice president can only vote to break a tie in the United States Senate[99] or that a legislative presiding officer usually refrains from voting unless his or her vote affects the result,[100] some believe that a board's presiding officer (usually, the chairperson) can only vote to break a tie. However, absent a contrary controlling provision, all board members may vote on any matter coming before a board.[101] A board's presiding officer can't vote on a motion and then, if the vote is tied, vote to break the tie unless explicitly authorized by law.[102]

Expired-term members – look first to the statute, charter provision, or ordinance creating the public body. Many statutes provide that "a member shall serve until a successor is appointed." Absent a contrary controlling provision, the general rule is that a public officer holding over after his or her term expires may continue to act until a successor is appointed and qualified.[103]

Imposing a greater voting requirement – where the Legislature has required only a majority vote to act, public bodies can't impose a greater voting requirement, such as requiring a two-thirds vote of its members to alter certain policies or bylaws.[104]

Majority – means simply "more than half."[105] Thus, on a 15-member board, eight members constitute a majority.

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[97] RRONR (10th ed.), p 390-395.
[98] *Dingwall v Detroit Common Council*, 82 Mich 568, 571; 46 NW 938 (1890),
[99] US Const, art I, §3.
[100] RRONR (10th ed.), p 392-393 – an assembly's presiding officer can break or create a tie vote.
[101] See OAG, 1981-1982, No 6054, p 617 (April 14, 1982).
[102] *Price v Oakfield Twp Bd*, 182 Mich 216; 148 NW 438 (1914).
[103] OAG, 1979-1980, No 5606, p 493 (December 13, 1979), citing *Greyhound Corp v Public Service Comm*, 360 Mich 578, 589-590; 104 NW2d 395 (1960). See also, *Cantwell v City of Southfield*, 95 Mich App 375; 290 NW2d 151 (1980).
[104] OAG, 1979-1980, No 5738, p 870 (July 14, 1980). OAG, 2001-2002, No 7081, p 27 (April 17, 2001), citing *Wagner v Ypsilanti Village Clerk*, 302 Mich 636; 5 NW2d 513 (1942).
[105] RRONR (10th ed.), p 387.

Proxy voting – the OMA requires that the deliberation and formulation of decisions effectuating public policy be conducted at open meetings.[106] Voting by proxy effectively forecloses any involvement by the absent board member in the board's public discussion and deliberations before the board votes on a matter effectuating public policy.[107] Without explicit statutory authority, this practice is not allowed.[108]

Roll call vote – there is no bright line rule for conducting a roll call vote.[109] We suggest some rules of thumb. One, when a voice vote reveals a divided vote on the board (i.e., more than one no vote), a roll call vote should be conducted to remove doubt about the vote's count. Two, if you have board members participating by teleconference, a roll call will permit the secretary to accurately record the entire vote. Three, when the board is acting on matters of significance, such as, contracts of substantial size or decisions that will have multi-year impacts, a roll call vote is the best choice.

Round-robin voting – means approval for an action outside of a public meeting by passing around a sign-off sheet. This practice has its roots in the legislative committee practice of passing around a tally sheet to gain approval for discharging a bill without a committee meeting. "Round-robining" defeats the public's right to be present and observe the manner in which the body's decisions are made and violates the letter and the spirit of the OMA.[110]

Rule of necessity – if a state agency's involvement in prior administrative or judicial proceedings involving a party could require recusal of all of its board members or enough of them to prevent a quorum from assembling, the common law rule of necessity precludes recusing all members, if the disqualification would leave the agency unable to adjudicate a question.[111] But the rule of necessity may not be applied to allow members of a public body to vote on matters that could benefit their private employer.[112]

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[106] *Esperance v Chesterfield Twp*, 89 Mich App at 464, quoting *Wexford County Prosecutor v Prange*r, 83 Mich App 197; 268 NW2d 344 (1978).

[107] Robert's Rules concur: "Ordinarily it [proxy voting] should neither be allowed nor required, because proxy voting is incompatible with the essential characteristics of a deliberative assembly in which membership is individual, personal, and nontransferable." RRONR (10th ed.), p 414. The Michigan House and Senate do not allow proxy voting for their members.

[108] OAG, 2009-2010, No 7227, p __ (March 19, 2009). OAG, 1993-1994, No 6828, p 212 (December 22, 1994), citing *Dingwall*, 82 Mich at 571, where the city council counted and recorded the vote of absent members in appointing election inspectors. The Michigan Supreme Court rejected these appointments, ruling that "the counting of absent members and recording them as voting in the affirmative on all questions, was also an inexcusable outrage."

[109] "The fact that the Open Meetings Act prohibits secret balloting does not mean that all votes must be roll call votes." *Esperance v Chesterfield Twp*, 89 Mich App at 464 n 9. The OMA does provide that votes to go into closed session must be by roll call. MCL 15.267.

[110] OAG, 1977-1978, No 5222, at p 218. See also, *Booth Newspapers*, 444 Mich at 229, which concluded that "round-the-horn" deliberations can constitute decisions under the OMA.

[111] *Champion's Auto Ferry, Inc v Michigan Public Service Comm*, 231 Mich App 699; 588 NW2d 153 (1998). The Court noted that the PSC members did not have any personal financial interest in the matter. *Id.* at 708-709.

[112] OAG, 1981-1982, No 6005, p 439, 446 (November 2, 1981). After OAG No 6005 was issued, the Legislature amended section 2a of 1973 PA 196, MCL 15.342a, to provide a procedure for voting by public officials in some limited circumstances where a quorum is otherwise lacking for a public entity to conduct business.

Secret ballot – the OMA requires that all decisions and deliberations of a public body must be made at an open meeting and the term "decision" is defined to include voting.[113] The OMA prohibits a "voting procedure at a public meeting that prevents citizens from knowing how members of a public body have voted."[114] Obviously, the use of a secret ballot process would prevent this transparency. All board decisions subject to the OMA must be made by a public vote at an open meeting.[115]

Tie vote – a tie vote on a motion means that the motion did not gain a majority. Thus, the motion fails.[116]

[113] See MCL 15.262(d) and 15.263(2) and (3).
[114] OAG, 1977-1978, No 5262, at p 338-339.
[115] *Esperance*, 89 Mich App at 464.
[116] *Rouse v Rogers*, 267 Mich 338; 255 NW 203 (1934). RRONR (10th ed.), p 392.