

DRAFT
WHAT SHOULD LOCAL COMMENTS ON A PROPOSED PLAN CONSIST OF?
AND
WHAT SHOULD A LOCAL GOVERNMENT DO WITH
COMMENTS IT RECEIVES ON A PROPOSED PLAN?

Background Information

The Problem: The December 2001 amendments to the planning enabling acts for cities, villages and townships established a mandatory mechanism to submit a draft plan or plan amendments to adjoining units of government, but failed to indicate: 1) what local comments on the draft plan should consist of, and 2) what a local government should do with comments it receives on a proposed plan—and in particular, how it should respond to them.

With regard to the first question, in the case of a county review of a local plan, the county must make a finding of whether the proposed plan or plan amendment is *inconsistent* with the county plan and any other land use plans of adjoining jurisdictions. However, no similar guidance is provided to cities, villages and townships. Thus, the amendments are silent as to what a reviewing entity should comment on. But obviously, since the county has to determine whether the proposed plan is *inconsistent* with its own plan or other local plans, it is in the best interest of a local unit of government to provide information to the county, as well as to the proposing local unit of government whether the reviewing local government believes a part of the proposed plan or plan amendment is inconsistent with its plans. A separate guideline entitled “*Determining Whether a Proposed Plan is Inconsistent*” narrowly addresses this part of the larger issue and should be reviewed by anyone reading this Guideline. However, that still begs the question of what factors beyond inconsistency, should be considered by a reviewing entity and what constructive comments should be made by a reviewing entity to a proposing entity on a proposed plan or plan amendment.

With regard to the second question, essentially, the reviewing entity reviews and submits (within 65 days to 95 days) comments to the proposing entity, but there is no mention of what the local proposing government is to do with the input from the reviewing entity, nor any mechanism for a return response. Yet a proper response is important, not only to good planning, but also good relations between adjoining units of government.

This Guideline is intended to provide guidance on these two questions. Attached is a “*Checklist for Review of Proposed Plans or Plan Amendments*” and a “*Response Form for Review of Proposed Plans or Plan Amendments*.” These forms are intended to help formalize this review and comment process and to introduce some consistency into it. These forms are discussed further on later pages. Also attached is guidance on what to include in formal transmittal letters and a glossary to define terms used in this Guideline, the Checklist and Response Form.

Statutory Citation: Sections 7b(4) in both the Municipal Planning Act and the Township Planning Act permit adjoining local units of government and other reviewing entities to provide comments to the proposing entity, but provide no guidance on what to say. A copy must also be sent to the County. Then Sections 7b(5) in both the Municipal Planning Act and the Township Planning Act

say the county planning commission or county board of commissioners shall submit its comments on the proposed plan or plan amendment:

“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, after considering any comments received under subsection (4), considers the proposed plan to be inconsistent with the plan of any city, village, township or region described in subsection (3)(a) or (b).*
- (b) If the county has a county plan, a statement whether the county planning commission considers the proposed plan to be inconsistent with the county plan.”*

The County Planning Act provides no more detail in this matter, but does require county plans to go through a similar preparation and review process as city, village and township plans. The County Planning Act also more clearly requires cooperation and coordination with local governments in the county, with adjacent counties, and with other governmental organizations as the county plan is being prepared. A separate guideline (referred to above) discusses what it means for a plan to be “*inconsistent*”, but it isn’t intended to provide much guidance in what a plan review ought to address and why.

History of the Requirement: A joint effort between MAP and Rep. Patricia Birkholz in 2001, produced HB 4571, commonly referred to as the draft or proposed Coordinated Planning Act. As the title suggests, the purpose of the proposed Coordinated Planning Act was to provide land use planning coordination between and among the various units of government. The proposed Act suggested a coordination process that would create a mechanism for an exchange of comments and/or concerns about a proposed plan between reviewing entities. The original draft of the proposed Coordinated Planning Act (preceded HB 4571, see Nov. 1999, *Planning & Zoning News*) had a list of six characteristics that could serve as the basis for an objection to the proposed plan (Section 49 (7) (a-f)). Briefly, these reasons include:

- The creation of a specific threat to the health or safety of the community to which the plan was submitted for review.
- Cumulative effects of plan implementation that would reduce the quality of life in the reviewing community (had to be reasonably identifiable and verifiable).
- The proposed plan was not consistent or compatible with the goals, objectives, policies, land uses or capital facilities in the plan of the reviewing community.
- The proposed plan had incompatible land uses along a common border or proposed capital facilities which would promote land uses, intensities or densities of development inconsistent with the plan of the reviewing entity.
- The proposed plan was inconsistent with the proposed Coordinated Planning Act.
- The proposed plan was in direct conflict with essential capital facilities planned by a municipality, county, regional or state agency, that were approved under procedures established in the proposed Coordinated Planning Act.

These considerations were refined in HB 4571 (see Section 592(d) as reproduced in the Guideline entitled “*Determining Whether a Proposed Plan is “Inconsistent”*”). These concepts are embodied in more practical ways in the attached Checklist.

Ultimately, the legislature only adopted “inconsistency” as a standard, and then only indirectly applied it to local units of government through the county review process.

The proposed Coordinated Planning Act (in form of HB 4571) provided for even more interaction between units of government on draft plans.

“A proposing planning commission shall give serious consideration to, reply to, and attempt in good faith to address every objection or other comment made by a reviewing entity. If the proposing planning commission disagrees with any objection or other comment made by a reviewing entity, the reply shall so state along with the reasons why the proposing planning commission disagrees. The reply may propose changes to the proposed plan.”

Ultimately, specific language addressing the substance of comment responses was not provided in the 2001 amendments to the planning enabling acts.

Recommended Best Practice

The APA ***Growing Smart Legislative Guidebook*** presents a statutory structure for state-regional-local planning that is integrated both vertically and horizontally.

“...to require local governments to adopt and update on a {5} year basis an internally consistent comprehensive plan that establishes policies to guide the administration of local development regulations and related ordinances, the acquisition and disposition of land and interests in land, and the scheduling and execution of capital projects, and that {takes into account or has regard for} the plans of adjoining local governments, regional planning agencies and special districts...”

This Guideline emphasizes the need for and provides for a process that ensures land use planning coordination between and among regions, counties and local units of government. To that end, the attached sample *Checklist for Review of Proposed Plans or Plan Amendments* and sample *Response Form for Review of Proposed Plans or Plan Amendments* were prepared.

Sample Checklist for Review of Proposed Plans or Plan Amendments: The attached Checklist focuses on six categories of topics that should be systematically evaluated to compare a proposed plan of a proposing entity to a plan of a reviewing entity. These categories are:

- Border issues
- Issues of greater than local concern
- Comparison with local plan contents
- Comparison with county/regional plan contents
- Comparison to other relevant adopted plans (such as an historic preservation plan, local wetland protection plan, TIF or brownfield redevelopment plan, etc.).
- Comparison to various implementation strategies.

Within each of these topic areas are questions to help guide the review. For every element in which there is an observation (problem, concern or objection) that reflected an actual or potential inconsistency, the “comment attached” box would be checked and a Response Form on that element would be completed. One may not be able to determine if there is an inconsistency, in which case, check the box “cannot determine from the plan.” The Glossary of terms (on page 5) has definitions of key terms used on this Checklist.

Sample Response Form for Review of Proposed Plans or Plan Amendments: This form is used to focus the comment to a particular element, section and page in the draft plan and explain what the observation (problem, concern or objection) is, why the reviewer thinks it is important, and to provide a suggestion for resolving the problem concern or objection. Mutual respect of a neighboring community or other reviewing entity, and professional courtesy demands no less

consideration than completing the elements on the Checklist and the Response Form. All comments should be clear, relevant and only related to significant issues. Remember, your community will someday go through the same review. In the transmittal letter of your comments to the community, be sure to indicate the following:

- Thank them for the opportunity to review and comment (if no substantive comments will be made—a prerogative of a reviewing entity—still be sure to acknowledge and provide thanks for the opportunity, but do not address the following elements).
- Identify who prepared the review comments.
- Indicate you used this Guideline, Checklist and Response form prepared by the Michigan Association of Planning and posted on their website at www.planningmi.org (under “Resources” then “Implementation Guidelines”) as the basis for preparing your response.
- Be sure to indicate the title and type of plan(s) used in your review and the date of original adoption and last update, and whether you believe the plan(s) provide a reasonable basis for your review under present circumstances (if a plan is being updated, or soon will be, be sure to mention that as well). Please note, if your plan is more than five years old and is not in the process of being updated, the proposing plan community may choose to ignore your comments, because the plan of your community (the reviewing community) is old and may be out-of-date.
- If there is a particular issue you would like to discuss by phone or in person, what that issue is.
- Where and when to contact you.
- Thank again for the opportunity to comment and offer best wishes for success.

Reply by the Community with the Proposed Plan or Plan Amendment to a Reviewing Entity:

While the Planning Enabling Acts do not require the proposing community to prepare a response to every set of comments received by a reviewing entity, at a minimum, the following elements should be addressed in a reply:

- Thank the community for taking the time to review and comment.
- Thank them for being specific and concise (which they will be if they use the attached Checklist and Response Form).
- Indicate who reviewed the comments (e.g. by staff, by the Planning Commission, governing body, etc.).
- Indicate the manner in which the comments were considered and specifically what changes, if any, to the draft plan or plan amendment that were made as a result of the comments received by the reviewing entity. In this regard the three following scenarios are most likely:
 - The proposing entity agrees with the comments of the reviewing entity and has made the following changes to the draft plan (specifically list the changes and attach the redrafted sections);
 - The proposing entity disagrees with one or more points and would like to pursue discussions to learn more and attempt to find common ground;
 - The proposing entity disagrees (as in some long standing dispute). In this case simply state you disagree and briefly explain why, and end it at that. Don't in any way insult or impugn the integrity of the other community or respondent.
- Indicate who to contact if additional follow-up was necessary or desirable and when the best time is to make such a contact.
- Indicate you welcome the opportunity to be a reviewer of proposed plans or amendments from the community.
- Thank them again for their comments.

Suggestions on Tone and Focus of Comments: In order for this process to be efficient, substantive and ultimately productive, it must also be conducted professionally.

- Efficiency is important because once a community gets to the point of having a draft plan or plan amendment approved for review, it is also usually nearly ready to adopt it and it is counterproductive to extend the adoption process any more than minimally necessary. There may also be some major land developments or major capital improvement decisions that are awaiting final plan approval, and time is usually money for those awaiting final plan approval.
- A substantive review that focuses only on significant issues, in a clear and well documented way, along with specific suggestions on how to resolve any identified problems is essential for efficiency, and to reflect the mutual respect that should exist between abutting jurisdictions and especially between professionals in abutting jurisdictions.
- Observations from reviewing entities that are clear, substantive and well documented are likely to result in some meaningful change(s) in the draft plan. This is productive and over time will improve the quality of planning on an area wide basis and will contribute to improving metropolitan quality of life.
- By all means, the review process must be conducted professionally. The professional providing reviewing comments needs to “walk in the shoes” of the professional proposing the plan or plan amendment. To be professional, all correspondence and reviewing comments or responding comments must be:
 - Prepared based on the principal of mutual respect; that means they must be
 - Factual, objective and based on sound planning principles; plus they must be
 - Polite, constructive, presented in a respectful tone, not defensive, and must be politically sensitive; in addition, they need to be
 - Clear, concise, civil, appreciative of the opportunity, and prepared in full recognition that next time, the reviewer may be the proposer and thus on the other side of the fence. Remember, this is a reciprocal relationship that will work best if both/all parties approach the issue positively, constructively, professionally, and in a timely manner.
 - Remembering the golden rule is also appropriate: *do unto others as you would have them do unto you*. Think about the level of detail and specificity of any comments you would like to receive if you were the proposing entity and intended to respond to all reviewing entities comments.

Glossary of Terms Used in the Checklist and Response Form

Following are definitions of terms used in the Checklist and the Response Form.

Inconsistent - *"not consistent; specifically, (a) lacking agreement in kind, nature, form, etc; not in harmony or accord; incompatible; as practice inconsistent with belief; (b) not uniform; not holding together; self-contradictory; as, an inconsistent narrative; (c) not holding to the same principles or practice; changeable; as inconsistent behavior."* **Webster's New Universal Unabridged Dictionary.**

Economic development - in the context of issues of greater than local concern, this refers to proposed large scale development at or near the border of a municipality that has an obvious impact beyond the borders of the municipality, such as an automobile factory, a large shopping mall, stadium, airport or mixed use development of a “new town” scale.

Environment – in the context of issues of greater than local concern, this means air quality, water quality or land pollution issues that cross municipal boundaries as with air pollutants or particulates of significance, surface or groundwater issues like floods and stormwater runoff, and contaminated soils from potential brownfield redevelopment sites.

Future Land Use Plan – Sets forth future land uses and the relationships between them, infrastructure and natural resources in a particular community for at least 20 years. If it includes detailed chapters on trends and conditions, and specific goals, objectives, policies and strategies to guide future growth and change, then it is likely to be called a Master, Comprehensive or Growth Management Plan.

Future Land Use Map – This is a map within a Future Land Use Plan that sets forth the specific locations for future land use in the community at some future point, usually about 20 years in the future (unless specified as at buildout—as would be done in a community reaching that point).

Infrastructure – in the context of issues of greater than local concern, it means physical structures that form the foundation for development that extend across municipal borders including, but not limited to: roads, highways, and railroads; public sewer and water systems; stormwater disposal systems; solid waste management facilities; oil and gas pipelines, electric power, and communications; and other transportation facilities (like airports and transit stations).

Incompatible objective – An element in a plan specifying a goal, objective or policy that is at odds with a goal, objective or policy of an adjoining jurisdiction or public agency.

Internally inconsistent – An element of a plan that contradicts or is contradicted by another element of the same plan. That element must be related to an incompatibility or conflict with the reviewing entities plan in order to be legitimate to comment on.

Issues of greater than local concern – Land uses, infrastructure or policies whose construction or implementation is of a size or scale that is large enough to have a significant, documentable, negative affect on one or more adjoining jurisdictions (see definitions of *economic development*, *environment* and *infrastructure* above).

Zone plan or zoning plan – An element of a Future Land Use Plan, Master or Comprehensive Plan that sets forth the proposed zoning districts, permitted uses, dimensional requirements and relationships between uses that is to be reflected in and to serve as the basis for the text of the local zoning ordinance and zoning map. The zoning plan should reflect existing land use, except in those areas where the community wishes to promote land use change, and then only in small amounts that reflect the amount of development that could be accommodated over the next 3-5 years. This preserves the long term integrity and focus of the Future Land Use Plan and strengthens the use of the rezoning process as a major tool to insure new development doesn't proceed unless it is consistent with the plan (i.e. a plan amendment may be needed before the rezoning can be approved).

Legal Considerations

It would seem prudent to be complete and clear in making reviewing entity comments or responses from a proposing entity, but cautiously being mindful of future potential legal entanglements. Specifically making an allegation about a proposed plan or defending an existing plan with an argument that might cause a legal challenge later on down the road, should be carefully avoided. When in doubt, consult with the municipal attorney first.

References

- APA ***Growing Smart Legislative Guidebook***, 2002 Edition, Chapter 2
- HB 4571, 2001
- Original draft of the Proposed Coordinated Planning Act as published in ***Planning & Zoning News*** in November 1999.

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