

SmartGrowthTactics

Putting the MLULC Recommendations into Action—A How to Series for Local Leaders

Michigan Zoning Enabling Act replaces state's three separate zoning statutes

It started with a phone call to the Michigan Association of Planning (MAP) office in November 2004 from then-freshman Representative Kevin Elsenheimer, R-105. Not a month into his first term of office, House Rep. Elsenheimer, a zoning attorney in Bellaire, Michigan, was anxious to introduce legislation that would have a positive impact on land use and had called to inquire about MAP's priorities for legislative action.

Recognizing the significance of the call, Rep. Elsenheimer was immediately informed about MAP's legislative agenda, our recently released "New Directions Report" (an in-depth study of Michigan's planning, zoning, and land division laws, and a series of 27 specific recommendations for change, released in March 2004) and the "Michigan Land Use Leadership Council (MLULC) Final Report" (released in August 2004). Each of these documents recommended the unification of the state's planning and zoning enabling acts.

As an attorney with expertise in land use and zoning, Rep. Elsenheimer was well aware of problems associated with local implementation of three separate zoning acts and the pressing need to create a single Zoning Enabling Act. Thus was born what would become an 18-month process to unify the Township Zoning Act (Public Act 184 of 1943), the City and Village Zoning Act (Public Act 207 of 1921), and

the County Zoning Act (Public Act 183 of 1943) into a single Zoning Act.

Unification of the state's zoning enabling legislation has long been a priority of MAP, and our law committee initiated research, review, comparison, and analysis of the three zoning acts many months before receiving the call from Rep. Elsenheimer. Already in-hand were reports, including a comparison table of the three acts which identified the text that was common to all three statutes, proposed new text to make the statutes uniform, highlighted text found only in one of the acts, as well as text proposed for removal. This line by line, color-coded comparison chart would become a critical document during the review period, widely appreciated by working group members, and it greatly simplified the unification process.

Instrumental in advancing the legislation quickly and accurately through the process was the creation of sample bill language for a single zoning act by Richard Norton, Ph.D, J.D., professor of Urban and Regional Planning at the University of Michigan, and an active member of MAP's Law Committee. The Michigan Association of Planning "bill" was forwarded by Rep. Elsenheimer to the Legislative Service Bureau (LSB), where modifications to the MAP model were made, and House Bill (HB) 4398 was introduced on February 23, 2005.

continued on page 2



The Zoning Enabling Act was presented to Governor Jennifer Granholm on March 30, 2006, after unanimous approval in both the House and Senate, and should be signed by mid April. The Act becomes effective immediately. To understand the changes and implications to local municipalities of the unification of the three zoning enabling acts into a single Michigan Zoning Enabling Act, see page 4 for training opportunities around the state.

Land use legislation aplenty in Lansing

In addition to the Michigan Zoning Enabling Act, there are many bills related to land use and planning winding their way through the Legislature.

SB 683, the Michigan Planning Act, was introduced on June 30, 2005, by Senator Patricia Birkholz, R-24, chair of the Senate Natural Resources and Environmental Affairs Committee. This bill seeks to unify the state's three planning acts: City/Village, Township, and County into a single state planning act. Sen. Birkholz spent the end of 2005 focused on water legislation, which allowed MAP to devote attention to the zoning unification with Representative Kevin Elsenheimer, R-105. Sen. Birkholz convened a working group in January 2006 to work through the Planning Act, and the group has been meeting almost every Thursday since then. Like the Zoning Act, the Planning Act seeks only to unify the three acts, and no substantive changes are likely unless all stakeholders agree. The working group is expected to work closely with Sen. Birkholz through this spring, and the bill could become law by summer. *The Michigan Association of Planning supports this bill, and is actively involved in all aspects of its creation.*

HB 5479, High School Site Plan Review, was introduced by Representative Phil LaJoy, R-21, on December 1, 2005. A similar, although more substantive, bill failed to get support in 2005, and this bill seeks to require the governing body of a public school, in townships only, to submit a site plan to the local zoning authority for the construction or expansion of a high school prior to construction. The zoning authority would review the site plan, and within 60 days, provide the school board with written comments, either concurring with the plan, or offering suggested changes. The school board is required to respond within 45 days, either by incorporating the changes into a revised plan, or providing an explanation as to why the changes will not be made. The requirement for review applies to the expansion of a high school building only if the expansion results in the square footage being increased by at least 20 percent, and for all new construction. *MAP met with Rep. LaJoy in February to discuss the bill, and emphasized to him why it is important to continue to move forward with stronger requirements for both zoning review and school siting. While this bill attempts*

to provide a review process for school construction, it is weak in that the school system still is not required to adhere to local zoning requirements, and it does not address the siting of schools or their conformance with a community's comprehensive plan. Nevertheless, this is at least an attempt to get local school districts to be informed about local zoning requirements.

HB's 5565, 5566, and 5567, Mixed Use Zoning in Counties, Cities/Villages, and Townships, was introduced by Representative Chris Kolb, D-53, on January 19, 2006, and seeks to amend the zoning acts to expressly allow mixed uses in a zoning district. This would simply make it clear that a mixed use zone could be created without having to do so by means of a PUD. *MAP maintains that additional improvements could be made to this bill, and although some changes were made at our recommendation prior to the bill going to the House Committee, Representative Kolb is interested in securing our expertise before the bill is approved.*

Upon introduction of HB 4398, which proposed the creation of the Michigan Zoning Enabling Act, Rep. Elsenheimer convened a diverse working group that met at least once a month over the next year to reach consensus on the final bill language. A working group is a common approach to bring together stakeholders to hash out the issues, and among those represented were the Michigan Association of Planning, the Michigan Municipal League (MML), the Michigan Association of Counties (MAC), the Michigan Townships Association (MTA), the Michigan Association of Home Builders (MAHB), the Michigan Association of Realtors (MAR), the Michigan Environmental Council (MEC), government agency representatives from the Department of Labor and Economic Growth (DLEG), the Department of Natural Resources (DNR), and the Department of Environmental Quality (DEQ).

Rep. Elsenheimer established clear ground rules for the work group from the start. The effort would only unify the three zoning acts, that is, no substantive changes be introduced into the discussion. Consensus on all issues would be required before the bill would move forward. And for the most part, Rep. Elsenheimer was steadfast in adherence to these principles. It should be noted, however, that several changes that are considered more substantive have been incorporated into the new legislation, but the changes were initiated by one of the stakeholders or Rep. Elsenheimer, and all stakeholders concurred with the changes and agreed that the changes would significantly improve the final statute.

Some of the more substantive changes that were incorporated into the new zoning act include:

- General reorganization of the Act into seven logical articles: Article I, General Provisions, which now includes a definition section; Article II, Zoning Authorization and Initiation; Article III, Zoning Commission; Article IV, Zoning Adoption and Enforcement; Article X, Special Zoning Provisions; Article XI, Zoning Board of Appeals; and Article XII, Statutory Compliance and Repealer. The reorganization results in a more intuitive structuring and flow of the law.
- Consolidation of all public hearing notice requirements into a single section based on the current procedures used for special land uses in all three statutes. This change is intended to create a single process for notification that works for ordinance adoption and amendment,

rezonings, special land uses, planned unit developments, variances, and other actions by the Zoning Board of Appeals (ZBA).

- The phasing out of zoning boards in townships and zoning commissions in counties over a five year period, with responsibility to be transferred to the planning commission. This consolidates planning and zoning authority in all jurisdictions to the planning commission and makes it easier to ensure zoning is based on the master plan.
- Elimination of state review of county zoning ordinances and amendments. The current process simply adds time before the decision of the county board is put into place, as there is no consistent substantive review by the state of the content of the zoning action.
- Retaining the use variance authority in cities and villages and extending it only to those townships and counties which had it in the zoning ordinance as of February 15, 2006. The use variance issue was one of the more complicated to be discussed by the work group. The Paragon case (*Paragon Properties Co. v. City of Novi*), and subsequent appellate court cases muddied the waters about which municipal entities had the legal authority to grant use variances. Although it is clear to most planning practitioners that until the recent appellate court opinion of *Grabow v. Macomb Township* (decided March 9, 2006) use variance authority was never explicitly granted to townships, and only through inadequately considered appellate court rulings did townships come to believe they had that authority. In fact, review of the history of the creation of the enabling legislation for each jurisdictional type, and subsequent case law, decidedly favors the position that only cities and villages explicitly have that power. Few townships or counties in Michigan actually use this authority



The MAP Law Committee members (left to right, Chairperson Jerry Rowe, PCP, Mark Wyckoff, FAICP, Doug Piggott, AICP, and Dr. Richard Norton, Ph.D., J.D.) received the 2005 Volunteer of the Year Award at the 2005 MAP Annual Planning Michigan Conference for their work on the Zoning Enabling Act.

(and the governing bodies of many cities and villages have prohibited their Zoning Boards of Appeal from using it either).

In an unusual twist during the work group discussions, this position on use variances was taken by both the home builders and MAP, organizations which often assume divergent positions in the land use debate, although for different reasons. MAP maintains that use variance authority, even in cities and villages, usurps the power of the legislative body, which makes (and should continue to make) final decisions about zoning for a community. The power to rezone property is effectively granted to the ZBA through the use variance authority. The home builders, on the other hand, perceive the use variance authority in townships to be yet another administrative hurdle to be conquered as they exhaust their remedies before utilizing the court system to resolve land use disputes. But nevertheless, our agendas on this matter are the same, if for different reasons, and MAP considers them an ally as we worked to rectify bill language both organizations deemed damaging.

Equally important is the role of the MTA, whose board agreed that the use variance authority should not be extended to ZBAs, but who also recognized some townships had already given use variance authority to the ZBA

based on the appellate court decisions. Thus, MTA supports the compromise language that grandfathers only those townships that had given use variance authority to the ZBA by February 15, 2006. That date was selected because it is the date the compromise was proposed jointly by MAP and the home builders with the support of MTA.

Passage of the Michigan Zoning Enabling Act is important for many reasons. Simplified language and fewer pages (the new act reduces by two-thirds the number of pages of statute) results in a zoning act that is easier for communities to understand and navigate. The many differences between three acts no longer have to be remembered, and it becomes irrelevant whether there was a rational reason for the differences. Common public notification requirements create a clear and consistent system, uniformly applied for all requests. A structure is in place that is easier to amend in the future.

A single zoning act is the first step to unifying not only a set of laws, but communities across the state who are committed to making better land use decisions.

The bill was presented to Governor Jennifer Granholm on March 30, 2006, after unanimous approval in both the House and the Senate, and should be signed by mid April.

The Michigan Association of Planning counts among its members some of the best land use and planning minds in the state, and we are privileged that a cadre of committed professionals dedicated scores of hours over the last year to this effort. MAP Law Committee members who contributed to this endeavor include Chairperson Jerry Rowe, PCP (Southeast Michigan Council of Governments), Doug Piggott, AICP, PCP (Rowe Incorporated), Cynthia Winland, AICP, PCP (Crescent Consulting, Inc.), Mary Ann Lampkin, AICP, PCP, Rebecca Harvey, AICP, and MAP Board Liaison Jane Fitzpatrick.

The Michigan Association of Planning offers special thanks to two law committee members who went well beyond the typical demands of a volunteer committee position. The expert legal skills of Dr. Richard Norton, coupled with his thorough knowledge of planning theory, were incredibly valuable to MAP and other stakeholders during this process. Dr. Norton was appointed to the law committee in October 2004, only one month before we received the call from Rep. Elsenheimer. He dove right in, volunteered to write the first draft of the “bill” that would become the model for the Michigan Zoning Enabling Act, attended work group meetings, and wrote briefs and responses which often required a turn around time of only a couple of days.

In addition, the technical expertise, keen insights on the historical aspects Michigan’s zoning laws, proficiency about land use case law, and “in the trenches” knowledge of municipal implementation of the zoning acts provided by committee member

Mark Wyckoff, FAICP, now with the Planning & Zoning Center at Michigan State University, were noteworthy. He brought to the table a resolve to accomplish this important task and a passion for excellence that inspired us all.

Also thank you to the many community planners who wrote letters of support for the zoning bill to Senator Patricia Birkholz, R-24, as it moved from the House to the Senate. Grass roots advocacy is critical, and the many voices of MAP members were heard by Sen. Birkholz and her committee.

Finally, Rep. Elsenheimer is to be commended for taking up this important legislation; for convening a diverse work group, and leading it to consensus; and for listening to stakeholder issues and thoughtfully weighing our professional considerations. Brian Mills, his chief aide, worked tirelessly on the details, never missing a beat, and kept all stakeholders well informed. Sen. Birkholz and her Chief of Staff Sally Durfee, and all members of the Natural Resources and Environmental Affairs Committee are applauded for working through the tedious use variance issue, and for their desire to clearly understand its complexities before moving forward. All deserve our thanks and continued support for their effort in taking the first step to modernize Michigan’s zoning enabling acts.

Andrea Brown, AICP, Michigan Association of Planning executive director

Michigan Zoning Enabling Act Workshop Training

The Planning & Zoning Center at MSU in conjunction with MSU Extension, the Michigan Association of Planning, and the Michigan Municipal League, will be conducting a series of statewide training programs in May and June 2006 at 15 locations throughout the state to explain the changes and implications to local municipalities of the unification of the three zoning enabling acts into a single Michigan Zoning Enabling Act. Mark Wyckoff, FAICP, will conduct the workshops. You can register on line by going to <http://web2.msue.msu.edu/pzc/register.htm>.

The dates and locations of the workshops are:

- Alpena**, Tuesday, June 6
(early reg. by May 30)
- Ann Arbor**, Wednesday, May 10
(early reg. by May 3)
- Clinton Township**, Tuesday, May 30
(early reg. by May 23)
- East Lansing**, Tuesday, June 13
(early reg. by June 6)
- Frankenmuth**, Monday, May 8
(early reg. by May 1)
- Grand Rapids**, Monday, May 15
(early reg. by May 8)
- Grayling**, Wednesday, June 7
(early reg. by May 31)
- Houghton**, Tuesday, May 23
(early reg. by May 16)
- Kalamazoo**, Tuesday, May 16
(early reg. by May 9)
- Marquette**, Wednesday, May 24
(early reg. by May 17)
- Mount Pleasant**, Thursday, June 8
(early reg. by June 1)
- Sterling** (by Standish), Monday, June 5
(early reg. by May 30)
- Southfield**, Wednesday, May 31
(early reg. by May 23)
- St. Ignace**, Thursday, May 25
(early reg. by May 18)
- Traverse City**, Thursday, May 18
(early reg. by May 11)

For more information, visit MAP’s Web site, www.planningmi.org.

SmartGrowthTactics

This publication was produced by the **Michigan Association of Planning**.

Photo credits: D. McIntyre, page 1; K. McIntyre, page 3.