



**Bill Anderson**  
MTA Legislative Liaison



## All Together Now: New Law Consolidates Three Municipal Planning Acts

*Author's note: This article will explain the new Michigan Planning Enabling Act as it relates to township planning. A handful of townships originally created their planning commissions under the provisions of the Municipal Planning Act (Public Act 285 of 1931), rather than the Township Planning Act (PA 168 of 1959). Those townships operating under the Municipal Planning Act will continue to have different statutory provisions from all other townships. Those communities should consult with their planning professionals regarding those variations.*

Five years ago, when Gov. Jennifer Granholm's Land Use Leadership Council issued its final report, the council made a major recommendation to consolidate the state's multiple laws involving zoning and planning into single statutes. Two years ago, the Michigan Zoning Enabling Act (PA 110 of 2006) was signed into law, consolidating the three municipal zoning acts. On March 13, the governor signed Senate Bill 206 into law, creating PA 33 of 2008, the Michigan Planning Enabling Act (PEA). The new planning act eliminates the three original planning acts—the Township Planning Act, County Planning Act and Municipal Planning Act—and takes effect Sept. 1, 2008.

Much like the new zoning law, the PEA was an attempt to consolidate the three major planning acts into a single new law.

While there was a general agreement to avoid major policy changes within the document, the simple consolidation process produced a laundry list of issues where procedures varied under the current laws. In some cases, differences were retained, leading to language describing two or three procedures for the same function—depending on whether the function is being carried out by township, city or county government. Other times, a uniform procedure was established, meaning some officials in the state will need to learn new procedures for certain functions.

While PA 33 creates many changes in planning commission operations, for the most part, these local boards will appear to operate in the same way that they have in the past to all but the most observant.

### PLANNING COMMISSION MEMBERSHIP

Under the new law, township planning commissions must consist of five, seven or nine members. Planning commissions with an even number of members will no longer be allowed. As under current law, all planning commission members serve for three years. However, the new law adds some additional specifics regarding the planning commission term of office, and specifies that a planning commissioner continues to serve on the commission until his or her replacement is named. This conforms to legal advice provided by the Michigan Townships Association, but that was not previously detailed by law. This addition to the law eliminates any possible ambiguity on the issue.

One member of the township board shall continue to serve on the planning commission and is referred to in the act as an "ex-officio" member. An ex-officio commission member has all of the same rights and duties as every other member except for one issue: He or she may *not* serve as commission chairperson. The law also specifies that township employees cannot serve on the planning commission.

All planning commission members must be qualified electors of the township—although, under the new law, one member may now reside *outside* of the township. This addition to the law was made after it was argued that villages had a difficult time filling positions on planning commissions due to their limited populations. Instead, villages wanted the opportunity to appoint local businessmen who might reside outside of the village limits.

Under the current Township Planning Act, planning commission members must not only be electors, but also property owners. The requirement that commission members must own property has remained in the law for many years, but the provision was found to be unconstitutional decades ago based on the equal

protection clause of the Constitution. Under the PEA, this is no longer an issue.

It must be remembered that a qualified elector does not mean that he or she is registered to vote. It simply means that he or she is *qualified* to register to vote—he or she is at least 18 years of age, is a U.S. citizen and lives in the community.

Planning commission members may only be removed from their position based on misfeasance, malfeasance or nonfeasance. Before a member can be removed for cause, the township board must hold a specific hearing for that purpose. The new law also specifies that the failure of a commission member to declare a conflict of interest is malfeasance. The PEA requires that either the township board or planning commission develop an ordinance or bylaw on conflict of interest.

Planning commission members will continue to be appointed by the township supervisor, with the concurrence of the township board. Although there were discussions on modifying this procedure, the existing system remains intact. The new law also states that commission members must represent the entire geography of the community as practicable, as well as representing the various interests of the community.

### WEIGHING IN ON MASTER PLANS

While the term “master plan” is used extensively by planners, current planning laws never put specific emphasis on that phrase—it was simply one of many terms used that actually means the same thing. The PEA identifies the master plan as the appropriate term, and in fact, states that no matter what a municipality’s plan was formally called in the past, it is now called the master plan.

The new law also gives much more definition to what should go into a master plan. All existing master plans remain in effect, regardless of the changes in law. The requirement that master plans be reviewed at least every five years to remain valid is still part of the law. The PEA also puts a focus on the desirable nature of posting the master plan on the community’s Web site. While this is not a requirement, the law does not create obstacles to the practice.

One change was made regarding amendments to master plans. The law specifically states that grammatical, typographical ►



Photo by Triumphant Photography, Grand Ledge

## Look to MTA for Your Planning and Zoning Information Needs

With all the recent changes occurring in planning and zoning law, and in popular planning tactics and strategies for your community, it might be difficult to keep track of it all. Let MTA be your guide to planning and zoning assistance!

### WORKSHOPS

In Fall 2008, we’ll be hosting workshops around the state on the latest in township planning and zoning trends and information. Look for additional information in the *Michigan Township News* and on MTA’s Web site, [www.michigantownships.org](http://www.michigantownships.org). Registration brochures will be mailed to your township later this summer.

### PUBLICATIONS

MTA is in the process of revising its popular *Township Guide to Planning & Zoning* to include updates on the new Michigan Planning Enabling Act, as well as other important revisions. Plans are also in the works for guidebooks specifically for planning commissioners and zoning board of appeals members. Look for these valuable publications later this year.

### RESOURCES

MTA’s Web site, [www.michigantownships.org](http://www.michigantownships.org), has numerous planning and zoning resources available—right at your fingertips! From handy resource toolkits and archived *Michigan Township News* articles, to sample ordinances and links to helpful information, the MTA Web site has nearly 100 pages of the information YOU need. Visit [www.michigantownships.org](http://www.michigantownships.org) and search for “planning and zoning.”

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or similar editorial changes, including the addition of approved plats, are *not* amendments to the master plan. Many community officials were concerned that every time they needed to fix a mistake or update maps based on approved new developments in the community, the formal notification requirements had to be followed to update a master plan.

PA 33 also creates a new requirement that every township with public sewers or water systems must develop an annual capital improvement plan. Although the law states that the planning commission is required to develop the plan, the township board can direct another entity or person to perform this function. Plans should look into the future to anticipate repairs, replacement and expansion of current infrastructure.

**CONFORMING WITH THE NEW LAW**

Under the Township Planning Act, planning commissions are established by a resolution. If that resolution does not conflict in any way with the new planning act, the township does not need to go through any formal procedure to remain in conformance with the law. However, if any part of the resolution creating the planning commission conflicts with the new law, the township must pass an *ordinance*—not a resolution—to adjust its operation to come into conformance. An example of this situation might be if the township’s planning commission was created with an even number of members.

Every township should review the resolution creating its plan-

ning commission to determine if any inconsistencies exist with the new law. PA 33 requires that the inconsistency be fixed as soon as any new ordinance is adopted or amended under the new act. If there are no changes to ordinances over the next few years, the law requires the change to be made to create conformity with the act no later than July 1, 2011.

In addition to now requiring ordinances to be adopted when a change is made to a planning commission resolution, there is also a special provision of the PEA that eliminates citizens’ ability to file a petition to stop the implementation of these special ordinances. This includes situations where townships are converting zoning boards to planning commissions, as required by the Michigan Zoning Enabling Act. Only special ordinances that require a township to conform with state law are exempt from right of petition. If a township is seeking to create local zoning for the first time, the law still provides citizens with veto power on this very important decision.

**GET UP TO SPEED ON CHANGES**

Now is an excellent time for township officials to take time to read the new zoning and planning laws. Even veteran planning officials have called MTA to question why a “startling new change” had been added into the consolidated zoning act, only to be told that this shocking provision had actually been part of the old law for many decades.

The same is sure to happen with the new planning act. ■