



**Michigan Association of Planning
A Chapter of the American Planning Association**

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The following text is excerpted from the Michigan Association of Planning *Planning Commissioner's Toolkit*. For more information on avoiding litigation, make sure to register for MAP's newest workshop "Risk Management," scheduled for May 2007. See page 3 for more details.

How to Avoid Litigation

The short answer to avoiding litigation is simple – you can't! Governments are always open to lawsuits, regardless of the quality of their decisions. Far too often disappointed applicants or neighbors look to the courts to solve their problems. As a result, you should not be overly influenced or concerned about whether or not your decision will result in a lawsuit – provided you have followed the ordinance and acted within your authority.

There are many things a community can do to minimize the risk of litigation or improve the chances of winning if sued.

- ◆ Keep good records. Minutes of the meetings should be complete, providing a concise summary of the issues, comments, and deliberations.
- ◆ Findings of fact. Each motion should include reasons in support of the motion, and whether to approve or deny a request. These findings should relate to the ordinance standards, comprehensive plan, conditions of the property and surrounding area, and other relevant considerations that went into the decision.
- ◆ Comprehensive plan. A well-conceived comprehensive plan should be prepared and adopted by the planning commission, consistently followed, and regularly updated. This will provide a solid foundation to support zoning actions and defend decisions in court.

- ◆ Be consistent. Every request should be evaluated on its own merits, but decision-makers should be consistent in their application of the rules and use of the comprehensive plan.
- ◆ Public comment. Use the public hearing process as a source of potentially useful information. Don't be swayed by emotions or large numbers of opponents.
- ◆ Follow notification requirements. Make sure that notices are mailed and published, meeting procedures followed and other statutory requirements adhered to.

Handling Angry People

You probably know by now that people do not generally come to a meeting in support of a particular project, most have concerns that they wish to have addressed, and many are simply opposed to what is proposed. The foremost concern that any planning commission should have is to ensure fairness for all concerned, the applicant as well as the public. To ensure fairness, keep some simple things in mind.

- ◆ Everyone must have the opportunity to speak and present evidence at public hearings. While some limitations may be placed on this right, as described earlier, no action should be taken that would deprive a person of their right to be heard.
- ◆ Most people are uncomfortable speaking in public. While the chair cannot make everyone effective speakers, he/she can make sure that meeting rules are followed and order maintained. Keeping a subtle balance between the degrees of formality required, and the degree of informality that is sometimes needed, is a learned art.
- ◆ Recognize emotional responses and treat them with concern and understanding. Land use issues, as you may have discovered, can bring out strong emotions. Strong responses, within limits, should be expected and understood. Controlling your own emotions is essential, even when the comments get personal. The chair can help things to stay calm by following meeting rules and requiring that comments be made only on the subject at hand. It is often helpful to point out what request is being made and to ensure that the public understands the limitations of the board or commission.