



*A Chapter of the American Planning Association*

**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 Republican 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, Representative 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, Representative 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 Representative 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.

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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 Representative 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.

Upon introduction of HB 4398, which proposed the creation of the Michigan Zoning Enabling Act, Representative Elsenheimer convened a diverse working group 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).

Representative 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, Representative 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 Representative 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).

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

And in an unusual twist during the work group discussions, this use variance position 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. Allowing a Zoning Board of Appeals to grant use variances, which effectively rezones a property, usurps the elected bodies authority to make zoning decisions for the jurisdiction. 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 grandparents only those townships that had given use variance authority to the ZBA by February 15, 2006. That date was

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selected because it is the date the compromise was proposed jointly by MAP and the Homebuilders 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) resulting 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 to begin with. 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.

It is expected that the bill will be signed by Governor Jennifer Granholm within a month, and will take effect July 1, 2006.

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 Representative Elsenheimer. He dove right in, volunteering to write the first draft of the "bill" that would become the model for the Michigan Zoning Enabling Act, attending work group meetings, and writing 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.

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Grass roots advocacy is critical, and the many voices of MAP members were heard by Senator Birkholz and her committee.

Finally, Representative Kevin 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. Senator Patricia 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.

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