Planning and Zoning Primer

Part One
(Part two is How To Influence Zoning Decisions)

Author and Assistance

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This program will cover

- A. Why Plan
- B. Planning
- C. Implement the plan
- D. Coordination
- E. Zoning
- F. Training, Keep up-to-date

Handouts

- These slides are reproduced on green paper.
- Detailed speaker outline are on yellow paper.
- Evaluation sheet for this training.
- Additional materials on white paper.

A. Why Plan?

- "Would you tell me please which way I ought to walk from here?" [said Alice]. 'That depends a good deal on where you want to get to,' said the cat."

– Alice's Adventures in Wonderland by Lewis Carroll (Charles Dodgson)

Sir John Tenniel -1865

A. We all Plan

- Often we plan subconsciously.
- We think ahead and prepare accordingly.
  - (We get dressed before going out of the house)
  - (We make a list before going to buy groceries)
  - (We measure before we cut the board)

A. We all Plan

- Planning as a Government; when one plans for a community:
  - Can not do it subconsciously (Open Meeting Act; we are in a democracy).
  - Must be open; include many people.
  - Must have a formal process.
  - Must have formal adoption.
A. We all Plan

- Does this all seem too complex, difficult?
  - That is a good sign because:

  “For every problem, there is one solution which is simple, neat and wrong.”
  - H. L. Mencken

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A. We all Plan

- Planning is not new:
  - New Haven (1682);
  - Philadelphia (1682); Detroit (1700);
  - New Orleans (1718); Savannah (1733);

- Our founding fathers did community planning:
  - Thomas Jefferson (Charlottesville and University of Virginia);

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A. We all Plan

- The Purpose of Planning
  - Why Plan according to Michigan Society of Planning Officials. (Wyckoff, Mark A. and others; Community Planning Handbook—Tools and Techniques for Guiding Community Change; Michigan Association of Planning; March 1992; Page 2.)

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A. We all Plan

- Zoning is based on a plan; the plan is when/where decisions are made about possible development.
  - Then: Often big picture issues are decided in the planning process.
  - By the time it is a zoning permit or amendment proposed, it is too late.
  - So: Be active in the development of the Plan. Participate. “The world is run by those who show up.”

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B. Planning

- Planning is a mix of:
  - Research, science (Fact Book)
  - Public opinion, politics for the community

- Need to do both.
  - Some say the process (that builds consensus, involves many people) is more important than the “published plan.”
B. Research

- Do not use just any “study.”
- There is good and bad research/science.
- Know the signs of good research:
  - Those standards are:
    - Was the data “double blind?”
    - Was the study peer-reviewed?
    - Can the study be repeated and get similar results?
    - The researcher does not have a stake in the outcome.

B. Public Policy

- Content of various plans
  - Manistee
  - Grand Traverse
  - Emmet County/Petoskey
  - Leelanau
  - Benzie
  - Canterbury (New Zealand)

B. Content of Plans

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C. Implement the Plan

- Zoning is not all there is
- Government has other powers that should also be used to use to promote/discourage development in different areas
  - Power of Taxation
  - Power of Spending Money
  - Police Power
  - Coordination

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C. Taxation Example

- City of Traverse City
  - Downtown Development Authority
  - Zoning District/DDA boundaries the same
  - New SEV set aside for downtown improvements:
    - Street scape
    - Parking ramp
    - Zoning design development (neo-traditional community)

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C. Spend Money Example

- Manistee County Road Commission
  - Year-round road construction to Kaleva
    - Goal: New industrial park & development
  - No road construction & closing county roads in certain forest areas: old growth, Big Manistee River
    - Goal: No development in areas important for recreation, trail use, etc. Preserve the outdoor experience, focus snowmobiles away from private lands.

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C. Police Power Examples

- Junk Ordinance.
- Sign, Billboards Ordinance.
- We will cover zoning (part E of this program)

C & D. Coordination

- The Relative Risk Analysis Project (1992) concluded "lack of integrated and coordinated land use planning" was one of the top environmental problems.
  - There are many issues and topics which cannot be dealt with in a small area, such as village, city, or township.
  - To be effective in planning for many issues, it must be done at a larger geographic scale.

D. Coordination, 2

- Economic development involves larger area than village, township, and most cities.
  - Jobs, and location of employed people is a labor market area; often an entire county or multiple counties.
  - Coordinated planning is needed to be as effective as possible for economic development: worker training, housing, new industrial sites.

D. Coordination, 3

- Ground & Surface water: One community can have a good system to protect river, lake, or groundwater.
  - Water does not stop at a political boundary.
  - Coordinated planning at a watershed (or ground-watershed) level is critical for long term success.

D. Coordination, 4

- Other topics that demand a multi-government cooperative planning approach include:
  - Natural features (lakes, rivers).
  - Technology for farming, mining, pipelines, radio transmissions.
  - Transportation networks (billboards, parking, scenic).
  - Major developments. (Have impacts on more than just one municipality (traffic, lights, etc.) reference, relevant portions of other plans adopted by other agencies and governments)
  - Can you think of others? ____________

D. Division of Authority

- Who is pulling all this together?
  - Township: decides local roads
  - Road Comm: decides primary roads
  - Township/village/city: parks
  - Township/village/city: billboards along highways
  - County: Tax reverted lands
  - USFS/DNR: Forest Management, parks, land trading
  - City/DPW/Township: Sewers & Water
  - School Board: parks, new school buildings
  - County, some townships, city village each do zoning
D. The Plan

- Who is pulling all this together?
- In Michigan it is supposed to be the Planning Process.
- Every local government in Michigan should identify those “bigger than just local concern” issues.
- Put that list on the table for coordinated planning discussion.
- County planning commission [YOU] has an opportunity to be the leader in this effort.

D. Planning Process

- Steps to plan (coordination steps in red):
  - 1. “I’m starting to plan” notice to all governments within/contiguous to the planning area.
  - 2. Conduct background studies, research.
  - 3. Prepare draft plan.
  - 4. Approve draft plan (Planning Commission & Legislative Body).
  - 5. Draft plan sent to all governments within/contiguous to the planning area.
  - 6-7. Draft plan and region/municipality’s comments on draft plan sent to county planning.
  - 10. Copies of plan sent to all governments within/contiguous to the planning area.

E. Zoning

- United States Supreme Court (Village of Euclid v. Ambler Realty Co., 272 U.S. 365 (1926)) upheld zoning as a proper exercise of the police power to protect the public welfare. (Euclid is a suburb of Cleveland, Ohio.) Court warned zoning must “find their justification in some (proper) aspect of . . . protecting the public welfare.” e.g. a Plan.
- Many Other Court Cases.

E. Enabling Statute in Michigan

- Michigan Courts ruled local government can not just adopt a zoning. Local government must be given authority to zone by Legislature (“enabling statutes”)
  - Zoning is based on a plan: Legal Basis (Know where your zoning authority comes from)
  - P.A. 110 of 2006, as amended, (being the Michigan Zoning Enabling Act, M.C.L. 125.3101 et seq.)

E. Some claim zoning is unconstitutional

- That is nonsense. (Village of Euclid v. Ambler Realty Co., U.S. Supreme Court)
- It is possible for part of a specific zoning ordinance to be unlawful, unconstitutional
- Big difference between:
  - Zoning is unconstitutional (not true), and
  - A specific part of a particular zoning ordinance is unconstitutional.
E. Zoning is:
• Use of Land
• Form
• Impact on land and adjacent uses

E. Zoning is not:
• to promote/oppose economic, racial, or religious views.
• enforcement of private deed restrictions.
• a solution for neighborhood feuds or personal quarrels.
• a promoter of development (it merely permits it).
• a tool for the political arena (to reward/punish others).
• a public popularity contest – zoning decisions are to be based on facts, not majority of votes.

E. Zoning Limitations:
• General Rule:
  • Cannot totally prohibit anything. (Must have a place for it somewhere when a need is demonstrated....)
  • Must allow continued use of nonconforming (grandfathered) land uses.
  • Cannot result in a taking of private property without paying for it.
  • Must provide for due process of law and equal protection under law.

E. Zoning Limitations:
• Outright Preemption of local zoning:
  • Hazardous waste disposal
  • Solid Waste Facilities (landfills) (See county Solid Waste Plan)
  • Utility lines (electric, phone, etc.)
  • Wind energy power transmission lines in designated resource zones
  • Pipelines regulated by the PSC

E. Zoning Limitations:
• Outright Preemption of local zoning:
  • Railroads
  • State prisons and public correctional facilities
  • Oil and Gas wells
  • Surface coal mining
  • Water pollution and Non-point source pollution regulations

E. Zoning Limitations:
• Aspects of a farm, “agricultural” that is already covered in Right to Farm Act or in a Generally Accepted Agricultural and Management Practices:
  • Manure management and utilization
  • Pesticide utilization and pest control
  • Nutrient utilization
  • Care of farm animals
  • Cranberry production
  • Site selection and odor control of livestock production facilities
  • Irrigation water use
  • Farm Markets
E. Zoning Limitations:

- Outright Preemption of local zoning:
  - Fertilizer regulation
  - Mackinac Island Park Authority activity on state land
  - State fairgrounds
  - Trails designated by DNR as “Michigan Trailways”
  - State Police radio communication system
  - State-owned armories etc. for military uses
  - Nuclear power facilities
  - United States military facilities

- Outright Preemption --sort of:
  - Mobile home parks
  - Activities of the United States Government
    - Federal government must consider local ordinances
    - Must follow them to “the maximum extent feasible”
    - Shall not obtain a local permit.
  - Nonferrous metallic mineral mining
  - Certain aspects of extraction (mining) of natural resources.

- If one is permitted, then also permit:
  - If zoned “residential” (2, or fewer, units per acre) then must provide for “open space”/“cluster” development
  - If dwellings are permitted, then must allow mobile homes
  - If dwellings are permitted, then must allow “state licensed residential facilities”
  - If dwellings are permitted, then must allow craft/fine art home occupations
  - If dwellings are permitted in a county or township, then must allow day-care
  - If a county zones an area commercial, (or similar, or if not zoned at all) then must permit billboards.
  - If allows farms then must permit biofuel production under a certain size

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E. Zoning Limitations:
- Can Regulate, but not prohibit:
  - Content of a sign.
  - Religious activities/land uses
  - Adult entertainment/sexually oriented businesses
  - Shooting ranges (gun clubs)
  - Medical Marihuana

- Can Regulate, but must be as strict or stricter than the state:
  - Air Pollution regulations
  - Airport zoning
  - High risk erosion areas (along the Great Lakes)
  - Designated sand dune protection
  - State Natural Rivers protection
  - Wetlands regulations/protection
  - Floodplains
  - Soil Erosion and sedimentation
  - Disposal of Septage

E. Division of duties and types of zoning decisions
- Three parts
  - Executive/Administrative
  - Legislative
  - Quasi Judicial

E. Division of duties

<table>
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<tr>
<th>ZONING ADMINISTRATOR</th>
<th>PLANNING COMMISSION</th>
<th>LEGISLATIVE BODY</th>
<th>APPEALS BOARD</th>
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<tbody>
<tr>
<td>Permits</td>
<td>Adopts plan (recommends adopting plan)</td>
<td>Might adopt plan (active in plan adoption)</td>
<td>Hear appeal of zoning administrator decision</td>
</tr>
<tr>
<td>Receive applications for special use, PUD, site plans and checks for completeness</td>
<td>Acts on special use, PUD permits (usually)</td>
<td>Appoints members of planning commission, appeals board, may hire zoning administrator</td>
<td>Hear appeal on special use, PUD, only if zoning says</td>
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<tr>
<td>Enforcement</td>
<td>Conduct hearing and make recommendation on zoning amendments</td>
<td>Adopt zoning amendments (might hold additional hearing)</td>
<td>Hear appeal on interpretation of zoning ordinance</td>
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<tr>
<td>Collect fees</td>
<td>Sets fees</td>
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<td>Hear requests for variances</td>
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Creating Local Diversity on Boards and Commissions
- Review local census data
- Identify underrepresented populations
- Reach out to women and minority populations in your community

E. Typical Zoning Ordinance Table of Contents
- Legal Authority
- Definitions
- General Provisions (regulations that apply everywhere)
- Specific special use standards
- Reference to zoning map
- Zoning Districts (regulations unique to a zoning district)
  - Special areas, Environmental
  - Farms/Forests
  - Rural residential
  - Residential
- Commercial
- Industrial
- Overlay
- Zoning Administrator
- Permits
- Site Plans
- Special Use Permits
- Planned Unit Development
- Appeals Board
- Enforcement
- Amendments
E. Zoning Functions
• A. Permits (must be specifically listed)
• B. Special Use Permits (must be specifically listed)
• C. Amendments (based on a Plan)
• D. Variances, Appeals

E. Zoning Actions
• The Public has influence on b. Special Uses, c. Amendments, d. Variances & Appeals (public notices, hearing, or similar)
  • Means any of the following can participate and make submissions:
    • Applicant/Developer
    • Neighborhood wishing to support or oppose
    • Local government/agency wishing to support or oppose, or provide facts.

E. Zoning Actions
• Little public influence on:
  • Permits (no review)
  • Apply; zoning administrator issues/denies permit often the same day
  • Decision on what is a permitted use (listed in zoning ordinance) made in preparing the plan; writing the zoning ordinance.
• Zoning Amendments
  • Decision based on the plan – influence is in preparing the plan.

E. Permits
• The general “land use permit” or “zoning permit.”
  • A person makes application, pays fee, the administrator checks for compliance
  • Use must be specifically listed in the zoning ordinance for the district
  • Each district should have a list of permitted uses
  • If not listed, the permit can not be issued
  • An example would be a permit for a house in a residential zoning district.

E. Special Use Permit (incl. PUD)
• The “special use permit” or “conditional use permit” or “discretionary permit.”
  • It is for land uses which may be allowed in a particular district
  • If certain standards and conditions are met

E. Special Use Permit (incl. PUD)
• Process:
  • A person makes application, pays a fee, the administrator makes sure application is complete, forwards to planning commission
  • The planning commission will meet and decide whether to issue the special use permit
  • The decision often requires a public hearing first.
  • May require a performance bond to guarantee compliance
E. Special Use Permit (incl. PUD)

- Special use must be specifically listed in the zoning ordinance for the district.
- If not listed, the special use permit can not be issued.
- Special use generally for land uses which are borderline to being appropriate for the area.
- The use may/may not have an adverse impact on surrounding land.
- The idea is the use is not appropriate for the district, but could be okay if it meets standards.

E. Special Use Permit (incl. PUD)

- An example would be a permit for a party store in a residential zoning district.
- Standards, conditions might include:
  - A hedge, tree border so it is not seen by neighbors,
  - Lighting which is shaded so it does not shine off property,
  - Entrance and location only on main roads,
  - Hours to avoid late night noise.

E. Special Use Permit Standards:

- Focus is on “Standards.”
- Rule: If all the “standards” are met; then must approve.
- Special Use permit is an administrative action.
- Notices that someone has applied sent to everyone within/around 300 feet & in newspaper.

E. Planned Unit Development

- A Planned Unit Development (PUD) is commonly used to allow for cluster development, mixed uses in a single development.
- Can be handled as a special use permit (above).
- Can be handled as a zoning amendment (below).

E. Zoning Amendment (incl. PUD)

- Zoning is based on a Plan.
- An amendment to zoning must also be based on (follow) the Plan.
- Zoning amendment is a legislative action.
- The elected officials have much more discretion on adopting, or not adopting, a zoning amendment.
E. Zoning Amendment (incl. PUD)

- Two types of zoning amendments:
  - Changes a zoning district boundary on the zoning map
  - Changes the text of the zoning ordinance.

E. Amendments change a lot

- A zoning amendment makes changes for more than just what is being proposed.
  - A text amendment might change rules for an entire zoning district, or the entire area under that zoning ordinance – not just the property that someone is proposing something for.
  - A map amendment means any of the permitted or special uses can happen, not just what someone is proposing on that day.

E. Amendments process

- Briefly, the amending process includes:
  - A. the planning commission studying the proposed amendment,
  - B. planning commission writing the text of the amendment,
  - C. planning commission giving proper hearing notices:
    - sent to everyone within/around 300 feet & in newspaper, (if rezoning is 10 or fewer parcels) or
    - in newspaper (if rezoning is 11 or more parcels).
  - D. planning commission holds at least one public hearing: attend with submissions

E. Amendments process, 2

- Briefly, the amending process includes:
  - E. action by the planning commission to recommend elected body adopt the amendment,
  - F. in a city or village: can file a protest petition (abutter’s challenge).
    - See a lawyer to do this.
    - Do not delay. There are deadlines and things that must be done within a certain amount of time.

E. Amendments process, 3

- Briefly, the amending process includes:
  - G. action by the Legislative Body to adopt the amendment and giving it a date in which it takes effect,
  - Legislative Body can:
    - Adopt proposed amendment, as recommended.
    - Hold additional Hearing(s).
    - Attend and give submissions
    - Return proposed amendment to the Planning Commission for further study.
    - When a proposed amendment comes back a second time, the Elected body can adopt, hold hearings, or reject it.
  - H. publication of a "notice of ordinance adoption."
  - I. Petition for an election (if a township or county)

- There are no shortcuts and each step, fully documented, is important. Proper notice forms, timing requirements, etc., must be followed.
E. Still not happy?
• If the Amendment is adopted and one is still opposed to it:
  • Can petition to bring the amendment to a vote of the people (maybe not in a city/village).
  • See a lawyer to do this.
  • Do not delay. There are deadlines and things that must be done within a certain amount of time.

E. Appeals / Variances
• Appeals Board does four things:
  • Interpretation of the Zoning Ordinance
  • Interpretation of the Zoning Map
  • Issues Dimensional/Regulation and use (sometimes) Variances
  • Appeal administrative decisions

E. Appeals / Variances
• Who can appeal?
  • Any aggrieved person
  • Officer, department, board, bureau of the state
  • Officer, department, board, bureau of the local unit of government.

E. Appeal, Interpretations
• Appeal decision of the Zoning Administrator.
  Text, Map: Interpretations
  • “Administrative appeal” and “ordinance interpretations” occur when someone is asking the appeals board to double-check a decision of the zoning administrator.
  • There will be cases where the permit applicant, zoning administrator, and planning commission will read the ordinance, or look at the zoning map, and decide the wording means two different things, or not agree on where a zoning district boundary is located.

E. Appeal, Interpretations
• For text interpretation issues (=standards):
  • Research zoning ordinance, old minutes, etc.
  • Consider in context of entire ordinance, section.
  • Review the definitions in the ordinance.
  • Review other zoning districts. If questioning “if it is allowed in one zoning district?”, and it is listed in another district, but not the one district, then the answer is likely “no.”
  • Seek advice of planning and legal counsel.
  • When it is not clear how to interpret, benefit of doubt is extended to the property owner.

E. Appeal, Interpretations
• For map interpretation issues:
  • (see specific rules spelled out in the zoning ordinance ( § 1807 or § 18XX) e.g. = to standards).
E. Appeal, Variance

• Request a Regulation Variance.
  • Grant an exception to regulations for a given use in a zoning ordinance — such as lot size, yard setbacks, building height, building size, parking requirements, etc.
  • Appeals board find that a "practical difficulty" exists. Thus, one of the regulations must be waived.

E. Appeal, Variance, continued.

• Example: Parcel is large enough to use, but because it has a pond, a minimum-size house would not fit between the pond (water setback) and the setback from the road or property line. In such a case, a variance to the setback for the side yard setback or road setback may be appropriate.

E. Appeal, Variance

• A regulation variance should be difficult to obtain.
  “Practical difficulty” (court established standards):
  • Will strict compliance with the dimensional requirements of the zoning ordinance prevent the applicant from using the property for the permitted purpose?
  • Will granting the variance be fair to the applicant or would a lesser variance work just as well?
  • Is the need for the variance due to a situation that is unique to the property and would not generally be found elsewhere in the same zoning district?
  • If granted, will the variance uphold the spirit and intent of the ordinance and be fair to neighboring properties?
  • Has the need for the variance been created by some action of the applicant?

E. Appeal, Use Variance

• Request a Use Variance.

• A county and township appeals board may not have the authority to grant use variances.

• Can grant use variance if:
  • A city or village.
  • A township or county that has zoning which prior to February 15, 2006 specifically authorizes granting use variances: “Use variance” or “variances from uses of land.”
  • A township or county that actually granted one or more use variances before February 15, 2006.

E. Appeal, Use Variance

• A use variance should be almost impossible to obtain.
  “Unnecessary hardship” (court established standards):
  • The property owner must show credible proof his property will not yield a reasonable (any) return if used only for a purpose allowed by the ordinance.
  • The property owner must show the zoning ordinance gives rise to hardship amounting to confiscation or the disadvantage must be so great as to deprive the owner of all reasonable use of the property
  • The need for the variance is not created by some action of the applicant.
  • The need for the variance is due to a situation that is unique to the property and would not generally be found elsewhere in the same zoning district.
E. All appeals

- Notices that someone has asked for a variance must be sent to everyone within/around 300 feet & in newspaper.
- If all else fails, go to court.

E. Zoning Enforcement

- Zoning administrator’s Duty: Responsible for making sure the zoning ordinance is complied with
  - Making sure no construction and no changes in the use of land take place without permits, when needed.
  - Making sure, once a permit is issued, the work is done as approved.

E. Zoning Enforcement

- There are three types of legal actions:
  - Criminal: pursuing the violation as a criminal matter.
  - Injunctive relief in Circuit Court: A civil action in Circuit Court to stop the violation.
  - Civil infraction: The newest technique is to use process of writing a ticket, similar to a traffic ticket (not a criminal matter).

E. Zoning Enforcement

- Techniques to obtain voluntary compliance.
  - Zoning administrator travels to find possible violations before improper construction or use has progressed too far. Catching a situation early means many more options for voluntary compliance.
  - Zoning administrator should be an extra pair of “eyes and ears” for the various agencies which enforce other similar statutes and regulations.
    - to report to them possible violations to their respective statutes; to help them find the location and to help make sure that an actual violation is pursued through appropriate channels.

E. Zoning Enforcement

- Maintain a good working relationship with other agencies.
  - When a zoning administrator encounters a hostile individual bring another person along to see him. Others can be the building inspector, DEQ inspector, Health Department sanitarian, Sheriff’s deputy and/or others.
  - Bringing another is often the technique which obtains the individual’s cooperation.
  - In some cases, the problem will also involve the Construction Code, environmental statutes, and/or Health or Sanitary Code and other violations. Should coordinate with those enforcement officers in such cases.

F. Training, Keep up-to-date

- Subscribe to: Planning and Zoning News©:
  - Mark A. Wyckoff, Editor, 715 N. Cedar Street, Lansing, Michigan 48906-5206, Phone: (517)886-0555, Fax: (517)886-0564
  - www.pzcenter.com
F. Training, Keep up-to-date

- MSUE Training programs
  - Training in response to specific needs and requests.
  - Contact your MSU Extension Land Use Educator
    - www.msue.msu.edu
- MSUE Bulletins (formal and informal):
  - Schindler’s own web page of training programs:
    - www.msue.msu.edu/lu/

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F. Training, Keep up-to-date

- Seven class series. (21 class hours)
- Contact:
  - http://msue.anr.msu.edu/program/info/michigan_citizen_planner

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F. Training, Keep up-to-date

- Membership (conferences, training programs): Michigan Association of Planning (MAP), 219 South Main Street-Suite 300, Ann Arbor, Michigan 48104. phone: (734)913-2000 fax: (734)913-2061. info@planningmi.org
  - Includes subscription: Michigan Planner magazine.
- (Michigan is unique, weak planning and zoning laws compared to many other states. A national organization is not always germane.)
  - But APA has many services: technical reports (Planning Advisory Service), books to order, APA Journals (of peer reviewed research academic and science papers), JobMart (job advertisements), American Institute of Certified Planners (professional planner certification), and smaller newsletters specializing in topics (economic development, environment, housing, planning law, small towns and rural planning, transportation, urban design).
  - APA, 122 S. Michigan Avenue, Suite 1600, Chicago, Illinois 60603-6107, Phone: (312)431-9100, Fax: (312)431-9985
  - http://www.planning.org/

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Thank you

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February 17, 2015

What we covered

- A. Why Plan
- B. Planning
- C. Implement the plan
- D. Coordination
- E. Zoning
- F. Training, Keep up-to-date
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