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### MEMORANDUM

To: Washtenaw County Board of Commissioners  
Washtenaw County Planning Advisory Board

From: Curtis N. Hedger  
Office of Corporation Counsel

Re: Appointment of Planning Representative to the Washtenaw County Parks and  
Recreation Commission

Date: May 13, 2008

My office has been asked to review and comment on the “planning” representative to the Washtenaw County Parks and Recreation Commission (“WCPRC”). Specifically, the issues to be answered are who is entitled to serve in this slot and which public body has the authority to appoint the individual for this position.

MCLA 46.351 specifically states who shall serve on a county parks and recreation commission. Section (2)(c)(ii) of this statute provides for a planning representative to this body. This section of the statute defines this member as follows:

In a county with a population of 1,000,000 or less, the chairperson of the county planning commission or another member of the county planning commission designated by the county planning commission. In a county that does not have a county planning commission; the chairperson of the regional planning commission shall serve on the county parks and recreation commission if that person is a resident of the county. If the chairperson of the regional planning commission is not a resident of that county, then the board shall, by a 2/3 vote, appoint a member of the regional planning commission who is a resident of that county to serve on the county parks and recreation commission.

Washtenaw County no longer maintains a Planning Commission. On September 18, 2002, the Board of Commissioners (“BOC”) in Resolution #02-0175 dissolved the Washtenaw County Metropolitan Planning Commission and assumed the planning duties formerly being

done by the Planning Commission. These include developing a County basic development plan along with reviewing proposed township basic development plans. To assist it in completing these duties, in the same Resolution, the Board of Commissioners created the Washtenaw County Planning Advisory Board (“PAB”). The PAB was charged in part, with developing a county basic development plan as well as reviewing pending township basic development plans with the PAB making recommendations for final approval by the Board of Commissioners on both of these matters.

The PAB was originally created with thirteen members representing a number of areas. On December 5, 2007 (Resolution #07-0240), the Board of Commissioners approved revisions to the PAB Bylaws to increase local government representation on the PAB. The PAB is now comprised of the following members: (1) three Board of Commissioner representatives who serve only during their time on the BOC; (2) one Economic Development representative; (3) one Transportation representative; (4) one Community Development/Urban County representative; (5) one Chelsea Area Planning Team/Dexter Area Region Group representative; (6) one Milan Organizational Region for Excellence Regional Group Representative; (7) one Saline Sustainability Circle Regional Group Representative; (8) one Southwest Washtenaw Council of Government Regional Group Representative; (9) one Washtenaw Metro Alliance Regional Group representative; and (10) three At-large public citizen representatives. In addition, the following positions serve the PAB as Ex-Officio, non-voting members: (1) Washtenaw County Drain Commission; (2) one Board of Public Works representative; (3) one Parks and Recreation Commission representative; and (4) one Workforce Development Board representative.

The September 18, 2002 Resolution also adopted the “Charge and duties” of the PAB. Among the duties specifically given by the Board of Commissioners to the PAB was “[t]o represent planning issues on Boards and Commissions as designated by the BOC.”

### **Who May Serve as the “Planning” Representative to the WCPRC?**

As noted above, for those counties that have planning commissions or participate in regional planning commissions, the “planning” representative to the parks and recreation commission is plainly stated by statute, *see*, MCLA 46.351(2)(c)(ii). For those counties such as Washtenaw County, that do not maintain a planning commission or participate in a regional planning commission, however, this selection to the parks and recreation commission is not so clear cut.

Under the County Planning Act, MCLA 125.101 et. seq., a county has the option to establish a planning commission. For those counties that choose not to create a planning commission, the board of commissioners fulfills those statutory planning duties. Since abolishing the Washtenaw County Metropolitan Planning Commission in 2002, the Board of Commissioners has fulfilled the statutory duties that otherwise would be the planning

commission's responsibility. Nowhere in the County Planning Act, however, does it state that a county board of commissioners which chooses to directly fulfill the duties which might be given to a planning commission, sits as the official "planning commission" for that county. Likewise, the Michigan Legislature recently enacted the Michigan Planning Enabling Act. This Act, which will take effect on September 1, 2008, will supersede existing county, city, township and village planning statutes, including the County Planning Act cited above. A careful review of this new statute reveals that while a county board of commissioners may again choose to directly fulfill the duties ordinarily given to a planning commission (review and approval of county master plan, advisory review of township master plan, etc.), instead of creating a separate planning commission, such counties still do not sit as the official "planning commission" for that County.

The distinction between a county "planning commission" and a county board of commissioners which chooses to directly fulfill the duties of a planning commission is critical when it comes to determining the planning representative to a county parks and recreation commission board. As noted above, MCLA 46.351 specifically states that one of the members of the parks and recreation commission is to be the "chairperson of the county planning commission or another member of the county planning commission designated by the county planning commission." For those counties without a planning commission, the representative should be appointed from the regional planning commission. In a county that does not have a planning commission, and does not participate in a regional planning commission, neither of these processes would apply. As a result, the plain language of the statute does not provide an answer on who is eligible to fulfill this position when the county has no planning commission.

In the present situation, Washtenaw County has no formal Planning Commission and does not participate in a regional planning commission; as such, the process for choosing a planning representative to the WCPRC found in MCLA 46.351 would not apply. However, as noted above, when the Board of Commissioners created the PAB, it also adopted a number of Charges and Duties for that body to fulfill. Significantly, one of those duties is, "[t]o represent planning issues on Boards and Commissions as designated by the BOC." In my opinion, this language reflects the desire of the Board of Commissioners that the PAB continue the role of the former Washtenaw County Metropolitan Planning Commission in representing planning issues on various Boards and Commissioners throughout the County, including the WCPRC. It should also be noted that this duty does not limit such representation to those PAB members who are also members of the BOC. While one could argue that only BOC members of the PAB should be appointed to represent the County/PAB on other governmental bodies because they are directly accountable to the voters, no such restriction was approved by the BOC when it approved the PAB's Charges and Duties as part of the September 18, 2002 Resolution; accordingly, it is my opinion that any member of the PAB is eligible to serve as the planning representative to the WCPRC.

### **Appointment of Planning Representative to the WCPRC**

The second issue to be addressed is which governmental body should appoint the PAB member to the WCPRC. Again, a quick review of the PAB's Charges and Duties reveals that the BOC intended for the PAB to represent planning issues on various Boards and Commissions throughout the County, "as designed by the BOC." This language leaves no doubt that the PAB representative to the WCPRC must ultimately be appointed by the BOC. However, the BOC created the PAB to act as an advisory body on planning issues to the BOC. Therefore, it would make sense to have the PAB recommend one of their members to the BOC as the WCPRC representative. While the BOC would presumably give significant weight to the PAB's recommended choice, it would not be bound by the recommendation and would be free to appoint any member of the PAB to serve as the planning representative to the WCPRC.

### **Conclusion**

Under Michigan law, the chairperson or another member of a county planning commission is to be a member of a county parks and recreation commission. If the county does not have a planning commission, a member of the regional planning commission is to serve as the planning representative to the parks and recreation commission. The statute is silent on how the position is to be filled if the county has no planning commission or regional planning commission.

On September 18, 2002, the BOC dissolved the Metropolitan Planning Commission and assumed the responsibility to complete the statutory duties of that body. To assist it in this function, it created the PAB as an advisory planning group to advise the BOC on all planning matters upon which the BOC must take action. In addition, the BOC approved a list of Charges and Duties for the PAB to complete. One of the PAB duties was to "represent planning issues on Boards and Commissions as designated by the BOC." The verbiage used in this duty demonstrates that the BOC intended for a member of the PAB to serve as the planning representative to the WCPRC. While the PAB, as an advisory board, can recommend which of its members the BOC should appoint for this position, it is ultimately the BOC's responsibility which PAB member to appoint to the WCPRC.

cc: Robert E. Guenzel, County Administrator  
Anthony VanDerworp, Director Planning and Environment  
Patricia Denig, Director of Planning Services

h: opinions/pabprc