

AGENDA
EATON AREA JOINT PLANNING COMMISSION
TUESDAY, JULY 28, 2026 AT 6:00 PM
BASEMENT CONFERENCE ROOM
551 COURTHOUSE DRIVE, CHARLOTTE MI 48813

1. Call to Order
2. Pledge of Allegiance
3. Attendance-Roll Call
4. Approval of Agenda
5. Disclose Conflict of Interest
6. Approval of June 23, 2026 meeting minutes
7. Approval of June 29, 2026 special meeting minutes
8. Reports
 - a. Legal
 - b. Zoning
 - c. Chairman
9. Old Business
 - a. Zoning Board of Appeals Discussion
 - b. Logo – Vision & Values
10. New Business
 - a. Training Planning & Zoning Basics
 - b. 11994 W Grand Ledge HWY Development discussion
 - i. Proposed Gas Station – No action will be taken.
 - c. FOIA Procedures and Guidelines
 - d. Approval of General Liability Insurance
11. Public Comment
12. General Discussion
13. Adjournment

NEXT MEETING: Tuesday, August 25, 2026, at 6:00 PM
LOCATION: 551 Courthouse Drive, Charlotte, MI 48813

DRAFT MINUTES
EATON AREA JOINT PLANNING COMMISSION
TUESDAY JUNE 23, 2026 AT 6:00 PM
BELLEVUE TOWNSHIP HALL, 121 N MAIN ST, BELLEVUE MI 49021

1. Chairman Thering Called the meeting to order at 6:00 pm.
Commissioners Present: Lawitzke, Orr, Carlson, Scramlin, Owens, Thering
Commissioners Absent: Shettler
2. Pledge of Allegiance
3. Approval of the Agenda

Motioned by Treasurer Orr to approve agenda.
Supported by Commissioner Owens.
Motion carried unanimously.
4. Approval of June 11, 2026 Minutes

Motion by Treasurer Orr to approve with the addition of Treasurer Orr as support for the motions to set the Planning Commission and Zoning Board of appeals rates.
Supported by Commissioner Owens.
Motion carried unanimously.
5. Reports
 - a. Lawyers - Attorney Hannah Stocker presented the lawyer's report. Stocker stated that the JPC could receive training for a fee to the JPC. Billing options and distribution were discussed. Stocker stated that a full bill would be provided to the EAJPC soon.
 - b. Zoning Administrators – Zoning Administrators (ZA) Andrea Hendrick was present and had no additional items.
 - c. Chairman Doug Thering presented the Chairman's report. He stated that ZA Hendrick and he had toured the new office located at 551 Courthouse Drive Suite #1. The Planning Commission discussed the logistical needs of the office. Planning Commission Hears will be held at the basement level of the office space, in a meeting room that holds roughly 68 people. The office is ADA accessible. Office hours will begin July 14th. The County is in the process of signing the final lease. Internet is not available currently.
6. Old Business

- a. Approval of contract with McKenna as zoning administrator. The contract with McKenna was previously approved. The attorney is reviewing and signatures are anticipated shortly.
- b. Resolution 2026-03 Budget discussion

The JPC will hold a budget discussion on June 29th, 2026. The budget year will be from July 1 through March 31st. The Chair projected out for the 27/28 JPC and estimated that fees would be decreased over time. Permit fees are unknown at this point, but a flood of permits is anticipated. Two thirds of the Townships need to adopt the budget, otherwise the budget would default to the county. Payment fee will be managed through clover. The cost of public noticing will be charged to the applicant through escrow.

- c. Resolution 2026-04 Resolution to Adopt the Zoning Fees

The fee schedule is based on the planning consultant fees with some overhead of around \$200 per application. The JPC discussed whether the credit card fee should be charged directly to the applicant or build into fee.

**Motion by Commissioner Owens to adopt the Zoning Fee Schedule.
Supported by Lawitzke.
Motion passed unanimously**

- d. The Planning Commission discussed administrative set up including the following:
 - a. Various details of the office.
 - b. JPC contact number will be (269) 312-7123.
 - c. JPC office address will be 551 Courthouse Drive Suite #1.
 - d. Notices will be posted by Doug when necessary.
 - e. Internet service options were discussed.
 - f. BSA options are being explored for permit management. Currently the County has all the previous planning and zoning data.
 - g. File management – Backup hard-drive to be saved at the office. The administrator may wish to require a thumb drive with large plans.
 - h. The administrator will secure a .gov.
 - i. The website can be modelled after the Wexford JPC Website.
 - j. Identity – a logo and letterhead is needed
 - k. Who has jurisdiction over previously approved land use approval
 - l. A PO Box will be set up soon.
 - m. The board will be securing Insurance & Sales Tax Exemption
 - n. There are multiple options for training that will be explored including
 - i. MSU Extension Training
 - ii. Michigan Association of Planning
 - iii. MTA – Hot Topics in Planning & Zoning
 - o. Hours of operation will likely be 9:00 am to 5:00 pm.
 - p. Payments to commissioners will be paid quarterly.

7. New Business

a. 2026-05 Commission Purchasing Policy

Motion was made by Commissioner Carlson to adopt the Commission Purchasing Policy with an amendment to Section 3.B.(2) to read - The requirement to obtain 3 bids may be waived by a majority vote of the JPC. Supported by Commissioner Owens.

Yay: Lawitzke, Orr, Carlson, Scramlin, Owens, Thering

No: None

Motion passed unanimously.

b. 2026-06 Commission Communications Policy

Motion by Commissioner Owens to adopt the Communications Policy with an amendment to the name of the policy to be the EAJPC “Consultant” Communications Policy.

Supported by Commissioner Scramlin

Yay: Lawitzke, Orr, Carlson, Scramlin, Owens, Thering

No: None

Motion passed unanimously.

8. Public Comment - There was no public comment.

9. Proposed Business for Next Regular Meeting

- a. Interviewing Engineer of record for review.
- b. Training
- c. Establish Monthly Report Structure
 - i. Applications – Progress
 - ii. Enforcement – Progress
- d. FOIA Policy and Procedures
- e. Comb through the Interim Zoning Ordinance

10. General Discussion - There was no general discussion.

11. Adjournment

Commissioner Owens made a motion to adjourn. Seconded by Scramlin

Motion passed unanimously

**DRAFT MEETING MINUTES
EATON AREA JOINT PLANNING COMMISSION
MONDAY, JUNE 29, 2026 AT 6:00 PM
BELLEVUE TOWNSHIP HALL, 121 N MAIN ST, BELLEVUE MI 49021**

1. Call to Order
2. Pledge of Allegiance
3. Attendance-Roll Call
 - a. Present: Lawitzke, Orr, Carlson, Scramlin, Owens, Chairman Thering
 - b. Absent: Shettler
 - c. Staff: Kyle Mucha, AICP – Planning Consultant
 - d. General Public: four (4)
4. Approval of Agenda
 - a. Scramlin motioned, with support from Orr, to approve the agenda as presented. Upon voice vote, motion passed 6-0.
5. Reports
 - a. Chairman: provided a synopsis of available training via Michigan Township Association (MTA).
6. Old Business
 - a. General housekeeping items:

Orr provided an update on the keys for the P.O. Box, as well as office keys and internet service for the office, which will be located in the County building. Orr referenced that internet service is still under review and availability to the building.
 - b. Approval of contract with Eaton County

Thering provided an overview of the proposed contract with the County to rent space in the County building. The Commission reviewed the proposed contract language and recommended that edits be made, such as the lease terms being from July 14 to July 13 of the following year, name corrections to reference the EAJPC and not the County, and incorporating the PO Box as the mailing address.

Scramlin motioned, with support from Owens, to approve the contract with the proposed modifications. Upon voice vote, motion passed unanimously 6-0.
7. New Business
 - a. **Approval of the 2026-2027 Budget**

Chair Thering opened the public hearing, allowing any interested person present to speak to the topic at hand.

Chair Thering presented the proposed budget for consideration by the Commission. Discussion followed regarding lawyer fees, expenses to be contributed from each community and how such contributions will be calculated. Chair Thering noted that the fiscal year would begin April 1 and end on March 31 of the following year.

There being no further discussion, Owens motioned, with support from Lawitzkey, to recommend approval of the proposed budget to each individual township. Upon roll call vote: Lawitzke – yes; Orr – yes; Carlson – yes; Scramlin – yes; Owens – yes; Thering – yes. Motion passed 6-0.

8. Public Comment

- a. None

9. General Discussion

- a. Training:

The Commission discussed potential training on July 28th in order to better understand duties and responsibilities of the Planning Commission. Mucha noted that McKenna will pull together training materials and continue to bring forth common elements for educational components during meetings.

- b. Procedural Steps

The Commission discussed establishing procedural steps for application reviews, information distribution and other foundational processes in order to most effectively administer the joint zoning ordinance.

- c. Meeting Dates

The Commission discussed publishing meeting dates online [where applicable] and at the respective community town halls for the general public.

- d. Joint Zoning Board of Appeals

Mucha inquired with the Commission if a Zoning Board of Appeals has been established. Chair Thering noted that a ZBA has not yet been established. Mucha highly encouraged the Commission to take the necessary steps to establish such a body.

- e. Attorney Communication

Mucha inquired as to whom of the Commission should be copied on communications with the EAJPC legal team. Upon discussion, the Commission requested that the Chair and Vice Chair be copied on communications in order to stay abreast of what topics and items need to be addressed.

- f. Frequently Asked Questions

The Commission requested that an FAQ sheet be prepared over the coming month(s) to address the common questions that may arise within each township

and the duties/responsibilities of the joint-Zoning Administrator and that of the EAJPC.

g. Insurance

The Commission briefly touched on insurance needs for liability as a joint Planning Commission. With no formal motion, a general consensus was reached to continue to evaluate insurance proposals in order to best meet the needs of the organization.

10. Adjournment

- a. There being no further business, Owens motioned, with support from Carlson, to adjourn the meeting. Upon voice vote, motion passed unanimously 6-0.**

EATON AREA JOINT PLANNING COMMISSION

Vision & Values Community Priorities Worksheet

In each section, check the 2 or 3 words or phrases that matter most to you.

Township: _____ Name: _____ Date: _____

1 LAND & PLACES

Which places and land uses matter most?

- | | |
|---|---|
| ☐ Farms & farmland | ☐ Parks & gathering places |
| ☐ Homes for all ages | ☐ Nature & open space |
| ☐ Local businesses | ☐ Community facilities |
| ☐ Jobs & industry | Other: _____ |

2 SHARED VALUES

Which values should guide how we work together?

- | | |
|--------------------------------------|---|
| ☐ Unity | ☐ Fairness |
| ☐ Stewardship | ☐ Collaboration |
| ☐ Integrity | ☐ Responsibility |
| ☐ Respect | Other: _____ |

3 OUR FUTURE

What should define the Eaton Area's future?

- | | |
|---|--|
| ☐ Rural character | ☐ Connected places |
| ☐ Thoughtful growth | ☐ A healthy economy |
| ☐ Strong communities | ☐ A lasting legacy |
| ☐ Local identity | Other: _____ |

FUTURE LOGO COLOR SCHEMES

OPTION 1 — RURAL HERITAGE

LAND

PEOPLE

FUTURE

OPTION 2 — REGIONAL WATERS

LAND

PEOPLE

FUTURE

OPTION 3 — HARVEST & COMMUNITY

LAND

PEOPLE

FUTURE

OPTION 4 — CONTEMPORARY CIVIC

LAND

PEOPLE

FUTURE

Mini Training Session

The Process of Site Plan Review

Using the Interim Zoning Ordinance • June 10, 2026

**A fair
process
turns
standards
into a
defensible
decision.**

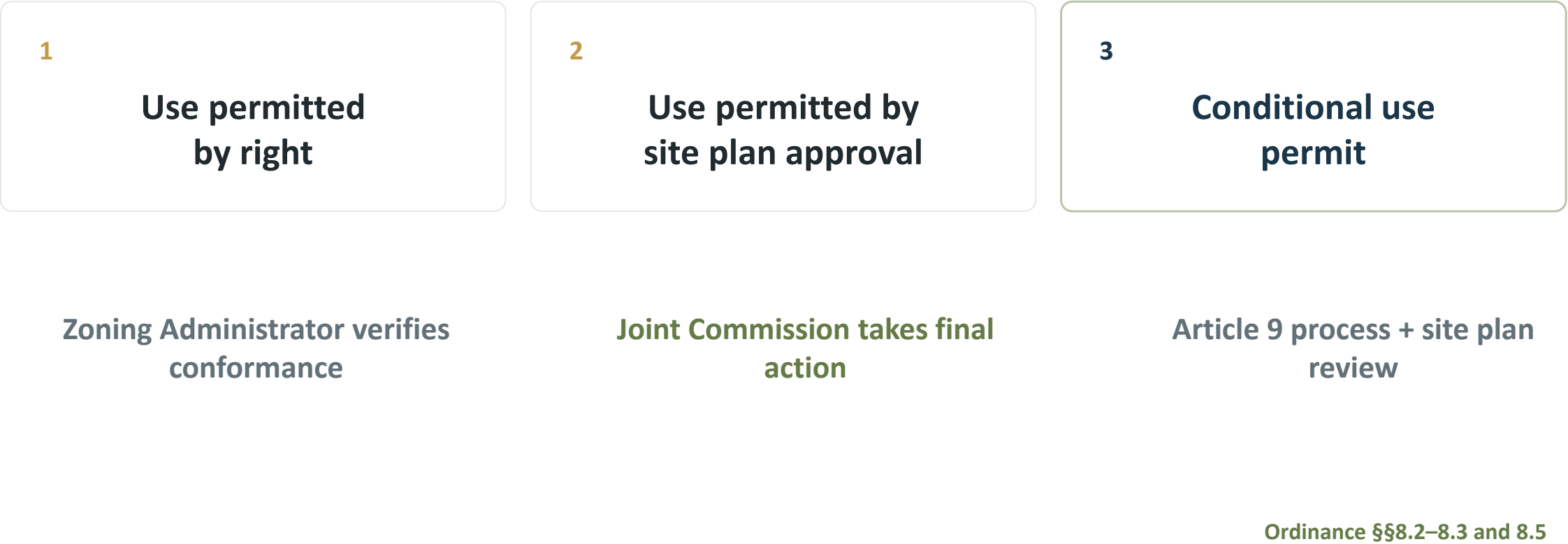
Site plan review asks one disciplined question

Does the proposal comply with the ordinance and the approval standards?

The Commission applies adopted law to the facts in the record. It does not rewrite the ordinance for a particular applicant.

Ordinance §§8.1–8.2

Know which review path applies



A complete application starts the clock responsibly

- Property owner or authorized agent files with the Zoning Administrator.
- Required fee, plan copies, and supporting materials accompany the request.
- The Zoning Administrator may waive only items that are not applicable.
- Incomplete information should be resolved before the Commission is asked to decide.

Ordinance §§8.4.1–8.4.3

The plan must show what exists and what will change

CONTEXT

Owner, project name, location map, north arrow, legend, readable scale

EXISTING SITE

Natural features, roads, utilities, buildings, drainage, easements, zoning

PROPOSED WORK

Buildings, access, parking, lighting, landscaping, utilities, grading

SUPPORT

Agency certifications, impact studies, phasing, surety, calculations

Ordinance §8.4.3(A)–(D)

Running example: a rural commercial service site

Proposal

A 9,000-square-foot equipment service building on a 6-acre parcel, with customer parking, an outdoor storage area, a new driveway, private well and septic, stormwater basin, lighting, and landscape screening.

What reviewers must locate

- Access and traffic movement
- Parking and loading
- Drainage and erosion controls
- Emergency access
- Well, septic, and waste handling
- Lighting and screening

Illustrative example based on Article 8 submittal requirements

Technical review builds the record before the meeting

1

**Zoning Administrator
reviews**

2

**Agencies and officials
comment**

3

**Review summary and
recommendation**

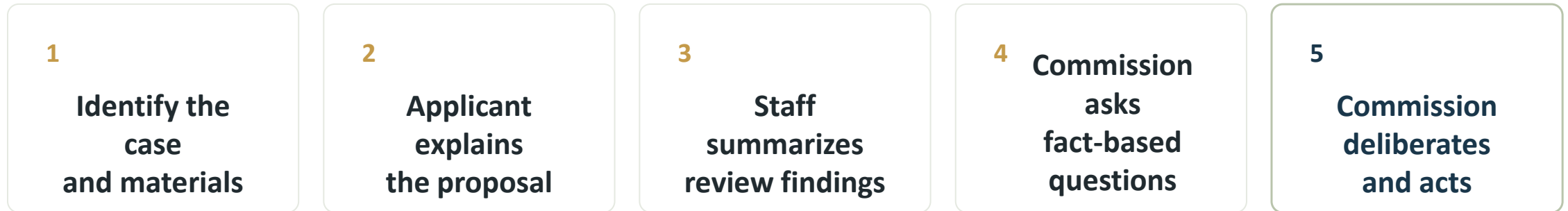
4

**Joint Commission
receives the record**

Potential reviewers: participating municipality • road commission • drain commissioner • health
• fire • conservation district • building official

Ordinance §§8.5–8.5.2

At the meeting, separate information from deliberation



If a public hearing is required by another approval process, close the hearing before Commission deliberation.

Source presentation: Making Good Decisions Together

Apply the objective agency standards first

- Ordinance compliance
- Drain Commissioner standards
- MDOT / Road Commission safety
- Fire and emergency access
- Soil erosion control
- Public health requirements
- Water, sewer, and waste
- State and federal law

Example: Does the driveway approval address sight distance and safe turning movements?

Ordinance §§8.6.1–8.6.8

Then test the site design against the general standards

- Safe driveway, pedestrian circulation, parking, and loading.
- A harmonious relationship with adjoining and prospective development.
- Protection of natural features and consistency with the ordinance purpose.
- Adequate public facilities, services, and road capacity.
- No unreasonable hazard, disturbance, or public cost.

For the example: Will outdoor storage, lighting, and truck movement remain compatible with nearby rural homes?

Ordinance §8.6.9(A)–(J)

Turn each important concern into a finding

STANDARD	FACT IN THE RECORD	CONCLUSION
Traffic safety	Road Commission review; driveway geometry; turning plan	Standard met / not met
Drainage	Drain calculations; basin design; agency comment	Standard met / not met
Compatibility	Lighting plan; storage screening; adjacent uses	Standard met / not met

A concern without evidence is not a finding.

Conditions must cure a specific compliance issue

- Specific
- Related to an ordinance standard
- Reasonable and achievable
- Written and verifiable
- Includes responsible reviewer and timing

Example condition

Before issuance of a development permit, the applicant shall submit a revised photometric plan demonstrating compliance with Article 14. The Zoning Administrator shall verify compliance.

Avoid vague directions such as “add more screening as needed.”

The motion is the Commission's decision document

- Identify the site plan name, number, and revision date.
- State the result: approve, approve with conditions, deny, or postpone.
- Connect the result to findings under the applicable standards.
- List every condition, deadline, and person responsible for verification.
- Make the vote and the basis for it clear in the minutes.

Source presentation: Making Good Decisions Together
— “Motion Musts”

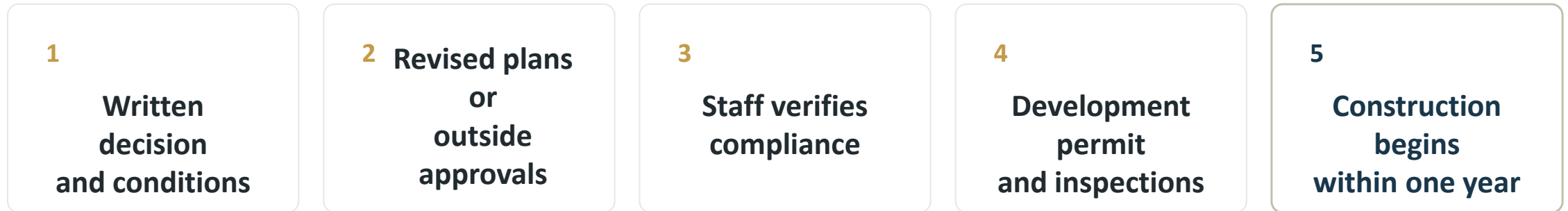
A defensible motion connects the plan, facts, and standards

Sample approval motion

I move to approve the [Project Name] site plan dated [date], based on the staff report, agency comments, application materials, and tonight's record, finding that the plan satisfies Sections 8.6.1 through 8.6.9, subject to the following written conditions: [list]. The Zoning Administrator shall verify completion of conditions before issuance of the development permit.

For denial, identify each unmet standard and the competent facts supporting that finding.

Approval is followed by verification—not assumption



Site plan approval becomes null and void if construction has not commenced within one year, unless properly extended.

Ordinance §§3.6.2, 8.4.4

A variance provides limited relief—not a different use

1

File application
and fee

2

Publish notice;
hold public hearing

3

Apply all five
variance standards

4

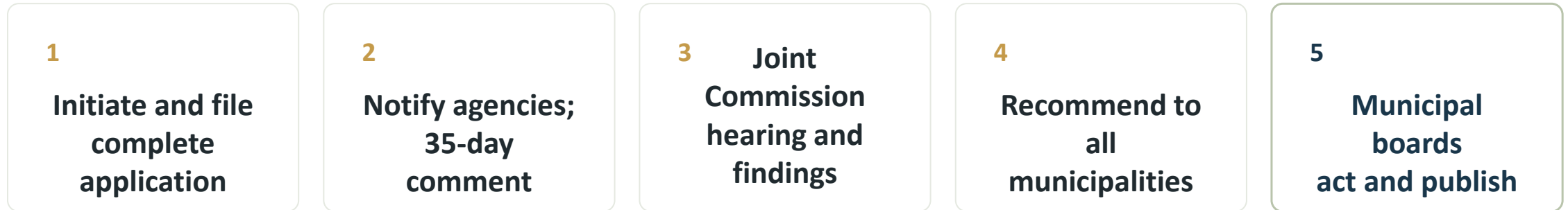
Issue written findings
and conditions

**The ZBA may vary dimensional and site-development requirements,
but it may not grant a use variance.**

Relief must address unique, non-self-created circumstances and be the minimum necessary. Approval expires if authorized construction does not begin within one year.

Ordinance §§4.4 and 4.6.3–4.6.4

Text amendments change the rule for everyone



A text amendment is legislative: use it when the ordinance language itself is outdated, unclear, erroneous, or inconsistent with changed policy—not to solve one property’s dimensional hardship.

Adoption requires a majority of the full membership of every participating municipality; the amendment generally takes effect seven days after publication.

Ordinance §§13.1–13.8

TAKEAWAY

Use the same disciplined process every time

Complete record + **Adopted standards** + **Clear findings**

Fair process • Consistent treatment • Defensible decisions

Commission checklist: What is the standard? What facts support the finding? What exactly does the motion decide?

SECTION 14.19 MOTOR FUEL SERVICE STATION, PARKING GARAGE, AND COMMERCIAL GARAGE

14.19.1 Definitions:

A. Motor Fuel Service Station: A structure, building, or parcel of land, or any portion thereof used for the retail dispensing or sale of vehicular fuels or other flammable fuels, and including minor repair services as defined in R257.111, Michigan Administrative Code, as amended.

B. Parking Garage: A structure, building, or parcel of land, or any portion thereof used for the storage or parking of motor vehicles, or boats operated as a business, and excluding minor or major repair services as defined in R257.111, Michigan Administrative Code, as amended.

C. Commercial Garage: A building, structure, or parcel of land, or any portion thereof used for the repairing, cleaning, sewing, equipping, painting or diagnosing of motor vehicles when operated as a business and not necessarily required to be registered as a Motor Vehicle Repair Facility pursuant to Act 300 of 1974, as amended.

14.19.2 Regulations and Conditions:

A. Parking or storage of inoperative vehicles shall be completely surrounded by an opaque fence of not less than six (6) feet in height.

B. Minimum road frontage of one-hundred fifty (150) feet shall be required.

C. Minimum lot area shall be increased five-hundred (500) square feet for each fuel pump unit in excess of four (4), and one-thousand (1,000) square feet for each service bay in excess of two (2), and three-hundred (300) square feet for each parking space intended for the storage of inoperative vehicles.

D. ~~All motor fuel service station building and accessory structure including gasoline pumps shall be setback fifty (50) feet from any lot line and seventy-five (75) feet from any street right-of-way line.~~ **setback requirements shall be further subject to planning commission and board of commissioner's discretion in addition to setback requirements established in other sections of this ordinance, as applicable.**

E. All equipment including hydraulic hoist, pits, and oil lubrication, greasing and automobile washing, repairing equipment and body repair shall be entirely enclosed within a building. ~~There shall be no outdoor storage of merchandise such as tires, lubricants and other accessory equipment.~~

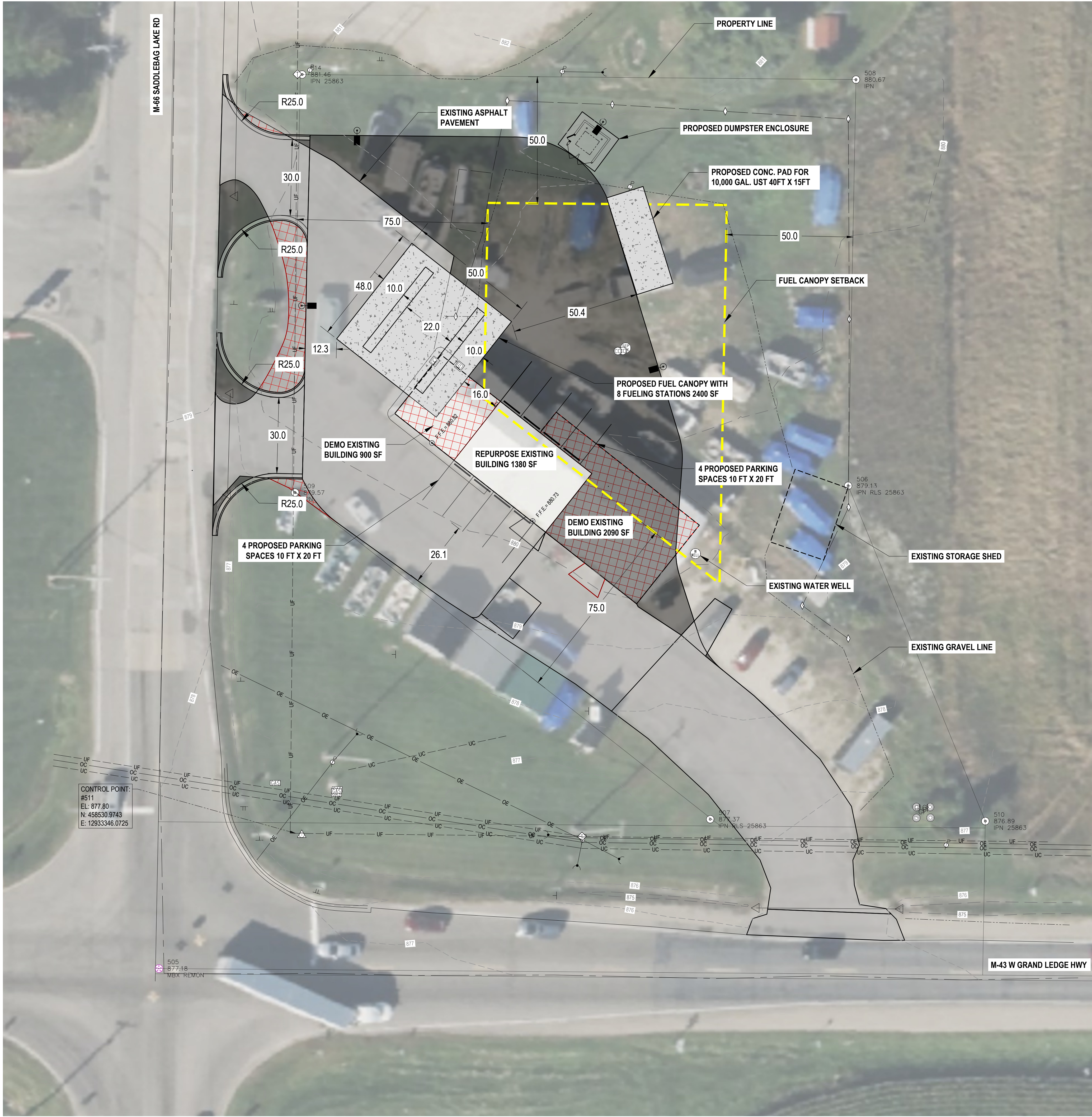
F. All activities, except those required to be performed at the fuel pump shall be carried on inside a building. All vehicles upon which work is performed shall be located entirely within a building.

G. ~~There shall be no above ground tanks for the storage of gasoline, liquefied petroleum gas, oil or other flammable liquids or gases.~~

H. All signs shall comply with Article 11 of this Ordinance.

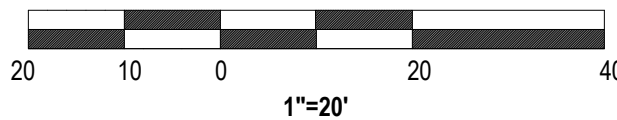
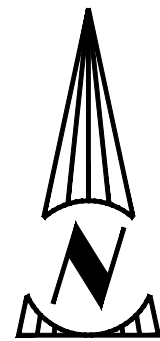
I. All parking areas shall comply with Article 10 of this Ordinance.

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LEGEND

- OC Overhead Cable
- UF Underground Fiber
- UC Underground Cable
- OE Overhead Power
- Existing Building
- Existing Fence Line
- Fuel Canopy Setback Boundary
- Existing Gravel Line
- Existing Road Centerline
- Existing 5' Major Contour
- Existing 1' Minor Contour
- Control Point
- Iron Pin
- Monument Box
- Finished Floor Elevation
- Metal Post
- Fence Post
- Power Pole
- Guy Wire Anchor
- Pedestal - Telephone Service
- Culvert Top
- Tank - Septic
- Well - Water
- Pipe Clean-Out
- Meter - Electric
- Meter - Natural Gas
- Maker - Natural Gas
- Vent - Natural Gas
- Public Sign - Single Post Mount
- Public Sign - Double Post Mount
- Proposed Light Pole
- Proposed Asphalt Pavement
- Existing Asphalt Pavement
- Proposed Concrete Pavement
- Proposed Demo



C200	DRAFT SITE PLAN FOR DESIRED LAYOUT	SITE IMPROVEMENT PLAN FOR LAKE ODESSA GAS STATION EATON COUNTY, MI 48849	PREPARED FOR: RAJ GHOTRA LAKE ODESSA, MI	TECHNICAL SKILL: CREATIVE SPIRIT.  www.MannikSmithGroup.com	545 MICHIGAN ST NE SUITE 200 GRAND RAPIDS, MI 49503 TEL: 616.202.2312	NO. 7/10/26 PROJECT DATE: 7/10/26 PROJECT NO.: 2601447 DRAWN BY: SLJ CHECKED BY: SRB	BY: SLJ DATE: 7/13/26	DESCRIPTION: ISSUED FOR TOWNSHIP REVIEW

EATON AREA JOINT PLANNING COMMISSION

Public Summary of FOIA Procedures and Guidelines

**It is the public policy of this state that all persons
(except those persons incarcerated in state or local correctional facilities)
are entitled to full and complete information regarding the affairs of government and the official acts of those
who represent them as public officials and public employees.**

The people shall be informed so that they may fully participate in the democratic process.

Consistent with the Michigan Freedom of Information Act (FOIA), Public Act 442 of 1976, the following is the Written Public Summary of the Planning Commission's FOIA Procedures and Guidelines relevant to the general public.

This is only a summary of the Planning Commission's FOIA Procedures and Guidelines. For more details and information, copies of the Planning Commission's FOIA Procedures and Guidelines are available at no charge at the Planning Commission office.

The Planning Commission, acting pursuant to the authority at MCL 15.236, will designate a FOIA Coordinator. He or she is authorized to designate other Planning Commission members or staff to act on his or her behalf to accept and process written requests for the Planning Commission's public records and approve denials.

If a request for a public record is received by fax or email, the request is deemed to have been received on the following business day. If a request is sent by email and delivered to a Planning Commission spam or junk-mail folder, the request is not deemed received until one day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall note in the FOIA log both the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator became aware of the request.

1. How do I submit a FOIA request to the Planning Commission?

- A request must sufficiently describe a public record so as to enable the Planning Commission to find it.
- Please include the words "FOIA" or "FOIA Request" in the request to assist the Planning Commission in providing a prompt response.
- A request from a person, other than an individual who qualifies as indigent under MCL 15.234(2)(a), must include the requesting person's complete name, address, and contact information, and, if the request is made by a person other than an individual, the complete name, address, and contact information of the person's agent who is an individual. An address must be written in compliance with United States Postal Service addressing standards:

JANE SMITH (or ABC MOVERS)
1500 E MAIN AVE STE 201
SPRINGFIELD VA 22162-1010

- Contact information must include a valid telephone number or electronic mail address.
- Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the Planning Commission may be submitted on the Planning Commission's FOIA Request Form or in any other form of writing (letter, fax, email, etc.).
 - o Verbal requests are invalid, and the Planning Commission is not obligated to respond to invalid FOIA requests.

- o No specific form to submit a written request is required. However, a FOIA Request Form and other FOIA-related forms may be available for your use and convenience at the Planning Commission's offices.
- Written requests may be delivered to the Planning Commission office in person or by mail: 551 Courthouse Dr, Ste. 1, Charlotte, MI 48813
- Requests may be emailed to: _____. To ensure a prompt response, email requests should contain the term "FOIA" or "FOIA Request" in the subject line.
- If a request does not comply with this section, the request will be considered invalid under MCL 15.233(1), and the Planning Commission is not obligated to respond to an invalid FOIA request.

2. What kind of response can I expect to my request?

- Within 5 business days after receiving a FOIA request the Planning Commission will issue a response. If a request is received by fax or email, the request is deemed to have been received on the following business day. The Planning Commission will respond to your request in one of the following ways:
 - o Grant the request,
 - o Issue a written notice denying the request,
 - o Grant the request in part and issue a written notice denying in part the request,
 - o Issue a notice indicating that due to the nature of the request the Planning Commission needs an additional 10 business days to respond, or
 - o Issue a written notice indicating that the public record requested is available at no charge on the Planning Commission's website
- If the request is granted, or granted in part, the Planning Commission will ask that payment be made for the allowable fees associated with responding to the request before the public record is made available.
- If the cost of processing the request is expected to exceed \$50, the Planning Commission will require a deposit before processing the request.
- The Planning Commission shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinator is authorized to promulgate rules regulating the manner in which records may be viewed so as to protect Planning Commission records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal Planning Commission operations.

3. What are the Planning Commission's deposit requirements?

- If the Planning Commission has made a good faith calculation that the total fee for processing the request will exceed \$50.00, the Planning Commission will require that you provide a deposit in the amount of 50% of the total estimated fee. When the Planning Commission requests the deposit, it will provide you a non-binding best efforts estimate of how long it will take to process the request after you have paid your deposit.
- If the Planning Commission receives a request from a person who has not paid the Planning Commission for copies of public records made in fulfillment of a previously granted written request, the Planning Commission will require a deposit of 100% of the estimated processing fee before it begins to search for the public record for any subsequent written request when **all** of the following conditions exist:
 - o The final fee for the prior written request is not more than 105% of the estimated fee;

- o The public records made available contained the information sought in the prior written request and remain in the Planning Commission's possession;
 - o The public records were made available to the individual, subject to payment, within the best effort time frame estimated by the Planning Commission to provide the records;
 - o Ninety (90) days have passed since the Planning Commission notified the individual in writing that the public records were available for pickup or mailing;
 - o The individual is unable to show proof of prior payment to the Planning Commission; and
 - o The Planning Commission has calculated an estimated detailed itemization that is the basis for the current written request's increased fee deposit.
- The Planning Commission will not require the 100% estimated fee deposit if any of the following apply:
 - o The person making the request is able to show proof of prior payment in full to the Planning Commission;
 - o The Planning Commission is subsequently paid in full for all applicable prior written requests; or
 - o Three hundred sixty-five (365) days have passed since the person made the request for which full payment was not remitted to the Planning Commission.
 - If a deposit is not received by the Planning Commission within 48 days from the date that the notice of deposit requirement is sent, and if the requesting person has not filed an appeal of the deposit amount, the request shall be considered abandoned by the requesting person and the Planning Commission is no longer required to fulfill the request. Notice of a deposit requirement must include notice of the date by which the deposit must be received, which date is 48 days after the date the notice is sent.

4. How does the Planning Commission calculate FOIA processing fees?

The Michigan FOIA statute permits the Planning Commission to charge for the following costs associated with processing a request:

- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
- Labor costs associated with searching for, locating and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the Planning Commission.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the Planning Commission.
- The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the Planning Commission's website if you ask for the Planning Commission to make copies.
- The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media. This may include the cost for copies of records already on the Planning Commission's website if you ask for the Planning Commission to make copies.
- The cost to mail or send a public record to a requestor.

Labor Costs

- All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down. If the time involved is less than 15 minutes, there will be no charge.

- Labor costs will be charged at the hourly wage of the lowest-paid Planning Commission employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits. Planning Commission may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
- Overtime wages will not be included in labor costs unless agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.
- Contracted attorney labor costs for reviewing records for exemptions and applying redactions will be charged at an hourly rate equal to six times the state minimum hourly wage.

A labor cost will not be charged for the search, examination, review and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the Planning Commission. Costs are unreasonably high when they are excessive and beyond the normal or usual amount for those services compared to the Planning Commission's usual FOIA requests, because of the nature of the request in the particular instance. The Planning Commission must specifically identify the nature of the unreasonably high costs in writing.

Copying and Duplication

The Planning Commission must use the most economical method for making copies of public records, including using double-sided printing, if cost-saving and available.

Non-paper Copies on Physical Media

- The cost for records provided on non-paper physical media, such as computer discs, computer tapes or other digital or similar media will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will be charged only if the Planning Commission has the technological capability necessary to provide the public record in the requested non-paper physical media format.

Paper Copies

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$0.10 per sheet of paper.
- Copies for non-standard sized sheets will paper will reflect the actual cost of reproduction.

Mailing Costs

- The cost to mail public records will use a reasonably economical and justified means.
- The Planning Commission may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless you request it.

If the FOIA Coordinator does not respond to a written request in a timely manner, the Planning Commission must:

- Reduce the labor costs by 5% for each day the Planning Commission exceeds the time permitted under FOIA up to a 50% maximum reduction, if **any** of the following applies:
 - o The Planning Commission's late response was willful and intentional,
 - o The written request conveyed a request for information within the first 250 words of the body of a letter

- o facsimile, email or email attachment, or
 - o The written request included the words, characters, or abbreviations for "freedom of information," "information," "FOIA," "copy" or a recognizable misspelling of such, or legal code reference to MCL 15. 231, et seq. or 1976 Public Act 442 on the front of an envelope or in the subject line of an email, letter or facsimile cover page.
- Fully note the charge reduction in the Detailed Itemization of Costs Form.

Waiver of Fees

The cost of the search for and copying of a public record may be waived or reduced if in the *sole judgment* of the FOIA Coordinator a waiver or reduced fee is in the public interest because it can be considered as primarily benefitting the general public. The Planning Commission may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

5. How do I qualify for an indigence discount on the fee?

The Planning Commission will discount the first \$20.00 of fees for a request if you submit an affidavit stating that you are:

- Indigent and receiving specific public assistance; or
- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

You are **not** eligible to receive the \$20.00 discount if you:

- Have previously received discounted copies of public records from the Planning Commission twice during the calendar year; or
- Are requesting information on behalf of other persons who are offering or providing payment to you to make the request.

An affidavit is sworn statement. For your convenience, the Planning Commission may provide an Affidavit of Indigence for the waiver of FOIA fees on the back of the Planning Commission FOIA Request Form.

6. May a nonprofit organization receive a discount on the fee?

A nonprofit organization advocating for developmentally disabled or mentally ill individuals that is formally designated by the state to carry out activities under subtitle C of the federal developmental disabilities assistance and bill of rights act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, may receive a \$20.00 discount if the request meets all of the following requirements in the Act:

- o Is made directly on behalf of the organization or its clients.
- o Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, 1974 PA 258, MCL 330.193 I.
- o Is accompanied by documentation of its designation by the state, if requested by the public body.

7. How may I challenge the denial of a public record or an excessive fee?

Appeal of a Denial of a Public Record

If you believe that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, you may appeal to the Planning Commission by filing a written appeal of the denial with the FOIA Coordinator.

The appeal must be in writing, specifically state the word "appeal," and identify the reason or reasons you are seeking a reversal of the denial.

The Planning Commission is not considered to have received a written appeal until the first regularly scheduled Planning Commission meeting following submission of the written appeal. Within 10 business days of receiving the appeal the Planning Commission will respond in writing by:

- Reversing the disclosure denial;
- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part.

Whether or not you submitted an appeal of a denial to the Planning Commission, you may file a civil action in Eaton County Circuit Court within 180 days after the Planning Commission's final determination to deny your request. If you prevail in the civil action the court will award you reasonable attorneys' fees, costs and disbursements. If the court determines that the Planning Commission acted arbitrarily and capriciously in refusing to disclose or provide a public record, the court shall award you damages in the amount of \$1,000.

Appeal of an Excess FOIA Processing Fee

If you believe that the fee charged by the Planning Commission to process your FOIA request exceeds the amount permitted by state law, you ***must*** first appeal to the Planning Commission by filing a written appeal for a fee reduction to the FOIA Coordinator.

The appeal must specifically state the word "appeal" and identify how the required fee exceeds the amount permitted.

The Planning Commission is not considered to have received a written appeal until the first regularly scheduled Planning Commission meeting following submission of the written appeal. Within 10 business days after receiving the appeal, the Planning Commission will respond in writing by:

- Waiving the fee;
- Reducing the fee and issue a written determination indicating the specific basis that supports the remaining fee;
- Upholding the fee and issue a written determination indicating the specific basis that supports the required fee; or
- Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Planning Commission will respond to the written appeal.

Within 45 days after receiving notice of the Planning Commission's determination of the processing fee appeal, you may commence a civil action in Eaton County Circuit Court for a fee reduction. If you prevail in the civil action by receiving a reduction of 50% or more of the total fee, the court may award all or appropriate amount of reasonable attorneys' fees, costs and disbursements. If the court determines that the Planning Commission acted arbitrarily and capriciously by charging an excessive fee, court may also award you punitive damages in the amount of \$500.

EATON AREA JOINT PLANNING COMMISSION

FOIA Procedures and Guidelines

Preamble: Statement of Principles

It is the policy of the Eaton Area Joint Planning Commission (the "Planning Commission") that all persons, except those incarcerated, consistent with the Michigan Freedom of Information Act ("FOIA"), are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people shall be informed so that they fully participate in the democratic process.

The Planning Commission's policy with respect to FOIA requests is to comply with State law in all respects and to respond to FOIA requests in a consistent, fair, and even-handed manner regardless of who makes such a request.

The Planning Commission acknowledges that it has a legal obligation to disclose all nonexempt public records in its possession pursuant to a FOIA request. The Planning Commission acknowledges that sometimes it is necessary to invoke the exemptions identified under FOIA in order to ensure the effective operation of government and to protect the privacy of individuals.

The Eaton Area Joint Planning Commission will protect the public's interest in disclosure, while balancing the requirement to withhold or redact portions of certain records. The Planning Commission's policy is to disclose public records consistent with and in compliance with State law.

The Planning Commission has established the following written procedures and guidelines to implement the FOIA and will create a written public summary of the specific procedures and guidelines relevant to the general public regarding how to submit written requests to the public body and explaining how to understand a public body's written responses, deposit requirements, fee calculations, and avenues for challenge and appeal. The written public summary will be written in a manner so as to be easily understood by the general public.

Section 1: General Policies

The Planning Commission, acting pursuant to the authority at MCL 15.236, designates the Planning Commission Secretary as the FOIA Coordinator. He or she is authorized to designate other Planning Commission members or staff to act on his or her behalf to accept and process written requests for the Planning Commission's public records and approve denials.

If a request for a public record is received by fax or email, the request is deemed to have been received on the following business day. If a request is sent by email and delivered to a Planning Commission spam or junk-mail folder, the request is not deemed received until one day after the FOIA Coordinator first becomes aware of the request. The FOIA Coordinator shall note in the FOIA log both the date the request was delivered to the spam or junk-mail folder and the date the FOIA Coordinator became aware of the request.

The FOIA Coordinator may, in his or her discretion, implement administrative rules, consistent with State law and these Procedures and Guidelines to administer the acceptance and processing of FOIA requests. The FOIA Coordinator may also implement administrative rules that protect public records from loss, unauthorized alteration, mutilation, or destruction. An administrative rule may be subject to review by the Planning Commission on appeal if the administrative rule serves as the basis for a valid appeal pursuant to Sections 8 or

9 of these Procedures and Guidelines.

The Planning Commission is not obligated to create a new public record or make a compilation or summary of information which does not already exist. Neither the FOIA Coordinator nor other Planning Commission members or staff are obligated to provide answers to questions contained in requests for public records or regarding the content of the records themselves.

The FOIA Coordinator shall keep a copy of all written requests for public records received by the Planning Commission on file for a period of at least one year.

The Planning Commission will make this Procedures and Guidelines document and the Written Public Summary publicly available without charge.

A copy of this Procedures and Guidelines document and the Planning Commission's Written Public Summary must be publicly available by providing free copies both in the Planning Commission's response to a written request and upon request by visitors at the Planning Commission's office.

Section 2: Requesting a Public Record

No specific form to submit a request for a public record is required. However, the FOIA Coordinator may, but is not required to, make available a FOIA Request Form for use by the public.

Requests to inspect or obtain copies of public records prepared, owned, used, possessed or retained by the Planning Commission may be submitted on the Planning Commission's FOIA Request Form or in any other form of writing (letter, fax, email, etc.).

Verbal requests are invalid, and the Planning Commission is not obligated to respond to invalid FOIA requests. However, if a person makes a verbal, non-written request for information believed to be available on the Planning Commission's website, where practicable and to the best ability of the employee receiving the request, the Planning Commission shall inform the applicant of the pertinent website address.

A request from a person, other than an individual who qualifies as indigent under MCL 15.234(2)(a), must include the requesting person's complete name, address, and contact information, and, if the request is made by a person other than an individual, the complete name, address, and contact information of the person's agent who is an individual. An address must be written in compliance with United States Postal Service addressing standards:

JANE SMITH (or ABC MOVERS)
1500 E MAIN AVE STE 201
SPRINGFIELD VA 22162-1010

Contact information must include a valid telephone number or electronic mail address. If a request does not comply with this section, the request will be considered invalid under MCL 15.233(1), and the Planning Commission is not obligated to respond to an invalid FOIA request.

A request must sufficiently describe a public record so as to enable Planning Commission personnel to identify and find the requested public record.

Written requests for public records may be submitted in person or by mail to the Planning Commission office. Requests may also be submitted electronically by fax and email. Upon their receipt, requests for public records

shall be promptly forwarded to the FOIA Coordinator for processing.

A person may request that public records be provided on non-paper physical media, emailed or other otherwise provided to him or her in digital form in lieu of paper copies. The Planning Commission will comply with the request only if it possesses the necessary technological capability to provide records in the requested non-paper physical media format.

A person may subscribe to future issues of public records that are created, issued or disseminated by Eaton Area Joint Planning Commission on a regular basis. A subscription is valid for up to 6 months and may be renewed by the subscriber. A subscription request may be subject to a reasonable subscription fee, which the Planning Commission may require to be paid monthly or in one lump sum for the full 6-month subscription.

A person serving a sentence of imprisonment in a local, state or federal correctional facility is not entitled to submit a request for a public record. The FOIA Coordinator will deny all such requests.

Section 3: Processing a Request

Unless otherwise agreed to in writing by the person making the request, the Planning Commission will issue a response within 5 business days of receipt of a FOIA request. If a request is received by fax, email or other electronic transmission, the request is deemed to have been received on the following business day.

The Planning Commission will respond to a request in one of the following ways:

- Grant the request.
- Issue a written notice denying the request.
- Grant the request in part and issue a written notice denying in part the request.
- Issue a notice indicating that due to the nature of the request the Planning Commission needs an additional 10 business days to respond for a total of no more than 15 business days. Only one such extension is permitted.
- Issue a written notice indicating that the public record requested is available at no charge on the Planning Commission's website.

When a request is granted:

If the request is granted, or granted in part, the FOIA Coordinator will require that payment be made in full for the allowable fees associated with responding to the request before the public record is made available.

The FOIA Coordinator shall provide a detailed itemization of the allowable costs incurred to process the request to the person making the request.

A copy of these Procedures and Guidelines and the Written Public Summary will be provided to the requestor free of charge with the response to a written request for public records.

If the cost of processing a FOIA request is \$50 or less, the requester will be notified of the amount due and where the documents can be obtained upon payment of the full FOIA fee amount.

If the cost of processing a FOIA request is expected to exceed \$50 based on a good-faith calculation, the Planning Commission will require a good-faith deposit pursuant to Section 4 of this policy before processing the request.

In making the request for a good-faith deposit, the FOIA Coordinator shall provide the requestor with a detailed itemization of the allowable costs estimated to be incurred by the Planning Commission to process the request

and also provide a best efforts estimate of a time frame it will take the Planning Commission to provide the records to the requestor after the deposit is paid. The best efforts estimate shall be nonbinding on the Planning Commission, but will be made in good faith and will strive to be reasonably accurate, given the nature of the request in the particular instance, so as to provide the requested records in a manner based on the public policy expressed by Section 1 of the FOIA.

When a request is denied or denied in part:

If the request is denied or denied in part, the FOIA Coordinator will issue a Notice of Denial which shall provide in the applicable circumstance:

- An explanation as to why a requested public record is exempt from disclosure; or
- A certificate that the requested record does not exist under the name or description provided by the requestor, or another name reasonably known by the Planning Commission; or
- An explanation or description of the public record or information within a public record that is separated or deleted from the public record; and
- An explanation of the person's right to submit an appeal of the denial to the Planning Commission or seek judicial review in the Eaton County Circuit Court;
- An explanation of the right to receive attorneys' fees, costs, and disbursements as well actual or compensatory damages, and punitive damages of \$1,000, should they prevail in Circuit Court.
- The Notice of Denial shall be signed by the FOIA Coordinator.

If a request does not sufficiently describe a public record, the FOIA Coordinator may, in lieu of issuing a Notice of Denial indicating that the request is deficient, seek clarification or amendment of the request by the person making the request. Any clarification or amendment will be considered a new request subject to the timelines described in this Section.

Requests to inspect public records:

The Planning Commission shall provide reasonable facilities and opportunities for persons to examine and inspect public records during normal business hours. The FOIA Coordinator is authorized to promulgate rules regulating the manner in which records may be viewed so as to protect Planning Commission records from loss, alteration, mutilation or destruction and to prevent excessive interference with normal Planning Commission operations.

Requests for certified copies:

The FOIA Coordinator shall, upon written request, furnish a certified copy of a public record at no additional cost to the person requesting the public record.

Section 4: Fee Deposits

If the fee estimate is expected to exceed \$50.00 based on a good-faith calculation, the requestor will be asked to provide a deposit not exceeding one-half of the total estimated fee.

If a request for public records is from a person who has not paid the Planning Commission in full for copies of public records made in fulfillment of a previously granted written request, the FOIA Coordinator will require a deposit of 100% of the estimated processing fee before beginning to search for a public record for any subsequent written request by that person when all of the following conditions exist:

- The final fee for the prior written request is not more than 105% of the estimated fee;
- The public records made available contained the information sought in the prior written request and

- remain in the Planning Commission's possession;
- The public records were made available to the individual, subject to payment, within the time frame estimated by the Planning Commission to provide the records;
- Ninety (90) days have passed since the FOIA Coordinator notified the individual in writing that the public records were available for pickup or mailing;
- The individual is unable to show proof of prior payment to the Planning Commission; and
- The FOIA Coordinator has calculated a detailed itemization that is the basis for the current written request's increased estimated fee deposit.

The FOIA Coordinator will not require an increased estimated fee deposit if any of the following apply:

- The person making the request is able to show proof of prior payment in full to the Planning Commission;
- The Planning Commission is subsequently paid in full for the applicable prior written request; or
- Three hundred sixty-five (365) days have passed since the person made the request for which full payment was not remitted to the Planning Commission.

If a deposit is not received by the Planning Commission within 48 days from the date that the notice of deposit requirement is sent, and if the requesting person has not filed an appeal of the deposit amount, the request shall be considered abandoned and the Planning Commission is no longer required to fulfill the request. Notice of a deposit requirement must include notice of the date by which the deposit must be received, which date is 48 days after the date the notice is sent.

Section 5: Calculation of Fees

A fee may be charged for the labor cost of copying/duplication.

A fee will not be charged for the labor cost of search, examination, review, and the deletion and separation of exempt from nonexempt information unless failure to charge a fee would result in unreasonably high costs to the Planning Commission because of the nature of the request in the particular instance, and the Planning Commission specifically identifies the nature of the unreasonably high costs.

Costs for the search, examination review, and deletion and separation of exempt from non-exempt information are "unreasonably high" when they are excessive and beyond the normal or usual amount for those services (Attorney General Opinion 7083 of 2001) compared to the costs of the Planning Commission's usual FOIA requests, not compared to the Planning Commission's operating budget. (*Bloch v. Davison Community Schools*, Michigan Court of Appeals, Unpublished, April 26, 2011).

The following factors shall be used to determine an unreasonably high cost to the Planning Commission:

- Volume of the public record requested
- Amount of time spent to search for, examine, review and separate exempt from non-exempt information in the record requested.
- Whether the public records are from more than one Planning Commission department or whether various Planning Commission offices are necessary to respond to the request.
- The available staffing to respond to the request.
- Any other similar factors identified by the FOIA Coordinator in responding to the particular request.

The Michigan FOIA statute permits the Planning Commission to charge for the following costs associated with processing a request:

- Labor costs associated with copying or duplication, which includes making paper copies, making digital copies, or transferring digital public records to non-paper physical media or through the Internet.
- Labor costs associated with searching for, locating and examining a requested public record, when failure to charge a fee will result in unreasonably high costs to the Planning Commission.
- Labor costs associated with a review of a record to separate and delete information exempt from disclosure, when failure to charge a fee will result in unreasonably high costs to the Planning Commission.
- The cost of copying or duplication, not including labor, of paper copies of public records. This may include the cost for copies of records already on the Planning Commission's website if you ask for the Planning Commission to make copies.
- The cost of computer discs, computer tapes or other digital or similar media when the requester asks for records in non-paper physical media. This may include the cost for copies of records already on the Planning Commission's website if you ask for the Planning Commission to make copies.
- The cost to mail or send a public record to a requester.

Labor costs will be calculated based on the following requirements:

- All labor costs will be estimated and charged in 15-minute increments, with all partial time increments rounded down. If the time involved is less than 15 minutes, there will be no charge.
- Labor costs will be charged at the hourly wage of the lowest-paid Planning Commission employee capable of doing the work in the specific fee category, regardless of who actually performs work.
- Labor costs will also include a charge to cover or partially cover the cost of fringe benefits.
- The Planning Commission may add up to 50% to the applicable labor charge amount to cover or partially cover the cost of fringe benefits, but in no case may it exceed the actual cost of fringe benefits.
- Overtime wages will not be included in labor costs unless agreed to by the requestor; overtime costs will not be used to calculate the fringe benefit cost.
- Contracted attorney costs for reviewing records for applicable exemptions will be charged at an hourly rate equal to six times the state minimum hourly wage.

The cost to provide records on non-paper physical media when so requested will be based on the following requirements:

- Any form of non-paper physical media (for example, USB drives, computer disks, computer tapes or other digital or similar media) will be at the actual and most reasonably economical cost for the non-paper media.
- This cost will only be assessed if the Planning Commission has the technological capability necessary to provide the public record in the requested non-paper physical media format.
- The Planning Commission will procure any non-paper media and will not accept media from the requestor in order to ensure integrity of the Planning Commission's technology infrastructure.

The cost to provide paper copies of records will be based on the following requirements:

- Paper copies of public records made on standard letter (8 ½ x 11) or legal (8 ½ x 14) sized paper will not exceed \$.10 per sheet of paper. Copies for non-standard sized sheets of paper will reflect the actual cost of reproduction.

The cost to mail records to a requester will be based on the following requirements:

- The actual cost to mail public records using a reasonably economical and justified means.
- The Planning Commission may charge for the least expensive form of postal delivery confirmation.
- No cost will be made for expedited shipping or insurance unless specified by the requester.

If the FOIA Coordinator does not respond to a written request in a timely manner, the Planning Commission must:

- Reduce the labor costs by 5% for each day the Planning Commission exceeds the response timeline permitted under FOIA up to a 50% maximum reduction, if **any** of the following applies:
 - o The Planning Commission's late response was willful and intentional,
 - o The written request conveyed a request for information within the first 250 words of the body of a letter facsimile, email or email attachment, or
 - o The written request included the words, characters, or abbreviations for "freedom of information," "information," "FOIA," "copy" or a recognizable misspelling of such, or legal code reference to MCL 15. 231, et seq. or 1976 Public Act 442 on the front of an envelope or in the subject line of an email, letter or facsimile cover page.
- Fully note the charge reduction in the Detailed Itemization of Costs Form.

Section 6: Waiver of Fees

The cost of the search for and copying of a public record may be waived or reduced if in the ***sole judgment*** of the FOIA Coordinator a waiver or reduced fee is in the public interest because it can be considered as primarily benefitting the general public. The Planning Commission may identify specific records or types of records it deems should be made available for no charge or at a reduced cost.

Section 7: Discounted Fees

Indigence

The FOIA Coordinator will discount the first \$20.00 of the processing fee for a request if the person requesting a public record submits an affidavit stating that they are:

- Indigent and receiving specific public assistance, or
- If not receiving public assistance, stating facts demonstrating an inability to pay because of indigence.

An individual is not eligible to receive the waiver if:

- The requestor has previously received discounted copies of public records from the Planning Commission twice during the calendar year; or
- The requestor requests information in connection with other persons who are offering or providing payment to make the request.

An affidavit is sworn statement. The FOIA Coordinator may make a Fee Waiver Affidavit Form available for use by the public.

Nonprofit organization advocating for developmentally disabled or mentally ill individuals

The FOIA Coordinator will discount the first \$20.00 of the processing fee for a request from:

- A nonprofit organization formally designated by the state to carry out activities under subtitle C of the federal developmental disabilities assistance and bill of rights act of 2000, Public Law 106-402, and the protection and advocacy for individuals with mental illness act, Public Law 99-319, or their successors, if the request meets all of the following requirements:
 - o Is made directly on behalf of the organization or its clients.
 - o Is made for a reason wholly consistent with the mission and provisions of those laws under section 931 of the mental health code, 1974 PA 258, MCL 330.1931.
 - o Is accompanied by documentation of its designation by the state, if requested by the public body.

Section 8: Appeal of a Denial of a Public Record

When a requestor believes that all or a portion of a public record has not been disclosed or has been improperly exempted from disclosure, he or she may appeal to the Planning Commission by filing an appeal of the denial with the FOIA Coordinator.

The appeal must be in writing, specifically state the word "appeal" and identify the reason or reasons the requestor is seeking a reversal of the denial. The Planning Commission may delegate the role of hearing an appeal and issuing an appeal determination to a specific Planning Commission official.

The Planning Commission is not considered to have received a written appeal until the first regularly scheduled Planning Commission meeting following submission of the written appeal.

Within 10 business days of receiving the appeal the Planning Commission will respond in writing by:

- Reversing the disclosure denial;
- Upholding the disclosure denial; or
- Reverse the disclosure denial in part and uphold the disclosure denial in part; or
- Under unusual circumstances, issue a notice extending for not more than 10 business days the period during which the Planning Commission shall respond to the written appeal. The Planning Commission shall not issue more than 1 notice of extension for a particular written appeal.

If the Planning Commission fails to respond to a written appeal, or if the Planning Commission upholds all or a portion of the disclosure denial that is the subject of the written appeal, the requesting person may seek judicial review of the nondisclosure by commencing a civil action in Circuit Court.

Whether or not a requester submitted an appeal of a denial to the Planning Commission, he or she may file a civil action in Eaton County Circuit Court within 180 days after the Planning Commission's final determination to deny the request.

If a court that determines a public record is not exempt from disclosure, it shall order the Planning Commission to cease withholding or to produce all or a portion of a public record wrongfully withheld, regardless of the location of the public record. Failure to comply with an order of the court may be punished as contempt of court.

If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in such an action, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or Planning Commission prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements.

If the court determines that the Planning Commission has arbitrarily and capriciously violated this act by refusal or delay in disclosing or providing copies of a public record, the court shall order the Planning Commission to pay a civil fine of \$1,000.00, which shall be deposited into the general fund of the state treasury. The court shall award, in addition to any actual or compensatory damages, punitive damages in the amount of \$1,000.00 to the person seeking the right to inspect or receive a copy of a public record. The damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

Section 9: Appeal of an Excessive FOIA Processing Fee

"Fee" means the total fee or any component of the total fee calculated under section 4 of the FOIA, including any deposit.

If a requester believes that the fee charged by the Planning Commission to process a FOIA request exceeds the amount permitted by state law or under this policy, he or she **must** first appeal to the Planning Commission by submitting a written appeal for a fee reduction to the FOIA Coordinator.

The appeal must be in writing, specifically state the word "appeal" and identify the specific FOIA request and fee that is being appealed and identify how the required fee exceeds the amount permitted. The Planning Commission may delegate the role of hearing an appeal and issuing an appeal determination to a specific Planning Commission official.

The Planning Commission is not considered to have received a written appeal until the first regularly scheduled Planning Commission meeting following submission of the written appeal.

Within 10 business days after receiving the appeal, the Planning Commission will respond in writing by:

- Waiving the fee;
- Reducing the fee and issuing a written determination indicating the specific basis that supports the remaining fee;
- Upholding the fee and issuing a written determination indicating the specific basis that supports the required fee; or
- Issuing a notice detailing the reason or reasons for extending for not more than 10 business days the period during which the Planning Commission will respond to the written appeal. The Planning Commission shall not issue more than 1 notice of extension for a particular written appeal.

Where the Planning Commission reduces or upholds the fee, the determination must include a certification from the Planning Commission that the statements in the determination are accurate and that the reduced fee amount complies with its publicly available procedures and guidelines and Section 4 of the FOIA.

Within 45 days after receiving notice of the Planning Commission's determination of an appeal, the requesting person may commence a civil action in Eaton County Circuit Court for a fee reduction.

If a civil action is commenced against the Planning Commission for an excess fee, the Planning Commission is not obligated to complete the processing of the written request for the public record at issue until the court resolves the fee dispute.

An action shall not be filed in circuit court unless *one* of the following applies:

- The Planning Commission failed to respond to a written appeal as required, or
- The Planning Commission issued a determination to a written appeal.

If a court determines that the Planning Commission required a fee that exceeds the amount permitted under its publicly available procedures and guidelines or Section 4 of the FOIA, the court shall reduce the fee to a permissible amount. Failure to comply with an order of the court may be punished as contempt of court.

If the requesting person prevails in court by receiving a reduction of 50% or more of the total fee, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. The award shall be assessed against the public body liable for damages.

If the court determines that the Planning Commission has arbitrarily and capriciously violated the FOIA by charging an excessive fee, the court shall order the Planning Commission to pay a civil fine of \$500.00, which shall be deposited in the general fund of the state treasury. The court may also award, in addition to any actual or compensatory damages, punitive damages in the amount of \$500.00 to the person seeking the fee reduction. The fine and any damages shall not be assessed against an individual, but shall be assessed against the next succeeding public body that is not an individual and that kept or maintained the public record as part of its public function.

Section 10: Conflict with Prior FOIA Policies and Procedures; Effective Date

To the extent that these Procedures and Guidelines conflict with previous FOIA policies promulgated by Planning Commission these Procedures and Guidelines are controlling. To the extent that any administrative rule promulgated by the FOIA Coordinator subsequent to the adoption of this policy is found to be in conflict with any previous policy promulgated by the Planning Commission, the administrative rule promulgated by the FOIA Coordinator is controlling.

To the extent that any provision of these Procedures and Guidelines or any administrative rule promulgated by the FOIA Coordinator pertaining to the release of public records is found to be in conflict with any State statute, the applicable statute shall control. The FOIA Coordinator is authorized to modify this policy and all previous policies adopted by the Planning Commission, and to adopt such administrative rules as he or she may deem necessary, to facilitate the legal review and processing of requests for public records made pursuant to Michigan's FOIA statute, provided that such modifications and rules are consistent with State law.

The FOIA Coordinator shall inform the Planning Commission of any change to these Procedures and Guidelines.

These FOIA Procedures and Guidelines become effective_____.