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TO: Wexford Joint Planning Commission
FROM: Catherine Kaufman 
RE: Joint Planning Commission Zoning Authority
DATE: February 1, 2019

In response to the request of Robert Hall, please allow this memo to summarize my analysis of the Wexford Joint Planning Commission's (JPC's) authority to require all participating members to approve a rezoning request in any one participating member's township. By way of background, it is my understanding that the JPC was formed pursuant to an Ordinance/Agreement between 11 participating municipalities in 2016. Thereafter, pursuant to the Agreement, a joint zoning ordinance was adopted for all 11 participating municipalities (11 townships). The JPC and the controlling agreement/ordinance among the participating municipalities was established pursuant to the Joint Municipal Planning Act, PA 226 of 2003, as amended.

The Joint Municipal Planning Act authorizes joint planning by the participating municipalities. MCL 125.137. The Joint Municipal Planning Act also provides that:

"[t]he participating municipalities, with the joint planning commission acting as the zoning commission, *may each* adopt a joint zoning ordinance which affects the jurisdictional area of the joint planning commission and provides for the joint administration of the joint zoning ordinance, including, but not limited to, a joint zoning board of appeals." MCL 125.137(4) (emphasis added)

In the case of the Wexford JPC, a joint zoning ordinance was developed and subsequently adopted by all 11 participating townships. Section 9802 of the Joint

Zoning Ordinance details the process for amending the Zoning Ordinance (including a rezoning).¹ The process includes a required public hearing at the JPC, followed by a unanimous vote of the participating municipalities' township boards. (Section 9802 F). This unanimous approval requirement for a rezoning is not required by law or by the Agreement between the 11 participating municipalities. Instead, this unanimous approval requirement is contained in the Joint Zoning Ordinance.

It is my understanding that this requirement has become problematic as it mandates that all 11 participating municipalities approve any rezoning request. Essentially, this provision allows one township to hold any of other townships hostage in terms of a rezoning decision. Additionally, the provision arguably does not comply with a municipality's statutory zoning authority. Notably the JPC's zoning authority is derived from the authority delegated to municipalities in the Michigan Zoning Enabling Act (through the Joint Municipal Planning Act). The MZEA provides that

“[t]he legislative body of a local unit of government may provide by ordinance for the manner in which the regulations and boundaries of districts or zones shall be determined and enforced or amended or supplemented.” MCL 125.3202(1).

Moreover, as noted above, the Joint Municipal Planning Act provides that a joint planning commission's zoning authority arises from the authorities of a zoning commission under the MZEA, with respect to the jurisdictional area of the joint planning commission. MCL 125.137(2).

So while it can be argued that a joint zoning ordinance may be authorized under the Joint Municipal Planning Act, the MZEA limits zoning authority to each local unit of government. Additionally, there is no requirement that a Joint Municipal Planning Commission adopt a joint zoning ordinance; instead a Joint Planning Commission can work cooperatively for planning purposes.

While the above analysis is a legal and technical one, it may also be helpful to the Joint Planning Commission to consider the practical implications of trying to operate with a Joint Zoning Ordinance across 11 townships. Practically, the requirement for unanimous approval for a rezoning unnecessarily introduces an enormous hurdle to the success of the Joint Planning Commission. It is easy to see how several municipalities can support a joint planning effort. The wisdom and forward thinking underlying a joint planning effort ultimately benefits all of the participating municipalities. Conversely, a joint zoning ordinance may, in reality, be cumbersome, difficult to administer and unfair in its applications in certain cases. Clearly, not all municipalities are alike, so the application of zoning districts and standards across 11 townships would be understandably challenging.

¹ Section 9801 of the Zoning Ordinance specifically says that “The a legislative body of a participating municipality may . . . on recommendation from the Commission, amend, modify, supplement of revise the district boundaries of the provisions or regulations herein. . . .”

More importantly, however, a Joint Zoning Ordinance requirement of unanimous approval for rezoning requests allows the rezoning process to be subverted for other purposes. For instance, the unanimous approval requirement may be hijacked to advance political agendas and/or to thwart another township's economic development. It is unrealistic to think that in a group of 11 municipalities, all 11 will always be in agreement with each other. The current unanimous approval requirement is a mechanism that may be used to advance other objectives and/or deliver other messages, to the detriment of the joint planning objective.

In summary, while many municipalities may support a joint planning effort and possibly a joint zoning ordinance, the requirement for unanimous approval by all participating township boards of any rezoning request seems unwise. This requirement could ultimately derail all the cooperative planning work done among the participating members. Additionally, many township participating members will feel more comfortable participating in the JPC if they know that their own township board has the ultimate decisions on zoning ordinance changes.

Accordingly, there are a few options for the JPC to consider:

1. Retain JPC for planning and zoning purposes:
 - a. Amend the Joint ZO to remove the unanimous approval requirement of each municipality – but retain Joint ZO in all other regards.
 - b. In the alternative, the Joint ZO may be amended to reflect specific zoning districts/requirements for each participating municipality.
2. Eliminate the Joint ZO and have each Township adopt its own zoning ordinance.
 - a. Each zoning ordinance would be supported by the JPC's overall master plan.
 - b. JPC would hold public hearings for rezonings and forward recommendation to specific township board
 - c. Township Board would approve rezonings/ZO text amendments to its own ZO.
 - d. Upfront work of developing and adopting 11 different ZOs
 - e. May be politically more acceptable for each Township to have its own ZO
 - f. Each township would need to have its own ZBA
3. Retain JPC staff for planning and zoning administration.
 - a. Retain zoning/planning administration through JPC staff.
 - b. JPC staff person would contractually assigned duties as zoning administrator of each of the 11 participating township members.

The above analysis includes consideration of both legal and practical implications of the Joint Zoning Ordinance and its unanimous approval requirement. I am available to answer any questions the JPC may have.