

BENZIE COUNTY PLANNING COMMISSION ORDINANCE  
ORDINANCE NUMBER 2009-002  
Date: May 19, 2009

AN ORDINANCE TO REPEAL ORDINANCE 2 OF 1969 AND TO ESTABLISH A NEW BENZIE COUNTY PLANNING COMMISSION IN COMPLIANCE WITH THE MICHIGAN PLANNING ENABLING ACT, PUBLIC ACT 33 OF 2008 (MPEA) TO SUPERSEDE THE EXISTING PLANNING COMMISSION ESTABLISHED BY ORDINANCE NO. 2 OF 1969; TO CONFER ON SAID PLANNING COMMISSION ALL POWERS AND DUTIES PROVIDED FOR IN THE MPEA; AND TO TRANSFER TO THE PLANNING COMMISSION THE ZONING POWERS OF A ZONING COMMISSION UNDER PUBLIC ACT 110 OF 2006, THE MICHIGAN ZONING ENABLING ACT (MZEA).

The County of Benzie hereby ordains:

**Section 1. Repeal of Ordinance No. 2 of 1969 and Establishment of New Planning Commission in Compliance with the Michigan Planning Enabling Act.**

Ordinance No. 2 of 1969 which established the planning commission for the County of Benzie under 1945 PA 282, the County Planning Act, is hereby repealed, and the planning commission for the County of Benzie established thereby shall be superseded by the planning commission established by this ordinance pursuant to P.A. 33 of 2008, as amended, being the Michigan Planning Enabling Act (M.C.L. 125.3801 *et seq.*) (MPEA), and shall be constituted in accordance with and shall have all of the powers and duties set forth in that act and this ordinance. The members of the existing planning commission shall, however, continue to serve as the members of the planning commission established by this ordinance until such time as new members are appointed pursuant to section 2 hereof, which appointments shall be made by the board of county commissioners at the first county board meeting that occurs more than ninety (90) days after the date this ordinance is adopted by the board of county commissioners.

No matter pending before the planning commission as of the effective date of this ordinance shall be affected in any way by the fact that a new planning commission is being established by this Ordinance. All such pending matters, including, without limitation, all plan reviews, permit reviews, public hearings, etc., shall be carried forward under the new planning commission at the same status as existed prior to the effective date of this Ordinance.

**Section 2. Membership.**

A. *Number of Members:* The Planning Commission shall consist of 11 members appointed by the Benzie County Board of Commissioners. In the event of a reduction of the number of appointed members, incumbent planning commissioners shall serve out their terms of office. To be qualified to be a member and remain a member of the Planning Commission, the individual shall meet the qualification set out below.

B. *Conditions of Membership:*

1. Members of the Planning Commission shall be qualified electors of the county.
2. Appointed members of the Planning Commission shall attend educational programs designed for training members of Michigan planning commissions if the adopted Benzie County budget for that fiscal year includes funds to pay for tuition, registration, and travel expenses for the training. Nothing in this paragraph shall prevent a member who has not had training from finishing his or her term of office unless the member resigns or is otherwise removed by action of the County Board of Commissioners as provided by law. Unless the County Board of Commissioners finds that such member has special skills desired for service on the Planning Commission, a member who fails to attend any training made available shall be ineligible for re-appointment at the conclusion of his or her term.
3. Training programs which qualify to meet this requirement shall be designed to maintain or increase the skill level of Planning Commission members in the area of planning, zoning and/or the law relative thereto and shall include:
  - a. educational programs presented by established educational institutions such as universities, colleges or community colleges;
  - b. educational programs presented by an established association of governmental units or governmental officials, such as the Michigan Association of Counties, the Michigan Townships Association, the Michigan Municipal League or the Michigan Association of Municipal Attorneys;
  - c. educational programs presented by experienced planning and/or legal consultants, or associations thereof, such as the Michigan Association of Planners or the Michigan Bar Association.

C. *Ex Officio Member:* The County Board of Commissioners may appoint up to but no more than two of its members to serve as an *ex officio* member of the Planning Commission with full voting rights.

D. *Terms of Members:* Members of the Planning Commission, other than the *ex officio* member, shall be appointed to 3-year terms as specified in section 15 of the MPEA. However, of the members of the Planning Commission, other than *ex officio* members, first appointed, a number shall be appointed to 1-year or 2-year terms such that, as nearly as possible, the terms of 1/3 of all members shall expire each year. Each member, including *ex officio* members, shall hold office until his or her successor is appointed. *Ex officio* members qualify as members as long as they hold membership in the organization that authorizes their *ex officio* membership on the Planning Commission. Qualified members may hold successive terms.

The term of an *ex officio* member of a planning commission shall be as specified in the Michigan Planning Enabling Act which currently provides as follows:

- (1) The term of a chief elected official shall correspond to his or her term as chief elected official.

- (2) The term of a member of the legislative body shall expire with his or her term on the legislative body.

*E. Planning Commissioner Appointments to Other Boards and Commissions*

1. As provided in Section 1 of the County and Regional Parks and Recreation Commissions Act, Public Act 261 of 1965 [MCL 46.351], the chairperson of the Planning Commission shall serve on the county Parks and Recreation Commission. At the request of the chairperson, the Planning Commission may designate one of its members to serve on the Parks and Recreation Commission in place of the chairperson.
2. As provided in Section 601 of the Michigan Zoning Enabling Act, Public Act 110 of 2006 [MCL 125.3601], one of the regular members of the planning commission shall be appointed to the Benzie County Zoning Board of Appeals by the Board of Commissioners as specified in the Benzie County Zoning Ordinance

*F. Vacancy:* If a vacancy occurs on the Planning Commission, the vacancy shall be filled for the unexpired term in the same manner as provided for an original appointment.

*G. Removal:* Pursuant to section 15, paragraph 9 of the MPEA, The Benzie County Board of Commissioners may remove a member of the Planning Commission for misfeasance, malfeasance, or nonfeasance in office upon written charges prepared by or directed to be prepared by the board of commissioners and after a public hearing.

*H. Compensation:* All members of the Planning Commission may be compensated at such rate as may be determined from time to time by resolution of the county board of commissioners. Members of the Planning Commission may be reimbursed for actual, reasonable and necessary expenses incurred in the discharge of their duties to the extent provided for by actual appropriation of money for said purposes.

*I. Appointment of Members:*

The Chairman of the Benzie County Board of Commissioners shall, with the approval of the Board, appoint Planning Commission members in the following manner:

1. *Representation:* Members shall be representative of important segments of the community and shall also, to the extent possible, be representative of the entire geography of the county and all of the townships, cities and villages in the County, but the Board of Commissioners may grant a preference to candidates or applicants recommended by those townships which are under the county's zoning authority. In accordance with the major interests as they exist in Benzie County, the important segments include but are not limited to:
  - (a) Tourism and recreation;
  - (b) Business and economic development;
  - (c) Citizen-at large;

- (d) Townships in the western one-half of the county;
- (e) Townships in the eastern one-half of the county;
- (f) Agriculture, forestry, and land use;
- (g) Environment and environmental protection;
- (h) Education;
- (i) Human services ;
- (j) An *ex officio* county board member;
- (k) An *ex officio* member or a citizen-at-large.

2. *Education Member*: The Benzie County Board of Commissioners shall make every effort to appoint a member of a public school board, or an administrative employee of the school district included, in whole or in part within Benzie County. Such appointment shall be made from nominations solicited from all applicable public school boards.
  
3. *Appointment Process*: In making appointments for all except the *ex officio* member, the Benzie County Board of Commissioners shall make every attempt to invite and solicit names of candidates who will meet the geographical and segment representation requirements set forth in 2, above. Before making any such appointments, the Board shall seek applicants and/or recommendations for such appointments in the following manner:
  - a. At least 90 days before making such appointments, the County Clerk shall send a notice to the Township Board for each township, city and village within the county seeking recommendations for appointment to the Planning Commission.
    - 1) The notice shall advise each township that their recommendations, accompanied by materials describing the persons being recommended and their experience that would make them desirable candidates for appointment, should be received at the County Clerk's office at least 30 days before the date on which it is planned to make such appointments in order to provide the Board of Commissioners with sufficient time to review said recommendations.
    - 2) The notice shall also advise the township boards of the particular experience needed to fill any vacancies so as to meet the representation requirements of section 2.I.1, above.
  - b. At least 90 days before making such appointments, the County Clerk shall send a notice to representative organizations which may have an interest in or are representative of the particular important segments of the community described in section 2.I.1 which are currently being considered for appointment, said notice inviting recommendations for appointment to the Planning Commission.
    - 1) The notice shall advise each organization that their recommendations, accompanied by materials describing the persons being recommended and their experience that would make them desirable candidates for appointment, should be received at the County Clerk's office at least 30 days before the date on which the

Board intends to make such appointments in order to provide the Board of Commissioners with sufficient time to review said recommendations.

- 2) The published notice shall also advise each organization of the particular experience needed to fill any vacancies so as to meet the representation requirements of section 2.I.1, above.
- c. At least 90 days before making such appointments, the County Clerk shall publish a notice in a newspaper of general circulation within the county seeking applications from persons interested in an appointment to the Planning Commission.
  - 1) The published notice shall advise such persons that they should submit a letter stating their interest, accompanied by materials describing their experience and interests which relate to the important representation segments listed in section 2.I.1, above, as well as the geographical area of the county of which they are representative, to the County Clerk's office at least 30 days before the date on which the Board has announced it intends to make such appointments in order to provide the Board of Commissioners with sufficient time to review said applications.
  - 2) The published notice shall also advise potential applicants of the particular experience needed to fill any vacancies so as to meet the representation requirements of section 2.I.1, above.
- d. Except as may otherwise be provided in this ordinance, the interview and appointment process shall be in accord with the county's duly adopted policy for appointing applicants to boards and commissions.

*J. Transition from Previous Ordinance:* In order to accommodate the notice provisions with respect to appointments provided for in Section 2.I.3, above, membership on the existing planning commission shall continue until 9:00 a.m. of the day of the first meeting of the board of commissioners in September, 2009, and the existing planning commission shall be reconstituted at the first meeting of the board of commissioners in September, 2009. When appointments are made to the reconstituted planning commission, preference shall be given to existing members of the Planning Commission prior to such reconstitution. In addition, each member of the reconstituted planning commission shall be assigned an "important segment" he or she shall be representative of. The Planning Commission's bylaws shall provide duties for each member to attend, be familiar with, and represent organizations representing those interests.

### **Section 3. Organization and Procedures.**

- A. The Planning Commission shall elect a chairperson, vice chairperson, and secretary from its members and fill other offices, as it considers advisable. Ex officio members are not eligible to serve as officers. The term of each officer shall be 1 year, with opportunity for reelection as specified in the Planning Commission's bylaws.

- B. *Bylaws.* The Planning Commission shall adopt bylaws for the transaction of its business, and shall keep a public record of its resolutions, transactions, findings, and determinations.
- C. *Advisory Committees.* The Planning Commission may appoint advisory committees whose members may not necessarily be members of the Planning Commission.
- D. *Annual Report.* No later than the 1<sup>st</sup> day of June of each year, the Planning Commission shall submit an annual written report, including a work program for the coming year, and a budget request for the commission and planning department to the county board of commissioners concerning its operations and the status of planning and zoning activities. The report may also make recommendations to the legislative body regarding planning, zoning, and development. Once the annual report is done, or concurrently, the planning commission may prepare a detailed budget of its operations for the coming year. This should be accompanied by a work program describing each proposed activity and the budget to go with it. The legislative body may approve or disapprove the budget, but in any event the planning commission must operate within the funds appropriated by the legislative body to cover its operations.
- E. *Meetings.* The Planning Commission shall hold not less than 4 regular meetings each year. The time and place of the meetings shall be established by resolution. Unless the bylaws provide otherwise, a special meeting of the Planning Commission may be called by the chairperson or by 2 other members, upon written request to the secretary. Unless the bylaws provide otherwise, the secretary shall send written notice of a special meeting to Planning Commission members not less than 48 hours before the meeting.
- F. *Open Meetings Act.* The business that the Planning Commission may perform shall be conducted at public meetings held in compliance with the Open Meetings Act, 1976 PA 267, MCL 15.261 to 15.275. Public notice of the time, date, and place of a regular or special meeting shall be given in the manner required by that act.
- G. *Freedom of Information Act.* A document prepared, owned, used, in the possession of, or retained by the Planning Commission and staff members in the performance of an official function shall be made available to the public in compliance with the Freedom of Information Act, 1976 PA442, and MCL 15.231 to 15.246.

#### **Section 4. Conflict of Interest.**

- A. Conflict of interest shall be defined as a situation in which a planning commissioner has competing professional or personal interests in the outcome of a vote. Such competing interests include but are not limited to financial reward or the involvement of employers or immediate family members. Such competing interests can make it difficult to fulfill his or her impartiality. A conflict of interest exists

even if no unethical or improper act results from it. A conflict of interest can create an appearance of impropriety that can undermine confidence in the conduct of Planning Commission business. "Immediate family" shall include a member's spouse, children, other dependents, parents, siblings and a spouse's parents and a spouse's siblings.

- B. In accordance with MPEA Section 15. (9), failure of a Planning Commission member to disclose a potential conflict of interest constitutes malfeasance in office.
- C. Before joining in deliberation, fact finding, or casting a vote on a matter on which a member may reasonably be considered to have a conflict of interest, the member shall disclose the potential conflict of interest to the Planning Commission.

Following such disclosure, unless a majority of the remaining members of the Planning Commission excluding the member with the potential conflict, finds that no conflict exists, the member with the conflict is disqualified from fact finding, deliberation, and voting on the matter.

#### **Section 5. Duties and powers.**

- A. *Master Plan.* The Planning Commission shall make and approve a master plan as a guide for development within the county and shall adopt same in accordance with the requirements of Sections 31 through 51 of the MPEA.
- B. *Capital Improvements.* No work shall be initiated on any project involving the expenditure of money by a county board, department, or agency for the acquisition of land, the erection of structures, or the extension, construction, or improvement of any physical facility by any county board, department, or agency unless a full description of the project, including, but not limited to, its proposed location and extent, has been submitted to the Planning Commission and the report and advice of the Planning Commission on the proposal has been received by the county board of commissioners, all in the manner provided for in sections 61 and 63 of the MPEA.
- C. *Capital Improvements Program.* To further the desirable future development of the county under the master plan, the Planning Commission, after adoption of a master plan, shall annually prepare a capital improvements program of public structures and improvements. All procedures in the preparation and processing of such capital improvements plan shall be in accordance with sections 65 and 67 of the MPEA.
- D. *Subdivision Regulations and Plat Approval.* The Planning Commission may recommend to the County Board of Commissioners provisions of an ordinance or rules governing the subdivision of land authorized under section 105 of the land division act, 1967 PA 288, MCL 560.105, and shall review and make recommendations on plats before action thereon by the County Board of Commissioners under section 112 of the land division act, 1967 PA 288, MCL 560.112, all in accordance with the provisions of section 71 of the MPEA.

- E. Zoning Commission.* The Planning Commission shall have all powers and duties of a county zoning commission under the MZEA (MCL 125.3101 *et seq.*).
- F. Education; Consultation.* To promote public interest in and understanding of the master plan, the Planning Commission may publish and distribute copies of the master plan or of any report, and employ other means of publicity and education. The Planning Commission shall consult with and advise public officials and agencies, public utility companies, civic, educational, professional, and other organizations, and citizens concerning the promotion or implementation of the master plan pursuant to the MPEA, section 51.
- G. Consultants:* Upon request by the planning commission or upon its own initiative, the board of commissioners may retain the services of a professional planner or other professional consultant to assist the planning commission in any matter within the planning commission's jurisdiction. Before retaining such consultant, however, the board of commissioners shall consider any consultants recommended by the planning commission.
- H. Management:*
- a. The management of planning staff, if any, including any zoning administration staff, if any, shall be supervised by the county planner.
  - b. The planning commission shall manage and direct the county planner for purposes of prioritization of projects, planning and zoning policy, planning, annual work plan, subdivision review, capital improvement program and reviews, other matters of business which come before or are assigned to the planning commission, and evaluation of performance in these areas.
  - c. The management of the county planner shall be under the general supervision and control of the Board of Commissioners, or its designee, for purposes of being the sole employer, including but not limited to payroll, benefits, department head administrative and managerial duties, budget, other non-planning duties that may be assigned (e.g., EDC, Remonumentation, Recreation/Parks, Brownfield Board, etc.), compliance with Benzie County employee policies and evaluation of performance in these areas.
  - d. The management of the county planner shall be under the general supervision and control of the Board of Commissioners. Only the Board of Commissioners may hire or fire the county planner.
  - e. The Board of Commissioners, and its designee, shall carry out its general supervision of the county planner with full consultation with the Planning Commission which shall be afforded the opportunity to consult on any planning staff management decision.

## **Section 6. Amendments to the MPEA.**

Any amendments made to the MPEA shall hereby be declared to automatically control the activities and function of the Planning Commission.

**Section 7. Repeal of Inconsistent Ordinances or Resolutions.**

Any prior ordinances or resolutions addressing the same subject matter as this ordinance, particularly “Ordinance to Provide for the Creation, Organization, Powers, and Duties of a Planning Commission for Benzie County, Michigan, Ordinance Number 2” of July 14, 1969, and any amendments thereto are hereby repealed.

**Section 8. Effective Date.**

This ordinance shall be effective on the day following the day when notice of its adoption is published in a newspaper of general circulation in the county.

Adoption of the foregoing ordinance was moved by Walterhouse and supported by Pitcher.

Voting for: Damm, Hollenbeck, Pitcher, Roper, Tanner and Walterhouse

Voting against: None

Excused: Kelley

The ordinance was declared adopted.

/s/ Donald R. Tanner  
Donald Tanner, Chairman

Date of publication of Notice of Adoption: May 27, 2009

Effective date: May 28, 2009

**CERTIFICATION STATEMENT AND CLERK’S SIGNATURE**

I, Dawn Olney, as Clerk to the Benzie County Board of Commissioners, do hereby certify that the foregoing Planning Commission Ordinance was duly adopted by the Benzie County Board of Commissioners at a regular meeting of said Board at which a quorum was present on the 19<sup>th</sup> day of May, 2009.

Date: May 20, 2009

/s/ Dawn Olney  
Dawn Olney, Clerk  
Benzie County Board of Commissioners