

# **CITY OF MANISTEE PLANNING COMMISSION**

## **WORKSESSION AGENDA**

**Thursday, January 22, 2004 - 7:00 p.m.**

**I Call to Order.**

**II Worksession Items:**

1. Capital Improvement Program Committee
2. By Law Review
3. Other

**III Adjourn.**

## Memorandum

TO: Planning Commission Members

FROM: Denise Blakeslee   
Administrative Assistant

DATE: January 23, 2004

Enclosed please find a copy of the Notes from the January 22, 2004 Planning Commission Worksession. The Planning Commission discussed Capital Improvement Program Committee and By-Law Review.

Greg Ferguson referred to information from our previous Master Plan (Manistee Development Plan of 1988) relating to the development of a Capital Improvement Program Committee. Enclosed is a copy of the information that Greg was referring to.

Members also discussed By-Law Review. I have contacted Jay Kilpatrick, Williams and Works and asked if he had any copies of By-Laws from other Planning Commissions and/or a sample of By-Laws that I could forward to you.

Due to the current workload and the need to begin the Zoning Ordinance Re-write the members in attendance agreed that these two items will be brought back to the Commission at a future Worksession. Commission Members were asked to submit any concerns or items they feel should be discussed regarding the By-Laws in writing. I will then copy and distribute this information to the other members to review. Members in attendance were also given a copy of Robert's Rules of Order. The members who were not at the meeting can either pick up their copy at City Hall or I will distribute them at the next meeting.

Have a wonderful weekend!

:djb

## CAPITAL IMPROVEMENTS PROGRAMMING

What is a Capital Improvements Program?

A capital improvements program (CIP) is a system of budgeting public expenditures for significant city facilities. It is particularly useful for large nonrecurring expenditures which can help stimulate development in the city.

By employing a CIP, the city can place all of it's most important future needs into a systematic "shopping list" and determine from which sources funds for each project can and should be drawn. However, the value of CIP does not end with identifying and funding projects. It can also provide a means of prioritizing and coordinating these improvements with city development. To accomplish this, there must be direct and continual input from the City of Manistee Planning Commission. With their unique role in determining long range development goals and trends for the city, this link to the city budgeting process is essential to help ensure that capital expenditures are aligned with the city's future.

Who is responsible for the CIP?

Under Act 285 of the Michigan Public Acts of 1931, also known as the Planning Commission Act of 1931, the responsibility for creating and running a CIP falls entirely on the City Planning Commission. The following excerpt is taken from Section 9 of the Planning Commission Act and it generally describes what must be accomplished by a CIP.

"For the purpose of furthering the desirable future development of the municipality under the master plan the city planning commission, after the commission shall have adopted a master plan, shall prepare coordinated and comprehensive programs of public structures and improvements." (C.L. '48, SS 125.39.)

Since the Manistee Development Plan represents the first truly comprehensive development plan for the city, the Manistee Planning Commission has not been actively involved in capital improvements programming as required by statute. It is clear, however, that one of the first projects to be implemented after the adoption of this plan must be a capital improvements plan which includes all the basic elements described in this portion of the Manistee Development Plan.

What Should Manistee Adopt for Such a Program?

Statutory Requirements:

The Planning Commission Act provides some insight into what is

required for a CIP.

"The commission shall annually prepare such a program for the ensuing six years, which program shall show these public structures and improvements, in the general order of their priority, which in the commission's judgement will be needed or desirable and can be undertaken within the six year period. The above comprehensive coordinated programs shall be based upon the requirements of the community for all types of public improvements, and, to that end, each agency or department of such municipality concerned with such improvements shall upon request furnish the commission with lists, plans and estimates of time and cost of public structures and improvements within the purview of such department." (C.L. '48, SS 125.39.)

As suggested in the Act, the budget must be prepared and adjusted annually and run for a six year period. The program must list projects for public structures and improvements and rank them in general order of their priority. Given the political nature of city government, the capital needs of cities such as Manistee, and the marginal revenues under which most local governments are forced to operate, this is no small task. Indeed it is often the case that political influences overshadow practical ones, and what was intended as a direct line of implementing the future plan of the city, becomes a squabble over jurisdiction and philosophical positions.

Nevertheless, there is value to the CIP process beyond the city's obligation under the Planning Commission Act. The following is a list of possible advantages as adapted from a Planners Advisory Service report on CIP: (ASPO, 1961)

- (1) Coordination of improvements with the Development Plan.
- (2) Fewer fluctuations in City tax rates and personnel changes.
- (3) More time to plan projects in advance of need.
- (4) Allow citizenry to see the long-range view of current proposals.
- (5) Coordination of projects with contiguous communities and agencies.
- (6) Allows for more orderly democratic deliberation on capital projects.
- (7) Allows for better programming of grant requests from city staff.

Obviously, a CIP which is approached properly, and administered

diligently, could avoid political pitfalls involved in CIP and net many benefits for the City of Manistee. This section of the Manistee Development Plan will outline a process through which the city can achieve these results.

#### Initial Program Outline:

The following outline is a recommended framework for accomplishing a CIP for the City of Manistee.

A. Financial Analysis. The CIP must include a yearly analysis on the financial status of the city. This is best accomplished by a report specifically designed for CIP formulation from the chief financial officer. Such a report must include projections of revenue and expenditures for the next six years. This report, and any associated charting of accounts, must be detailed enough to allow for the itemization of various capital projects and to allow for recommendations in changing or adding new revenue sources such as grants, tax increment financing, special assessment districts and so on. Financial forecasting in the report should use as much information as possible from the Manistee Development Plan in order to ensure consistency. Finally, the report should document the existing fiscal policies of the city discussing any fiscal guidelines adopted by the City Council concerning capital improvements.

#### B. Project Identification:

1. Identify Departments. Each department of the City of Manistee with jurisdiction over the expenditure of public dollars for public improvements must be identified and brought into the process in a systematic manner. The system should ensure that department heads are responsible for developing their own lists, priorities, and schedules. This work will serve as the preliminary basis for formulating priorities.

2. Identify Other Interests. Other agencies or groups with interests in capital improvements should be listed and contacted for possible projects. This would include the Downtown Development Authority, the Parks and Recreation Commission, the Housing Commission, Manistee County Planning Commission, neighborhood groups, etc.

3. Identify Projects. Once all appropriate organizations have been listed and contacted for projects, a single preliminary list of projects should be developed along with schedules, approximate costs and departmental priorities.

C. Project Prioritization. Project prioritization is the most critical part of the CIP process, and yet there is still no

single "best method" for accomplishing this task (So, 1979). Systems range from simple decisions of "in or out" of plan compliance to sophisticated point allocation systems which calculate a score for each of capital projects. Since reliance on point allocation systems alone can produce politically difficult recommendations and requires a fair amount of staff time, the Manistee Development Plan is recommending that the future CIP be a two-step process of (1) evaluation with broad planning elements and (2) political judgement and decision-making through committee recommendations.

1. Formulate Simple "Checklist". The Planning Commission should create a "check list" of the most important aspects of this planning document to which proposed capital projects can be compared for compliance. The proposed policies plan is a good source for such a check list. Physical plan layouts and proposals such as the realignment of US-31 or any of the several special planning areas are examples of check list attributes. With this checklist, a simple scoring could be generated for each proposed CIP project, and this score should accompany the rest of the information to be forwarded to the CIP committee for discussion. The checklist must be reviewed each year to ensure that the current planning elements and policies are being adequately addressed.

2. Approval by CIP Committee. A Capital Improvements Program Committee, as described later in this section, should be established to serve as the forum to provide political temperance and political decision-making to the capital improvements program. With the plan compliance checklist providing more objective input for the CIP Committee, the committee membership itself should provide the debate necessary to bring about the political side of establishing project priorities.

D. Project Budgeting. If the CIP is to effectively be implemented, it must be realistic enough to allow it's use in the city's budgeting process. This will not be accomplished unless the projects tentatively scheduled, and dollars which must be allocated, are budgeted in a manner which will allow easy insertion into the city budget.

#### E. Consolidate and Adopt Program

1. Prepare Program. Once staff has prepared the budgeting report for the six year CIP project list, the CIP Committee should review the entire program to be sure that all projects have been included, and to ensure that projects are added or deleted as may be necessary from budget surpluses or shortfalls.

2. CIP Adoption. Since the CIP will be adopted by the

Planning Commission as an annually updated part of the Manistee Development Plan, the Planning Commission must hold at least one public hearing on the proposed CIP. This hearing, as well as subsequent plan adoption, must be conducted as provided in the Planning Commission Act of 1931.

F. Continuing Program. The CIP process must be a yearly programmed effort of the Planning Commission, and many of the parts of this CIP outline will not be necessary for each year of the program. In particular, establishing the CIP committee and developing the list of players for the project list would not be necessary. There should, however, be a continual effort to ensure that any new departments, agencies or organizations with capital project interests are fairly represented.

#### What Steps Must be Taken to Accomplish Such a Program?

The outline above suggests an approach to create a CIP for the City of Manistee. To create this program, there are several important steps which must be taken by the City. This section describes what these steps are.

Additional Staff or Professional Assistance. Since the City of Manistee Planning Commission will be preparing a CIP on a yearly basis, there will be need for specific personnel to accomplish many of the recommended elements of this program. The City must consider planning assistance for the Planning Commission to accomplish this, either in the form of staff personnel, professional consulting or both. Probably the best approach is to hire a consultant to assist in bringing about the first year or two of a CIP, then to phase in staff assistance as personnel becomes available.

Understanding the Budget Process. The city's budgeting process must be analyzed and well understood by the Planning Commission as a starting point to Manistee's CIP effort. With it's role in other components of the Manistee Development Plan, the Planning Commission will be in a good position to coordinate the listing and scheduling of significant capital projects. However, unless this activity is done with a complete understanding of the city's budget process, it is far less likely that this work will be implemented in a manner consistent with the usual format for city expenditures.

Obtain Support of City Hall. The City Council and City Manager must be brought into the process at the earliest possible time to ensure the necessary liaison with city hall, administratively and legislatively. As the person responsible for all city departments function, the City Manager must make positive efforts to ensure that all department heads are brought into the process, including special emphasis on the role of the chief financial

officer. In Manistee, this process will be something new and special actions must be taken in the first year, such as official executive statements and follow-up memorandum. There is also likely to be opportunity at this early stage to generate political advantages by making news releases and recommending various groups in the community to be included in the CIP process.

Form Capital Improvements Program Committee. As seen throughout the above proposed CIP process, a key element will be the formation of a CIP Committee. This should be a standing committee responsible for formulating and recommending a CIP for the annual adoption of the Planning Commission as a whole. The CIP committee should include two members of the Planning Commission, the City Manager, one member of the City Council's finance committee (preferably the Chief financial officer), the City Economic Development Officer, the City Engineer and appropriate personnel to function as planning staff. One of the two Planning Commissioners should chair the committee.

Introductory Meeting. After the City Manager has established the necessary contact to city departments, it is recommended that an introductory meeting be conducted by the Planning Commission with the City Manager in attendance. The purpose of the meeting would be to further explain the process, and to take comments aimed at fine-tuning the process prior to implementation.

Standardized Procedures. The Capital Improvements Program will require the development of many forms and procedures. It would be especially useful to bring the City's computer resources into the process, especially to the extent that existing budgeting is performed on computer. Other highly desirable computer applications in CIP may include spreadsheets and data base managers or record processors. Standard forms and procedures must be developed as the process evolves, and there are many examples available from other communities currently involved in CIP. It is recommended that the Planning Commission investigate the use of the following types of forms as their CIP process develops:

**Project Request Form:** This form should include all information necessary to help prioritize, schedule and pay for suggested capital improvements. It should be designed to standardize whatever system of record-keeping is devised including department numbers, project types, particular funding sources and so on.

**Project Status Form:** This form is necessary to help track the progress of previously adopted capital projects and may be necessary to reduce confusion associated with yearly project request forms.

**Capital Improvements Inventory Form:** If the Manistee CIP includes a running inventory of capital improvements, particularly where capital facilities may require upgrading,

there may be a need for an inventory form to help track the existence, use and condition of capital facilities.

**Plan Compliance Checklist:** As suggested in the program outline above, there will be need for a "checklist" form for staff use. This form should be set up to indicate the policy or plan recommendation which is subject to compliance as well as one or more columns to indicate the degree of compliance. Such a form should be flexible enough to be amended with changes in the Manistee Development Plan planning process.

**CIP Budget Schedule.** There will be need for a consistent expression of the budget schedule for the final CIP. This schedule must be designed to be easily translated into the City's budget process. It must include at a minimum a statement of project type, the amount of expenditure, and the intended revenue sources for each of six years in the CIP.

**Develop CIP Report.** The Planning Commission will be responsible to provide a CIP report on a yearly basis. The CIP report should become, along with data collected and examples of the forms used, the replacement for this section of the Manistee Development Plan. The report itself, however, should be a brief summary of the process and present the CIP budget schedule as adopted. This report should be copied and made available for the City Council, the City Manager's office, as well as the public at large. It is recommended that the report include the following basic elements: (1) the CIP Budget Schedule, (2) a general description of the methodology used to develop the program, (3) more detail on the types of projects proposed, and (4) the method by which priorities were developed, including project point accrual and minutes of meetings at which priority ratings were given.

**Concurrence by City Council.** Final implementation of the CIP rests entirely with the City Council through their power to appropriate public funds. For this reason, the City Council should be well informed of the projects and priorities to be included on the CIP. Though the Planning Commission develops and actually adopts the CIP, the final result will rest on the use of the program in the City's budget development and capital improvements appropriations.

**Maintaining Consistency.** It is very likely that as the process develops, few projects will proceed as programmed. However, as the process takes shape and members of the Planning Commission, City staff and City Council begin to look for the upcoming CIP results in their various roles as facility providers, there should be noticeable changes. It is therefore very important for the Planning Commission to establish this process quickly, thoroughly and with consistency. In time, expectations will be created, and the CIP process will a natural part of the growth and development of the New Manistee.

The proposed capital improvement plan is not complete at this time.

Currently the city of Manistee Planning Commission is coordinating this section with the office of the City Manager to maximize planned capital improvements now under consideration with those recommendations for future capital improvements

Upon completion of this section, the recommendations will be submitted to the City of Manistee Council for approval and subsequent adoption.

# MEMORANDUM

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TO: Planning Commission Members

FROM: Denise Blakeslee, Administrative Assistant *DB*  
Community Development Department

DATE: January 16, 2004

RE: Worksession January 22, 2004

The Planning Commission placed two items on the Worksession Agenda during their January meeting. We will discuss Capital Improvement Program Committee and Review our By-Laws. Enclosed is information relating to the two subjects.

If you are unable to attend the worksession please call me at 723-2558. Thank you!

cc: City Manager

# MEMO

TO: Planning Commission Members

FROM: Jon R. Rose   
Community Development Director

DATE: January 12, 2004

RE: Capital Improvements Program

We have been compiling data regarding "Capital Improvements Program". We found information in our Master Plan and a section in the Municipal Planning Act (latest version). They are as follows for your review:

There are two references in the Master Plan regarding Capital Improvements Program. They can both be found in Chapter 10. Implementation.

The first reference can be found in the first paragraph which reads:

"In order for the master plan to be something more than an academic exercise, steps must be taken to actually use it. As alluded to earlier, the plan is not and end in itself, but rather is a framework for future action. Moreover, validation of the plan requires more than just Planning Commission and City Council adoption. True affirmation of the plan is achieved through its active use for such things as capital improvement scheduling, development and redevelopment efforts, grant submissions, recreation planning and revisions of the zoning ordinance that are consistent with it."

The second is the final section/paragraph of the plan which reads:

## **"Manistee Capital Improvements Program**

As stated earlier, the Capital Improvements Program (CIP) is a schedule of short and long range capital projects that have been earmarked for funding by the City Council. Elements of the CIP include: project identification, project description, implementation timetable, project cost, funding sources, party responsible for undertaking project. Historically, capital improvement planning and programming within the City has been based on the collective effort of the different City departments working in concert with the Manistee City Manager and the City Council. This cooperative and collaborative process has generally functioned well and should be continued pursuant to matters associated with implementation of the Plan."

We found one reference in the Municipal Planning Act. Act 285 of 1931, as amended (Municipal Planning), Section 125.39 Municipal Planning commission; public works; powers of council; failure to act; program reads as follows:

**“125.39 Municipal planning commission; public works; powers of council; failure to act; program.**

1. Sec. 9.

Whenever the commission shall have adopted the master plan of the municipality or of 1 or more major sections or districts thereof no street, square, park, or other public way, ground, or open space, or public building or structure, shall be constructed or authorized in the municipality or in such planned section and district until the location, character, and extent thereof shall have been submitted to and approved by the commission: Provided, That in case of disapproval the commission shall communicate its reasons to council, which shall have the power to overrule such disapproval by a recorded vote of not less than 2/3 of its entire membership: Provided, however, That if the public way, ground, space, building, structure, or utility be one the authorization or financing of which does not under the law or charter provisions governing same, fall within the province of the municipal council, then the submission to the planning commission shall be by the board, commission, or body having such jurisdiction, and the planning commission's disapproval may be overruled by said board, commission, or body by a vote of not less than 2/3 of its membership. The failure of the commission to act within 60 days from and after the date of official submission to the commission shall be deemed approval. For the purpose of furthering the desirable future development of the municipality under the master plan the city planning commission, after the commission shall have adopted a master plan, shall prepare coordinated and comprehensive programs of public structures and improvements. The commission shall annually prepare such a program for the ensuing 6 years, which program shall show those public structures and improvements, in the general order of their priority, which in the commission's judgment will be needed or desirable and can be undertaken within the 6-year period. The above comprehensive coordinated programs shall be based upon the requirements of the community for all types of public improvements, and, to that end, each agency or department of such municipality concerned with such improvements shall upon request furnish the commission with lists, plans and estimates of time and cost of public structures and improvements within the purview of such department.

**History:** 1931, Act 285, Eff. Sept. 18, 1931 ;--Am. 1943, Act 163, Eff. July 30, 1943 ;--CL 1948, 125.39 .”

# MEMO

TO: Planning Commission Members

FROM: Jon R. Rose   
Community Development Director

DATE: January 12, 2004

RE: By Law Review - Charter/Code of Ordinance References (City Council and Planning Commission)

The Planning Commission asked that Review of By-Laws be placed on the January 22, 2004 Worksession Agenda. As requested we have attached a copy of the City Council Guidelines (Last Revised November 12, 2003). Please bring your copy of the By-Laws to the worksession.

to require enforcement of the Guidelines and an affirmative vote by the majority of the Council shall require the presiding officer to act.

- b. Members of the Administrative Staff and employees of the City shall observe the same rules of procedure and decorum applicable to members of the Council. While the presiding officer has authority to preserve decorum in meetings so far as staff members and City employees are concerned, the City Manager shall be responsible for the orderly conduct and decorum of all employees under his direction and control. The City Manager shall take such action as may be necessary to ensure that such decorum is preserved at all times by City employees in Council meetings, and may direct that employees leave the meeting at any time.
- c. Public members attending Council meetings shall observe the same rules of propriety, decorum and good conduct applicable to members of the Council. Any person making personal, impertinent and slanderous remarks or who becomes boisterous while addressing the Council or while attending a Council meeting shall be removed from the meeting if so directed by the presiding officer. In case the presiding officer shall fail to act, any member of the Council may move to require them to act to enforce the rules, and the affirmative vote of the majority of the Council shall require the presiding officer to act.

Any public member desiring to address the Council shall be recognized by the Chair and shall limit remarks to the question under discussion. The public member must approach the podium and state their name and address to be recognized by the Chair. Comments by members of the audience shall not exceed five minutes in length; however in the event that a group of citizens desires to address the Council regarding the same subject, the group may designate one or more representatives who may speak on behalf of the group for a total duration not to exceed thirty minutes.

All remarks and questions addressed to the administration of the City shall be addressed to the City Manager and not to any individual City employee. No person other than members of the Council and the person having the floor shall enter into any discussion either directly or indirectly without the permission of the presiding officer.

#### DUTIES AND PRIVILEGES OF MEMBERS

- 16. **Seating Arrangement.** Members shall occupy the respective seats in the Council Chamber assigned to them by the Mayor but any two or more members may exchange seats by advising the Mayor to that effect.
- 17. **Right of Appeal.** Any member may appeal to the Council from a ruling of the presiding officer. If the appeal is seconded, the member making the appeal may briefly state the reason for the same and the presiding officer may briefly state the ruling. There shall be no debate on the appeal and no other member shall participate in the discussion. The presiding officer shall then put the question, "Shall the decision of the Chair be sustained?" If a majority of the members present vote "aye" the ruling of the Chair is sustained; otherwise it is overruled.
- 18. **Personal Privilege.** The right of a member to address the Council on a question of personal

privilege shall be limited to cases in which the member's integrity, character or motives are assailed, questioned or impugned; or to matters interfering with the conduct of business such as excessive noise, temperature, inability of a speaker to be heard, etc.

19. **Dissents and Protests.** Any member shall have the right to express dissent from or protest against any ordinance, resolution or motion of the Council and have the reason therefore entered upon the minutes. Such dissent or protest must be filed in writing and be presented to the Council not later than the next regular meeting following the action giving rise to the objection.
20. **Code of Ethics.** Council members, public officers, members of boards and commissions and employees occupy positions of public trust. All municipal business must be subject to the scrutiny of public opinion both as to the legality and to the propriety of such business.

In addition to matters of financial interest, Council members, public officers, advisory board members and employees shall refrain from making use of special knowledge or information before it is available to the general public and shall refrain from using the public office as a method of directly or indirectly favoring self, friends, customers, clients, family members, business associates or any other special interests. Council members, officers, advisory board members and employees shall at all times be mindful of their responsibility to the entire electorate and shall refrain from actions benefitting special interest groups at the expense of the City as a whole and shall do everything in their power to ensure equal and impartial law enforcement and opportunity without unlawful discrimination.

- a. **Nepotism.** In accordance with 2-12 of the Charter of the City of Manistee and Council Policy 16 dated July 16, 1991 and administrative policy issued May 22, 1995 nepotism is prohibited in the employment practices of the City. This provision applies to relatives of the Council and City Manager to the second degree of consanguinity including grandparents, sons and daughters, grandsons and granddaughters, siblings, aunts and uncles, nieces and nephews, and first cousins, whether by blood, marriage or law. Applicants who are related by this degree shall not be considered for employment unless the City Manager individually, specifically and in writing determines that the skills, abilities or talents of the applicant are unique and of such a value to the City generally that an exception to the policy is warranted. The Manager must seek the concurrence of the entire City Council by formal vote at a properly noticed regular or special meeting prior to the hiring of such an applicant.
- b. **Pecuniary Interest.** In accordance with Section 2-9 of the Charter of the City of Manistee and Public Act 317, 1968, as amended, members of the City Council, officers and employees shall not be a party to a contract involving the City except as provided by law and this Section. Council members who have an interest in a firm (meaning as an officer or employee of a firm including a co-partnership or other unincorporated association or private corporation in which he/she is a stockholder owning more than 1% of the total outstanding stock) which is involved in the supply of routine goods or services to the City handled as administrative purchases not subject to formal Council approval shall at the Organizational Meeting of the City Council advise in writing the Council and administrative staff of that interest in that firm. Thereafter the firm is eligible to supply goods or services in accord with

normal municipal purchasing policies provided however that within 30 days following the conclusion of each fiscal year the City Treasurer shall separately tabulate the dollar amount of the total business which has been conducted with that firm during the fiscal year with that summary published in the newspaper designated as the official publication for the City.

- c. It is recognized that no ethics clause can adequately address the broad scope of potential conflicts and ethical dilemmas. The City Council, officers and employees must be dedicated to the highest ideals of honor, integrity and fidelity with no color of self-interest in the execution of the public's business.

COMMITTEES

- 21. **Appointments to Boards and Commissions.** All appointments to City boards and commissions shall be made in accordance with appropriate statutes and local ordinance. Except as otherwise provided by ordinance or statute, boards and commissions shall serve at the pleasure of the City Council and report to the City Council. All vacancies shall be advertised in the official publication of the City of Manistee.

The Mayor and City Council are not limited to a selection from among the applicants; however the Mayor and Council shall generally give preference to those citizens who apply in accordance with the terms of the vacancy. The Mayor and Council shall generally give preference to residents of the City of Manistee. The following board and commission members are appointed by the Mayor and City Council respectively:

MAYOR

CITY COUNCIL

Airport Authority  
Beautification Committee  
Building Authority - Residency Required  
Compensation Commission - Residency Required  
Construction Board of Appeals  
Downtown Development Authority  
Housing Commission  
Local Development Financing Authority  
Oil and Gas Investment Board  
Planning Commission  
Tree Commission  
Zoning Board of Appeals

Board of Review - Residency Required  
Harbor Commission  
Parks Commission  
PEG Commission  
Retirement Board

All appointments by the Mayor are subject to the Council's approval, unless otherwise specified by statute or ordinance. Nominations for Council appointments do not require a second.

- 22. **Appointments.** By ordinance the Mayor assumes the Chair of the Downtown Development Authority and the Oil and Gas Investment Board. The Mayor becomes a member of the Sands Park Board.

Appointments to be considered immediately after the Organizational Meeting include two

appointments to the Manistee Recreation Association and two appointments to the Retirement Board (one a member of the City Council and one an appointed officer of the City).

23. **Council Standing Committee.** Immediately after the annual Organizational Meeting of the Council, the Mayor shall appoint the following standing committees, subject to confirmation by the Council: a.) Auditing Committee, b.) Ordinance Committee. Three members of the Council shall be appointed to each committee with the Mayor designating the member who is to serve as Chairman of the committee. Vacancies occurring in any committee shall be filled in like manner.
  - a. The Auditing Committee shall review all invoices paid by the City to review their appropriateness, conformance with the budget and compliance with municipal purchasing practices. Any questions or apparent irregularities shall first be reviewed with the City Finance Officer and then the City Manager. If the matter cannot be adequately addressed by the Finance Officer or the City Manager, the Auditing Committee shall bring the matter to the City Council as a regular agenda item.
  - b. Ordinance Committee. All ordinances proposed, whether by a member of the Council, City Manager, Advisory Board or Commission or the public at large shall be put in proper form and reviewed by the Ordinance Committee. The Ordinance Committee shall make a recommendation to the City Council on each ordinance reviewed, with or without modification. If the recommendation of the Ordinance Committee is that the ordinance not be approved, the person or group sponsoring the proposed ordinance may request consideration by the entire Council with the committee's negative recommendation.
  - c. Personnel Committee. In accordance with Section 5-6 of the Charter, the City Manager may appoint a Personnel Committee's subject to the approval of the City Council.
24. **Special Committees.** In accordance with Section 10-13 of the Charter, special committees for particular purposes may be appointed by the Mayor, by the City Council or by the City Manager to investigate and/or make recommendations to the City Administration or City Council. Such committees shall be ad hoc and serve only until such time their charge has been fulfilled.
25. **Meeting Notice.** It shall be the duty of the Chairman of any standing or special committees and advisory boards and commissions to give advance notice of the time and place of the meeting in accordance with the Open Meetings Act (minimum 18 hour notice) and to advise all members of the committee, the City Council, the City Manager and other persons who have made known in writing their interest in the particular matters to be considered. Minutes shall be kept and circulated in like manner.
26. **Reports.** Reports by committees, boards and commissions to the City Council shall be reduced to writing and represent the views of the majority. This shall not be construed to prohibit minority reports. Reports shall be submitted to the City Clerk who, in addition to maintaining a file copy will post a copy in City Hall and forward a copy to the City Manager for distribution to the affected City Staff and City Council.

27. **Per Diems, Expenses.** No standing or special committees or advisory boards or commissions shall receive compensation in the form of per diem for time spent on municipal business. All reasonable, normal and customary expenses incurred by the committee and its members, including meal expenses, shall be borne by the City in accord with the City's Travel Policy.

The Compensation Commission shall meet in odd numbered years to make recommendations to the City Council regarding Council stipends, per diems, etc. Any modifications approved by the Council as a result of recommendations by the Compensation Commission shall automatically amend this section of the Council Guidelines. See State Statute on this subject.

### COUNCIL PROCEDURE

28. **Order of Business.** The regular business at all regular meetings of the Council shall be transacted in the following order, unless the Council shall by a vote of at least two-thirds of the members present suspend the rules and change the order:

- I. Call to Order.
- I.a.) Pledge of Allegiance.
- II. Public Hearing(s), if any.
- III. Consent Agenda.
- IV. Approval of Minutes.
- V. Financial Report.
- VI. Unfinished Business.
- VII. New Business.
- VIII. Notices, Communications, Announcements.
- IX. Concerns and Comments.
  - a. Citizens
  - b. Officials and Staff
  - c. Council Members
- X. Adjourn.

29. **Parliamentary Procedure.** Roberts Rules of Order, the most recent published edition, are hereby adopted as the parliamentary procedure for the City Council. In all matters specific in these Guidelines, these Guidelines shall take precedence over Roberts Rules of Order. In matters of parliamentary procedure not otherwise addressed in these Council Guidelines, Roberts Rules of order shall prevail.

- a. **Precedence of Motions.** When a main motion is before the Council, other motions may not be entertained except 1.) to adjourn, 2.) to recess, 3.) to table, 4.) for the previous question (to limit debate)\*, 5.) to refer to a committee, or 6.) to amend. These motions have precedence in the order indicated. Once made and seconded, each motion shall be put to a vote without debate; except that a motion to amend is debatable.

\* Requires two-thirds vote.

- b. When a motion is made and seconded, it shall be restated by the presiding officer before debate. Any member may demand that it be put in writing. A motion may be

withdrawn at the request of the mover with the consent of the second in which event the motion shall not be recorded in the minutes and shall not be subject to further action.

- c. After a decision on any ordinance, resolution or motion, any member who voted with the majority may move for a reconsideration of the action on the same or the next succeeding meeting; provided however that a motion for reconsideration is out of order if the action earlier authorized has been implemented or partially implemented. A motion for reconsideration does not require a second. If approved, the effect is to place the original action before the Council for further consideration, not to overrule the original decision.
- d. A point of order, parliamentary inquiry, personal privilege and similar actions do not require a second and are subject to a ruling by the presiding officer which may be appealed to the Council.

### MISCELLANEOUS

- 30. **Depositories, Official Publication.** At the first regular meeting of the City Council at the beginning of each fiscal year, the City Council shall take action to designate depositories for municipal funds. At that same meeting the Council shall take action to designate an official publication for the City which shall be a newspaper with wide local distribution. The official publication named by the City shall publish all official notices and communications of the City. This provision shall not preclude publication in other newspapers, as appropriate.
- 31. **Complaints.** The procedure for complaints shall be:
  - a. All complaints involving municipal policies shall be referred to the City Council for appropriate action and, except in the most unusual cases, such action shall be preceded by a report and recommendation of the City Manager who shall have had ample opportunity and time in which to investigate and render a report.
  - b. All complaints involving charges of unfair, improper or inadequate hearings before advisory boards and commissions or Council committees shall be referred immediately to the particular board or commission concerned for a rehearing provided however that such referral shall be accompanied by a written statement from the person complaining of such improper hearing which statement shall delineate the specific charges in order that the board or commission concerned may be able to take appropriate action.
  - c. All complaints with the respect to the management of the City shall be referred to the City Manager for necessary or appropriate action. A copy of written complaints will be forwarded to the City Council for information. In the case of those complaints against the management of the City wherein the Council desires further information, then the City Manager when so requested by a majority of the Council shall be given adequate time in which to make the necessary investigation and report to the City Council.
  - d. Questions, comments or concerns regarding municipal services shall be conveyed to

the City Manager or appropriate department during regular business hours and shall not be raised at Council meetings unless the City Manager has failed to adequately respond to the issue following a reasonable opportunity to address same.

32. **Administration.** In accordance with Section 2-10 and Section 5 of the Charter, the City Manager is responsible for the administrative affairs of the City including the appointment, discipline and removal of employees except as otherwise noted in the Charter. The Manager shall supervise and control the administrative affairs of the City and all departments thereof. Members of the Council shall not individually provide direction to City employees or departments, nor make inquiry thereof except through the office of the City Manager. This Section in no way limits the Council from fully and freely discussing its views with the City Manager pertaining to the appointment, discipline or removal of employees; nor limit the Council's ability to initiate investigations into municipal affairs in accordance with Section 13-10 of the Charter.

This Section shall not limit individual Council members' ability to make requests for services from departments, nor convey a request for services to a department by a constituent as would be available to a citizen at large.

33. **Separability.** Any part of these Guidelines which shall conflict with any state or federal law now or in the future, or the Charter of the City of Manistee or any ordinance of the City duly adopted now or in the future shall be null and void but only to the extent of the conflict. All other parts shall continue in full force and effect.
34. **Amendments.** These Guidelines may be amended by the City Council at the annual Organizational Meeting of the Council by majority vote. These Guidelines may be amended by the City Council at any other regular or special meeting of the City Council, by a majority of the members elect.

ADOPTED: March 16, 1993  
AMENDED: December 17, 1996  
AMENDED: November 9, 1999  
AMENDED: January 16, 2001

AMENDED: November 15, 1994  
AMENDED: November 12, 1997  
AMENDED: December 5, 2000  
AMENDED: November 12, 2003

  
Richard Mack, Mayor

# MANISTEE CITY PLANNING COMMISSION

## BY-LAWS and RULES OF PROCEDURE

The following by-laws and rules of procedure are hereby adopted by the Planning Commission to facilitate the performance of its duties as outlined in Act 285, P.A. of 1931, as amended (being M.C.L. 125.34, Municipal Planning).

### Section 1.0 Officers:

- 1.1 Selection: At the regular meeting in December of each year, the Planning Commission shall select from its membership a Chairman, Vice Chairman and Secretary. All officers are eligible for reelection.
- 1.2 Tenure: The officers shall take office at the start of the next regular meeting following their selection and shall hold office for a term of one year, or until their successors are selected and assume office.

### Section 2.0 Officers' Duties:

#### 2.1 Chairman: The Chairman shall:

- A. Preside at all meetings,
- B. Appoint committees,
- C. Sign all Legal Documents authorized by the Planning Commission,
- D. Periodically meet with Planning Department Staff,
- E. Appoint an acting Secretary for a meeting at which the Secretary is absent, and
- F. Perform such other duties as may be ordered or authorized by the Planning Commission.

[Annotation: Section 2.1.C was added by amendment on November 4, 1999]

#### 2.2 Vice Chairman: The Vice-Chairman shall:

- A. Act in the full capacity of the Chairman in the absence of the Chairman, and
- B. In the event the office of the Chairman becomes vacant, shall succeed to the office of Chairman for the unexpired term. The Planning Commission shall select a successor to the office of Vice-Chairman from its membership for the unexpired term.

#### 2.3 Secretary: The Secretary or his or her designee shall:

- A. Execute documents in the name of the Planning Commission,
- B. Be responsible for the minutes of each meeting and shall have them spread in suitable volumes.
- C. Be responsible for copies of the minutes being distributed to each member of the Planning Commission prior to the next meeting of the Planning Commission,
- D. Prepare an agenda for each meeting,
- E. Be responsible for all communications, petitions and reports addressed to the Planning Commission,
- F. Keep attendance records and shall notify the City Council whenever any member of the Planning Commission is absent from three consecutive regularly scheduled meetings so

the City Council can take further action pursuant to Section 3.2 of these rules of procedure and by law, and

- G. Perform such other duties as the Planning Commission may determine.
- H. Maintain an accounting of funds budgeted to the Planning Commission.

[Annotation: Section 2.3 was amended November 4, 1999, by adding "or his or her designee" to 2.3 and adding 2.3.D]

### Section 3.0 Meetings:

3.1 Regular Meetings: Meetings of the Planning Commission will be held the First Thursday of every month at 7:00 p.m. in the City Council Chambers at City Hall. When the regular meeting day falls on a legal holiday, or if city wide festivities are planned for that date, the Planning Commission shall select a suitable alternate day in the same month. A meeting of the Planning Commission shall only be canceled due to severe weather or when quorum cannot be present.

[Annotation: The meeting time was changed from 7:15 p.m. by amendment on December 10, 1992]

3.2 Attendance: If any member of the Planning Commission has unapproved absences from three consecutive regularly scheduled meetings, then that member shall be considered delinquent. Delinquency shall be grounds for the City council to remove any member from the Planning Commission for nonperformance of duty or misconduct of office, or both.

[Annotation: Section 3.2 was amended on January 3, 2002]

3.3 Special Meetings: Special meetings shall be called at the request of the Chairman, or by three members of the Planning Commission. Notice of special meetings shall be given to the members of the Planning Commission at least 48 hours prior to such meeting and shall state the purpose and time and place of the meeting. The Chairman may designate special meetings for the exclusive purpose of discussion of long range portions of the master plan or for other single issue discussions.

[Annotation: Section 3.3 was amended on November 4, 1999]

3.4 Public: All regular and special meetings, hearings, records and accounts shall be open to the public.

3.5 Quorum: Five members shall constitute a quorum for the transaction of business and the taking of official action for all matters except the adoption of a master plan, or any part of a master plan. The affirmative vote of six members shall be necessary for the adoption of a master plan, or any part of a master plan. Whenever a quorum is not present at a meeting, those present may adjourn the meeting to another day or hold the meeting for the purpose of considering such matters as are on the agenda. No action taken at such a meeting shall be final or official unless and until ratified and confirmed at a subsequent meeting when a quorum is present by acting to approve the minutes of the meeting at which the quorum is not present.

3.6 Motions: Motions shall be restated by the Chairman before a vote is taken.

3.7 Voting: Voting shall be by voice or shall be by roll call and each vote recorded in the minutes. Roll call votes shall only be done upon request of a member or by ruling of the Chairman. Members must be present to cast a vote.

3.8 Commission Action: Action by the Planning Commission on any matter on which a hearing is held shall not be taken until after the hearing has concluded.

3.9 Parliamentary Procedure: Parliamentary Procedure in Commission meetings, when needed, shall be governed by Roberts' Rules of Order.

3.10 Conflict of Interest: As used here, a conflict of interest shall at a minimum include, but not necessarily be limited to, the following:

- A. A commission member issuing, deliberating, voting or reviewing a case concerning himself.
- B. A commission member issuing, deliberating, voting or reviewing a case concerning work on land owned by himself.
- C. A commission member issuing, deliberating, voting or reviewing a case involving a corporation, company, partnership, or other entity in which he is a part owner, or any other relationship where he may stand to have a financial gain or loss.
- D. A commission member issuing, deliberating, voting or reviewing a case which is an action which results in a pecuniary benefit to himself.
- E. A commission member issuing, deliberating, voting or reviewing a case concerning his spouse, children, step-child, grandchildren, parents, brother, sister, grandparents, parents in-law, grandparents in-law or member of his household.
- F. A commission member issuing, deliberating, voting or reviewing a case where he/she is a member of the Manistee City Planning Commission and
  1. is an applicant, or
  2. has a direct interest in the permit, or
  3. chooses to intervene in a permit application case and is done in such a manner that the commissioner feels, in his/her judgement, that his/her job, scope of duties and/or position may be a risk, pending the outcome of the permitting process. A commission member shall, when he/she has a conflict of interest do the following immediately, upon the first review of the case and determining a conflict exists:
    - a) declare a conflict exists at the beginning of the meeting where the case appears on the agenda, or when the topic brought up so such declaration is recorded in the minutes, and
    - b) refrain from participating in the discussion, site inspection or review of the case, except where specific information has been requested by the commission, and
    - c) refrain from casting a vote on any motion having to do with the case.

[Annotation: Section 3.0 Meetings was amended on November 4, 1999. The amendment included deleting 3.6 Order of Business]

#### Section 4.0 Committees:

##### 4.1 Executive Committee:

- A. The Executive Committee shall be a standing committee of the Planning Commission. Its membership shall be the elected officers of the Commission, and they shall hold the same offices in the committee. The Executive Committee may deal with recommendations to the Planning Commission on

1. matters of the Planning Commission Budget;
  2. and anything else directed to the Executive Committee by the Planning Commission.  
[Annotation: Section 4.1.A was amended on November 4, 1999]
- B. The Executive Committee has limited power to act only on housekeeping matters, budget, office policy, overseeing contracts when time constraints require action prior to the next regularly scheduled Planning Commission meeting. Such actions shall be reported at the next regularly scheduled Planning Commission meeting and are subject to the Planning Commission's review and veto.  
[Annotation: Section 4.1B was amended on November 4, 1999]

4.2 Ad Hoc Committees: The Planning Commission or Chairman of the Planning Commission may establish and appoint ad hoc committees for special purposes or issues, as deemed necessary. No more than four members of the Planning Commission may serve on an ad hoc committee at any given time.

Committee appointments shall be made at the first regular meeting held in January of each year or at the time the committee is formed. Committees requiring appointments may include, but are not limited to: Historic Overlay/Site Plan Review Committee, Joint City Ordinance Review Committee, Master Plan Review Committee and Zoning Board of Appeals.

[Annotation: Section 4.2 was amended on January 4, 2001, amendment included deletion of Manistee County Plat Review Board and DDA Liaison.]

[Annotation: Section 4.2 was amended on January 2, 2003 amendment to add Master Plan Review Committee to the list of Committees]

4.3 Citizen Committees: The Planning Commission, Chairman of the Planning Commission, and/or the Planning Director may establish and appoint citizen committees with the consent of the Planning Commission. Membership can be any number, so long as no more than four members of the Planning Commission serve on a citizen committee at any given time. The purpose of the citizen committee is to have more citizen and municipal government involvement, to be able to use individuals who are knowledgeable or expert in the particular issue before the Planning Commission, to better represent various interest groups.

#### Section 5.0 Rules of Procedure for All Committees:

5.1 Subservient to the Planning Commission: All committees are subservient to the Planning Commission and report their recommendations to the Planning Commission for review and action. A simple majority vote by the Planning Commission can overrule any action of any committee.

5.2 Same Principles: The same principles of these Rules of Procedure for the Planning Commission also apply to all committees of the Planning Commission:

- A. Officers of committees are appointed by the Chairman at the time the committee is created or are elected by the committee from its membership at their first meeting. Officers, at a minimum, shall include a chairman and a secretary-vice chairman.

- B. A committee's quorum shall be at least half the total appointed membership of the committee. Only citizen committees can elect to meet without a quorum as provided in section 3.4 of these Rules of Procedure.
- C. Only those appointed members of a committee who are present at the time of a vote shall be eligible to cast a vote.
- D. If any member of a committee is absent from three consecutively scheduled meetings of that committee, than that member shall be considered delinquent. Delinquency shall be grounds for the Planning Commission to remove the member from the committee. The elected committee secretary or acting secretary shall (and the Planning Director may) keep attendance records and notify the Planning Commission of any committee member who has been absent from three consecutively scheduled meetings. The Planning Commission may consider removal of the individual from the committee.  
[Annotation: Section 5.2,D was amended on November 4, 1999]
- E. The secretary of the committee shall keep minutes of the committee meetings in the same format as the minutes of the Planning Commission. Minutes shall be filed in the Planning Department.
- F. Committees have reasonable use of Planning Department staff time and assistance and direction for performing the work of the committee.
- G. All committee meetings, records, etc. are open to the public
- H. Citizen committees may form subcommittees from their own membership or with additional citizens when deemed necessary. Subcommittees are subservient to the parent committee. Subcommittees are informal, not requiring quorums, attendance, minutes, public participation, Less than one half the committees' members shall be appointed to a single subcommittee.

#### Section 6.0 Per Diem, Expenses and Mileage:

- 6.1 Mileage and Per Diem shall be paid to members of the Planning Commission at rates established by the City Council from time to time for attendance at Commission meetings and Executive Committee meetings and other authorized meetings or trips to represent the Commission, if those members bill the Commission for the same.
- 6.2 The payment of registration fees and/or the reimbursement of expenses to represent the City at planning related meetings, seminars and workshops must be approved by the Planning Commission, provided budgeted funds are available and if those members bill the Commission for the same.

[Annotation: Section 6.2 was amended on January 3, 2002]

#### Section 7.0 Hearings:

- 7.1 Master Plan Hearings: Before the adoption of any part of the Master Plan as defined in Section 8 of P.A. 285 of 1931, as amended (being M.C.L. 128.38, Municipal Planning) or any amendment to the Master Plan, or recommending approval of an amendment to the governing

body, the Planning Commission shall hold a public hearing on the matter. Notice of the time and place of the hearing shall be given, not less than 15 days prior to such hearing, by one publication in each newspaper of general circulation.

7.2 Special Hearings: Notice of special hearings for the purposes of presenting preliminary master plans, obtaining public opinion on a problem, or discussion of a particular problem with interested parties will be given in the most practical manner and to persons, or group representatives most interested.

7.3 Notice of Decision: A written notice containing the decision of the Planning Commission will be sent to petitioners and originators of a request for the Planning Commission to study a special problem.

7.4 Speaking at Meetings. Unless waived by the Commission for a specific meeting, any public comment shall be limited to five (5) minutes per speaker, one time only. If a group of people wish to be heard on one subject, a spokesperson may be appointed who may request that the Chairman approve more than the normal five (5) minutes. If necessary, a maximum of five (5) minutes will be allowed for the group to caucus to choose their spokesperson and develop their comments.

[Annotation: Section 7.4 was added on January 3, 2002]

#### Section 8.0 Matters to be considered by the Planning Commission:

8.1 The following matters shall be presented for consideration at a meeting of the Planning Commission:

- A. All preliminary plans and reports for the physical development of the city, including the general location, character and extent of streets and roads, viaducts, bridges, parks and open spaces; the general location and extent of public utilities and terminals.
- B. The removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of any public right-of-way, grounds, agricultural land, open spaces, buildings or properties.
- C. The general character, extent and layout of the replanning and redevelopment of blighted districts and slum areas.
- D. Land subdivision plats.
- E. All planning reports and plans before publication.
- F. Capital improvement programs.
- G. Planning Department and Commission's budget requirements for the fiscal year and requests for appropriations.
- H. Selection of consultants and determination of basis for compensation.  
[Annotation: Section 8.1.H was amended on November 4, 1999]
- I. Plans, zoning ordinances, etc. adopted by municipalities.
- J. Such other matters as the Planning Director shall find advisable or essential to receive consideration by the Planning Commission.

Section 9.0 Matters to be acted upon by staff on behalf of the Commission:

9.1 The Planning Department Director shall take action or make recommendation in the name of the Planning Commission, in accordance with such plans, policies and procedures as are approved or established by the Planning Commission from time to time. Where there is a serious conflict of interest, public controversy, or uncertainty or doubt as to the plans, policies or procedures approved or established by the Planning Commission, presentation of the matter shall be made at a Planning Commission meeting.

Section 10.0 Site Plan Review and Parcel Split and Combination Review Policy:

[Annotation: "Lot" was changed to "Parcel" by amendment on January 4, 2001]

10.1 Submitted site plans shall be reviewed in the following manner:

**Basic Site Plans:** shall only be subject to review by the zoning administrator.  
[Annotation: "City Code Administrator" was changed to "Zoning Administrator" by amendment on November 4, 1999]

**Medium Site Plans:** subject to review by the zoning administrator, with the option to refer the plan to the planning commission or site plan review committee.  
[Annotation: Previous language for Medium Site Plans was deleted and new language was adopted by amendment on January 3, 2002]  
[Annotation: language for Medium Site Plan was changed by amendment on January 2, 2003 to be gender neutral]

**Detailed Site Plans:** shall only be subject to review by the planning commission and/or Board of Appeals.

10.2 The Zoning Administrator shall report monthly on all site plans administratively reviewed.  
[Annotation: Section 10.2 was added by amendment on November 4, 1999]

10.3 Plans for Parcel Splits and Combinations shall be reviewed, as required in Section 151.07(E) of the Manistee City Subdivision Ordinance, in the following manner:

Plans for the proposed parcel split or combination shall be forwarded by the Zoning Administrator to the Site Plan Review Committee or the Planning Commission, for review. The plan shall be reviewed to see that each resulting parcel meets each and every requirement of the City of Manistee Zoning Ordinance for the land use district in which the parcels are located.

If reviewed by the Site Plan Review Committee the Committee is authorized to either:

- A. Submit recommendations on the plan to the Manistee City Council on behalf of the Planning Commission, or
- B. Refer the plan to the full Planning Commission for review and recommendation.

As provided in Section 1242.f.2 of the Manistee City Code of Ordinances, recommendations of the Site Plan Review Committee and/or of the Planning Commission can be made with or without a public hearing.

[Annotation: Section 10.3 added by amendment on December 9, 1993]

[Annotation: "City Code Administrator" was changed to "Zoning Administrator" by amendment on November 4, 1999]

[Annotation: Section 10.3 was changed by amendment on January 4, 2001, included in change was deleting "Lot" and replacing with "Parcel", adding Planning Commission, and updating Section number of Manistee City Code of Ordinance.]

### Section 11.0 Staff assigned to Planning Commission:

[Annotation: Section 11.0 was changed by amendment on November 4, 1999]

11.1 Authorization: The Planning Commission staff may consist of a Planning Director and such other personnel as may be authorized after the budget for the same is approved by the City Council.

[Annotation: Section 11.1 was changed by amendment on November 4, 1999]

11.2 General Responsibility: The Planning Commission Staff is charged with the duty of preparation and administration of such plans as are authorized by the Planning Commission.

11.3 Planning Director's Duties: The Planning Director shall be responsible for the professional and administrative work in directing and coordinating the program of the City. His work shall be carried on with the widest degree of professional responsibility under the direction of the City Manager. The Planning Director shall:

[Annotation: Section 11.3 was changed by amendment on November 4, 1999]

- A. Supervise and review the work of professional, technical and nontechnical employees.  
[Annotation: Section 11.3.A was changed by amendment on November 4, 1999]
- B. Prepare a proposed annual budget for the Planning Commission and Department to submit to the Planning Commission.
- C. Be responsible for carrying out the directives of the Planning Commission.
- D. Work with the chairman of the Planning Commission for formulation of staff policy, subject to approval by the Planning Commission.
- E. Recommend to the Planning Commission the process to implement plans and policies such as:
  - 1. Zoning and subdivision control.
  - 2. Programs for capital expenditures.
  - 3. Other actions by the commission or other government agencies.
- F. Officially present the Planning Commission's recommendations to the City Council.
- G. Officially represent the Planning Commission, and Planning Department, at planning conferences, interdepartmental meetings, and to the public and press.

[Annotation: Section 11.3.G was changed by amendment on November 4, 1999]

- H. Encourage development in harmony with plans, policies and ordinances, supply information, and promote understanding of planning.
- I. Perform other such duties as are contained in a job description adopted by the City  
[Annotation: Section 11.3.I was changed by amendment on November 4, 1999]

Section 12.0 Adoption and Repeal:

- 12.1 Upon adoption of these by-laws and rules of procedure, they shall become effective and all previous rules of procedure or bylaws shall be repealed.

Section 13.0 Amendments:

- 13.1 These rules may be amended at any regular meeting of the Planning Commission by a two-thirds (2/3) vote of the total membership of the commission.

Adopted by Manistee City Planning Commission - 1/9/92  
Amended by Manistee City Planning Commission - 12/10/92  
Amended by Manistee City Planning Commission - 12/9/93  
Amended by Manistee City Planning Commission - 11/4/99  
Amended by Manistee City Planning Commission - 1/4/01  
Amended by Manistee City Planning Commission - 1/3/02  
Amended by Manistee City Planning Commission - 1/2/03

## MEMO

TO: Planning Commission Members  
City Council

FROM: Denise J. Blakeslee   
Administrative Assistant

DATE: January 15, 2004

Enclosed please find a draft copy of the minutes with attachments from the January 8, 2004 Planning Commission Meeting. Also enclosed is a copy of items we have received on the Manistee Saltworks Development Corporation project.

Thank you.

:djb

**Items forwarded to the  
City of Manistee Planning Commission  
relating to Manistee Saltworks Development Corporation  
in their packets 1/16/04**

Correspondence:

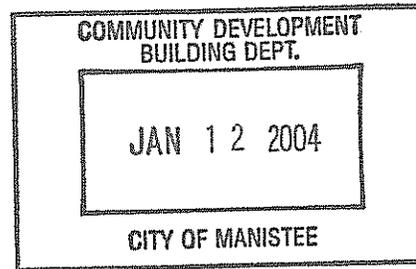
Carol Pasco, 610 Spruce Street  
Pleasanton Township - Resolution concerning Northern Lights Project  
Mickey McCann, 297 Hughes Street

Letter dated 1/15/04 from Jon Rose to Jim Tondu

Letter dated 1/15/04 from Mitch Deisch to Carol Pasco

610 Spruce St.  
Manistee 49660  
January 11, 2004

City of Manistee Planning Commission  
Manistee, Michigan 49660



To the Commissioners:

I attended the recent Planning Commission meeting on January 8<sup>th</sup>, 2004. I was surprised and somewhat disturbed by certain events that occurred during that meeting. First, I was stunned when Commissioner Ferguson invoked the provision that would have limited people speaking if they were members of the Citizens for Responsible Development. Amazingly, three other members of the commissions also voted in favor of limiting free speech during the public comment period. I am a member of the CFRD group, but I am also a tax-paying resident of the city and have every right to speak up for myself regardless of my affiliation with this organization. Thankfully, the attempt at silencing individuals did not pass. Second, I found it insulting to be referred to as "you people" as in "We've done all we can for you people." You people? Does this mean we are somehow outsiders who really shouldn't be at the meeting? I thought the commission and the city government worked FOR the people and that we were all in this together for the betterment of our city. Once again, I am a resident of this community. I have a right to attend the meetings and speak out against something I consider negative. Third, I was very surprised by the attitude expressed in the comment, "If we don't give them time to speak, we get killed on paper." In other words, as I interpret this, we, the commissioners, really don't want to hear what the citizens (referred to as "them") have to say, but we better let them speak or we get bad publicity. How sad. I would think the commissioners would be eager to hear everything possible from the citizens of this city and county. Their decision will affect all of us, our children, our grandchildren, and down the line for generations. Planning commissioners and members of City Council work FOR the citizens of the community; they are not entities unto themselves. They cannot have too much information to help them make this far-reaching decision.

Thank you.

Sincerely,

*Carol Pasco*  
Carol Pasco

Copies: City Council, City Manager, Mayor

**PLEASANTON TOWNSHIP, MANISTEE COUNTY, MICHIGAN**

**RESOLUTION CONCERNING NORTHERN LIGHTS PROJECT**

**WHEREAS**, the primary functions of local government are to serve community by promoting and protecting the health, safety and welfare of its citizens;

**WHEREAS**, the primary functions of corporations are to grow and show a profit to its shareholders;

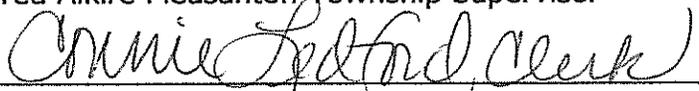
**WHEREAS**, in democracy it is imperative to have unbiased information to enable local officials the opportunity to fully execute their responsibility to separate and prioritize the facts and make a fully informed decision;

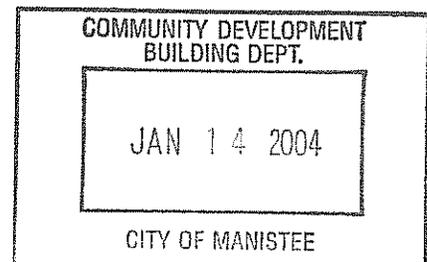
**NOW THEREFORE IT IS HEREBY RESOLVED** that a decision to issue a special use permit at this time is premature and has an appearance of placing corporate goals above that of community well being, and;

**BE IT FURTHER RESOLVED** that Pleasanton Township is against the issuance of a special use permit to Manistee Saltworks Development Corporation, Northern Lights Project until an independent economic assessment and an environmental impact statement have been completed and analyzed.

The foregoing resolution was adopted on January 12, 2004  
By Pleasanton Township

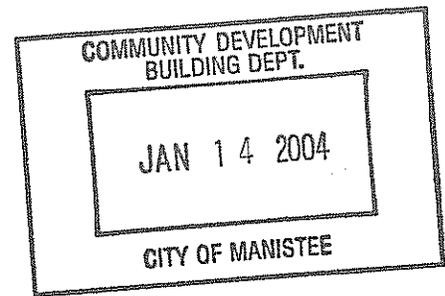
  
Fred Alkire Pleasanton Township Supervisor

  
Connie Ledford Pleasanton Township Clerk



**Mr. Michael McCann**

297 Hughes St.  
Manistee MI  
49660.



January 13, 2004.

This letter is in response to your request to submit in writing any possible conflicts of interest regarding any planning commission members.

I called Mr. Greg Ferguson on Monday December 1 2003 around 6:30 PM To discuss when I would be ready to start work on an addition to my house in which I had received A bid from Mr. Ferguson to construct my basement. Also to let him know as A resident of Manistee that I was opposed to the possible construction of A coal fired 425MW power plant in my town.

During the course of our discussion I was giving my reasons why I did not want the power plant. Mr. Ferguson informed me that they, the planing commission, was looking at the special use permit and all they could was deem it filled or not. At this time I was unaware that the commission also had to consider what was in the public's best interest.

Pollution and mercury discharges were A concern. Mr. Ferguson, s Reply was that the cars that go through town to the casino cause as much pollution. My reply was that what he was saying in effect was "what is another carcinogen". When asked about the 30 trucks of ash to the landfill each day he replied that landfills would fill up eventually and when they do another one will open.

He went on to say that even now we are in direct path of A plant in Wisconsin, So I informed him that the most toxic forms of mercury fall 12 to 24 miles from the source of emission.

In conclusion of our topic, Mr. Ferguson said he had to look at this wearing different hats. One as A resident of Manistee and one as A business owner, "because" quote "I stand to make hundred's of thousand's of dollars if this goes through" I said "no because you need to be union and have 3 years experience in building power plants". Mr. Ferguson said, "no I am exploring other avenues". At this our conversion ended.

Do I believe there is A conflict with Mr. Ferguson, I would have to say yes?

If any member wishes to contact me they may at (231) 398 0936.

Thank you.



70 Maple Street • P. O. Box 358 • Manistee, Michigan 49660

231-723-2558  
FAX 231-723-1546

January 15, 2004

Mr. Jim Tondu  
3315 Brookhollow N.E.  
Rockford, MI 49341

VIA FAX 616.866.5321

Dear Mr. Tondu:

The Tondu Corporation is in the process of developing a coal fueled power plant project named "Northern Lights." The Northern Lights project would be built on what is referred to as the General Chemical Property and the North and South Seng Properties. In order to accomplish this project, the Tondu Corporation created the Manistee Saltworks Development Corporation, which acquired the property previously owned by General Chemical Company and has secured options on the North and South Seng properties. On November 6, 2003, you submitted a Special Use Permit Application to the City of Manistee on behalf of the Manistee Saltworks Development Corporation. This application will be reviewed by the Manistee Planning Commission as soon as it is complete.

As you are aware, legal counsel for the Citizens for Responsible Development has raised concerns that several members of the Manistee Planning Commission may have conflicts of interest that would preclude their participation in the review of Manistee Saltworks Development Corporation's pending application for a special use permit. At the Planning Commission meeting on January 8, 2004 in which you were in attendance, special counsel for the Planning Commission publicly explored the factual basis regarding these claimed conflicts of interest. The matters raised at that meeting are presently being reviewed by special counsel and a decision will be made whether any of the Planning Commission members should be disqualified from participating in the review of Manistee Saltworks Development Corporation's special use permit application on the basis of conflict of interest.

As the applicant in the special use permit application process, the Manistee Saltworks Development Corporation has the primary interest in having its application not be reviewed by members of the Manistee Planning Commission who may have a disqualifying conflict of interest. In order to insure that its procedures are fairly conducted, the Manistee Planning Commission adopted bylaw 3.10 which prohibits a Planning Commission member from acting upon an application for a Special Use Permit in instances where that member would be placed in a conflict of interest situation. This bylaw provides:

3.10. Conflict of Interest: As used here, a conflict of interest shall at a minimum include, but not necessarily be limited to, the following:

- A. A commission member issuing, deliberating, voting or reviewing a case concerning himself.
- B. A commission member issuing, deliberating, voting or reviewing a case concerning work on land owned by himself.
- C. A commission member issuing, deliberating, voting or reviewing a case involving a corporation, company, partnership, or other entity in which he is a part owner, or any other relationship where he may stand to have a financial gain or loss.
- D. A commission member issuing, deliberating, voting or reviewing a case which is an action which results in a pecuniary benefit to himself.
- E. A commission member issuing, deliberating, voting or reviewing a case concerning his spouse, children, step-child, grandchildren, parents, brother, sister, grandparents, parents-in-law, grand-parents in-law, or member of his household.
- F. A commission member issuing, deliberating, voting or reviewing a case where he/she is a member of the Manistee Planning Commission and
  - 1. is an applicant, or
  - 2. has a direct interest in the permit, or
  - 3. chooses to intervene in a permit application case and is done in such a manner that the commissioner feels, in his/her judgment, that his/her job, scope of duties and/or position may be at risk, pending the outcome of the permitting process.

Bylaw 3.10 further provides that:

A commission member shall, when he/she has a conflict of interest do the following immediately, upon the first review of the case and determining a conflict exists:

- a) declare a conflict exists at the beginning of the meeting where the case appears on the agenda, or when the topic brought up so such declaration is recorded in the minutes, and
- b) refrain from participating in the discussion, site inspection or review of the case, except where specific information has been requested by the commission , and

- c) refrain from casting a vote on any motion having to do with the case.

This bylaw summarizes the more commonly recognized reasons that it would be inappropriate for a planning commissioner to participate in the review of any special use permit application. As noted by the bylaw, there may also be other matters that would require a planning commissioner to refrain from participating in the review of any special use permit application. You can receive further guidance regarding conflicts of interest by consulting your legal counsel.

In order to complete its review of any potential conflict of interest, the Planning Commission on January 8, 2004 requested the Manistee Saltworks Development Corporation to advise the Planning Commission if it believes there is any reason that any member of the Commission is personally biased against it or that it believes any member cannot fairly act upon the application. The Planning Commission requests that you examine this issue and provide the Planning Commission with a written statement regarding any claimed potential conflict of interest not later than January 22, 2004. This statement should be addressed to the undersigned as Zoning Administrator and must include written documentation to support any claim that a Planning Commission member should not be permitted to review or act on the Manistee Saltworks Development Corporation application.

In addition to requesting notification if the Manistee Saltworks Development Corporation believes that any Planning Commission member should be disqualified from reviewing or acting upon its special use permit application, the Planning Commission needs information regarding contacts that any officer, employee or agent of the Manistee Saltworks Development Corporation has had with any member of the Planning Commission and includes information regarding contacts made by or through any entity related to the Manistee Saltworks Development Corporation. Prior to January 22, 2004, please provide the undersigned with a written statement regarding any such contacts that have occurred since January 1, 2002. In regard to any contact, please specify when the contact occurred, who was present when the contact was made, who initiated the contact and what was occurred or was discussed during that contact.

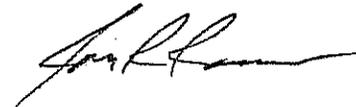
In order to ensure the integrity of the application review process, it is essential that officers, employees or agents of the Manistee Saltworks Development Corporation avoid any discussion of this application with members of the Manistee Planning Commission outside of scheduled Planning Commission meetings. Please take appropriate action to inform your officers, employees and agents of this requirement and establish a procedure to record information regarding any incidental contacts that may occur. Planning Commission members have also been cautioned regarding discussion of this application outside of scheduled Planning Commission meetings, and have been directed to forward to the Planning Commission any communications that they receive regarding this application.

Jim Tondy Letter Dated 1/15/04  
Page 4

If you have any questions regarding the scope of this request, please contact Attorney John H. Gretzinger at Nantz, Litowich, Smith & Girard in Grand Rapids. His direct dial number is (616) 954-2546.

Sincerely,

CITY OF MANISTEE  
[www.ci.manistee.mi.us](http://www.ci.manistee.mi.us)



Jon R. Rose  
Community Development Director  
[jrose@ci.manistee.mi.us](mailto:jrose@ci.manistee.mi.us)

JRR:djb

cc: John Gretzinger, Nantz, Litowich, Smith & Girard



231-723-2558  
FAX 231-723-1546

70 Maple Street • P.O. Box 358 • Manistee, Michigan 49660

January 15, 2004

Ms. Carol Pasco  
610 Spruce Street  
Manistee, Michigan 49660

Dear Carol:

Thank you for your letter dated January 11, 2004, addressed to the Manistee Planning Commission regarding the January 8, 2004 Planning Commission meeting.

I heard the same words and comments as you did that evening, but after serving dozens of Planning Commissions and City Councils throughout my career, I heard them in a different way. I truly believe there was no disrespect intended by the phrases "you people or them." This volunteer group has heard between 8-9 hours of public comments and read dozens of letters on this application. This shows their commitment to hearing everyone's comments on this proposed project.

All I ask is for some leniency and understanding when comments aren't phrased exactly as we would like, under this very difficult process in which we have to make a decision. I am very proud of how the entire City has handled this process. Citizen comments are being heard and received. Information is being gathered, shared and disseminated. And yet, no decision has been made, despite the popular belief out in the community that this is a done deal. As your City Manager, neighbor and friend, I can assure you that no decision has been made. I cannot tell you way it will ultimately go, just that this decision has not yet been reached.

Thank you for your letter and for helping gather information on this far-reaching decision.

Sincerely,

CITY OF MANISTEE

Mitchell D. Deisch, City Manager  
[mdeisch@ci.manistee.mi.us](mailto:mdeisch@ci.manistee.mi.us)

MDD:cl

cc. Mayor Richard Mack  
Members of the City Council  
Members of the Planning Commission

**Items forwarded to the  
City of Manistee Planning Commission  
at the Planning Commission Worksession of  
January 22, 2004 relating to the  
Manistee Saltworks Development Corporation**

Letter dated 1/20/04 from Mitch Deisch to Brian Sousa

Page 34 of Report "*Mercury Falling*" (did not copy in 1/8/04 packet)

Correspondence:

Letter from Steve Klein, 88 Greenbush Street, Manistee

Letter from Pat Didion, 88 Greenbush Street, Manistee

David Vavra, P.O. Box 102, Manistee

Daniel Behring, 3695 Lakeshore Drive, Manistee

Helen Ann Yunis, 444 Third Street, Manistee

Lary Lidroth, Eastlake

Christopher Bzdok, Olson Bzdok & Howard, P.C., 420 East Front Street, Traverse City



70 Maple Street • P. O. Box 358 • Manistee, Michigan 49660

231-723-2558  
FAX 231-723-1546

January 20, 2004

Brian Sousa, Engineer  
Wade Trim  
7985 Mackinaw Trail  
Cadillac, MI 49601

Dear Brian,

The City of Manistee would like answers to the attached questions. If you do not have appropriate resources within Wade Trim, please contract with the appropriate experts to provide us this information.

If you go outside of Wade Trim, please make sure that the consultants have no ties with Tondu Corporation. Please provide us with preliminary cost estimates and time frame for response.

Sincerely,

CITY OF MANISTEE

Mitchell D. Deisch  
City Manager

djb:MDD

**Potential Questions for Air Quality/Environmental Engineer  
Related to the Proposed Northern Lights Coal Fired Power Plant  
City of Manistee, Michigan**

1. What is the expected particulate dispersion and dropout percentage, as related to distance from the point source (stack) for the particulates listed in the air quality permit? Please limit the dispersion distance to 300 miles and provide the information in a "bull's eye" map format.
2. What mercury emission standard is expected to evolve from the reviews currently conducted by the USEPA? When is it expected to be in place?
3. What other emissions could be expected from the plant other than those addressed above and what would their dispersion rate be?
4. What are the potential effects of fly ash? Does Fly ash pose a health problem with becoming airborne?
5. Compare the impact of this plant on the local community with existing emissions around the area.
6. What air quality impact does the City of Manistee currently see from industrial plants outside the area?
7. What is the expected amount of particulate matter entering the air from coal dust during unloading and handling operations? Please provide this in tons per year. Also, please indicate the dropout rate of coal dust with a dispersion map.
8. Please discuss the potential effects of warm water discharge on the receiving waters.
9. What effects could be expected from pumping 5 MGD of water out of Manistee Lake?

on removing sulfur to reduce acid rain-related emissions.

*Average mercury removal efficiency: 21 percent*

*Percent of coal being cleaned: 77 percent Eastern and Midwestern bituminous coal is cleaned, compared with only 10-15% of Powder River Basin coal. Lignite is not cleaned.*

**Particulate Controls**

**Electrostatic Precipitators (ESPs)** are used to reduce fly ash emissions by creating an ionized field that removes charged particles. Although they have low energy requirements and operating costs, ESPs have limited ability to remove mercury because mercury exists in a vapor form in flue gas and does not generally adsorb fly ash particles at typical combustion temperatures.

*Average mercury removal efficiency: 32 percent for cold and zero percent for hot.*

*Percent of utility boilers equipped with ESPs: 82 percent*

**Fabric Filter (Baghouses)**, also used to limit fly ash emissions, pass flue gas through a tightly woven fabric capturing particulates on the fabric by sieving and other mechanisms. The dust cake that forms on the filter can increase significantly the collection efficiency. Bagoauses can potentially

**Table B2. Boiler type.**

Boiler Type	Percent
Arch	1.2%
CFB	3.4%
Cyclone	7.5%
Front	22.6%
Front (Rear)	0.7%
Opposed	17.1%
Other (Opposed)*	0.3%
Other (Tangential)*	3.5%
Stoker/Spr	2.2%
Tangential	38.3%
Vertically	3.2%

*Source: Environmental Working Group. Compiled from EPA and DOE data. \*For the few (4 percent) boilers we could not classify we used EPA's default assumptions. See Appendix A for a more complete explanation. Thirty boilers did not submit data to EPA and are not included in these calculations.*

reduce both elemental and ionic mercury.

*Average mercury removal efficiency: 44 percent*

*Percent of utility boilers equipped with baghouses: 14 percent.*

**Acid Gas Controls**

**Flue Gas Desulfurization (FGD) or Scrubbers** are installed to remove sulfur dioxide from power plant flue gas. Scrubbers use sorbents to create the chemical reactions needed to remove sulfur dioxide. There are wet and dry scrubbers, with wet scrubbers being more efficient (up to 95%) in removing sulfur dioxide than dry scrubbers. One of the waste products

January 17, 2004

To: Members of the City of Manistee Planning Commission

I have written to you and spoke to you previously. I have also written an article to the newspaper and have spoken to a variety of groups in the Manistee area about the proposed plant. I am attempting to be a bit more personal in this communication and I hope you will take the time to consider my comments.

I have owned a home in Manistee County since 1978. I did not live here year round during all that time, but am now here as a permanent resident and have been here for 10 years. I have seen the many changes that have occurred in Manistee and Manistee County over those years. I served on the Onekama Township Planning Commission for three years and, as you do now, struggled with some difficult issues.

I was a Captain in the US Army during the Vietnam era and in that capacity was responsible for helping with the rehabilitation of soldiers with head wounds, loss of limbs, burns and others who were accidentally sprayed with agent orange. I have seen a lot of suffering and pain. Additionally, and relevant to the issue before you, I was brought up in a town in Wisconsin that had a heavy reliance on coal. I lived on a deep-water port and my father was responsible for lining up coal cars along the dock to transport off-loaded coal to our coal-fueled power plant. I walked the yards many times with him and sat in his shanty along the docks and coal piles.

Because of a lot of experiences in my life, I believe I have a perspective on the issues in front of you that many people do not have. Your task is difficult because of all the competing interests, but it is one in which you can exert leadership that will be your legacy and that of your family's. I believe it is important each day for anyone, who is in public office to ask, "what difference is what I am doing today going to have on the future?" I often recall the movie "It's a wonderful life" when I have to make a tough decision and when I get frustrated and just want to get things over with. I remind myself that if I am not careful, what I do or do not do might contribute to the place I live becoming a "Potterville."

The issue you face has all sorts of tugs and pulls and ramifications. On the one hand you have a promise of an infusion of dollars into the community that could solve some financial problems. You have the hope that there will be jobs for some people that will remain after the construction takes place. On the other hand you have the fear that this area will become a worse place to live immediately and into the distant future because of the other issues that come with a power plant.

You have the prospect that over 10 years tons of volatile organic chemicals will be put into the atmosphere above our county. You cannot escape that fact. You

know that there is the prospect that 4000 pounds of mercury will be discharged over that same time and you know that at least 74% of that will fall over our county. You may know that the plant owned by Holland, Michigan in their area, the James DeYoung plant emits 8 pounds of mercury each year. You know that the overall contamination from the new proposed plant will be 10 times more, at least, than what has been put into our lakes and atmosphere by the T.E.S. Filer plant since their existence.

So, the question becomes, how much is it worth to allow so many more toxins to be added to the atmosphere without any firm idea what impact it will have on the economy. There are real risks to the retirement residence boom we have been experiencing, to the recreational use of the area and to the fishing industry. The other unknown, of course, is how much impact will these toxins have on the increased medical costs that will come out of citizen's pockets. I personally know the impact of toxins on people's health and their financial well being. These have also been well documented.

Another big issue which it appears you are faced with is just how much infrastructure cost will have to be borne by the city and just what is the revenue stream that you can expect given the layered financing that the Tondu Corporation has arranged. Without much deliberation, it can be seen that there very well may be a cash flow out rather than a cash flow in.

In my profession, when I work with executives to help them through ethical decisions such as this, I first help them acknowledge that they are struggling with a decision that involves two rights.

The first right is to have more cash flow and job opportunities.

The second right is to protect the environment, the economy, and the strength of the city and the health of the people.

There is only one way to resolve ethical decisions such as this that involve two rights. You must stop and examine your own core values. Any decisions such as this require executives and public officials to define their core values. I ask executives as a bottom line question to ask themselves what they want their legacy to be to their grandchildren. I ask them to think about how they would like to be seen. I ask them to write down their core values. I ask them if they want to have their children live in "Potterville" because they went against their core values.

In the workshops I attended to help me be a better planning commission member, I remember the long discussions we had about not passing the buck to state and federal regulators. Many planning commission members play "Pontius Pilate" and wash their hands of the tough decisions that involve environmental issues by deferring to the DEQ and the EPA. Each township, city and county has their own ordinances and they can set standards for the health,

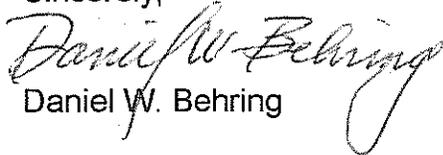
safety and welfare of the community. Now, there may be a challenge from a person or a corporation if standards are higher than DEQ and EPA, but that is what leadership is all about; being courageous for the good of the community. My hope is that you will be courageous and see the very important ethical considerations and therefore values that are at stake with your decision. Your decision will define how we live for many years to come. Your legacy will play itself out for generations. That is why so few people today allow themselves to be public officials. You set the standards of how we will live. You must visit your core values in this decision.

You know my position. Over the last month I have spent 8 to 10 hours a day five to six days a week gathering information, doing research and investigating the investors in this project. I will do my utmost to help anyone involved in this decision to see that there is only one clear winner in this proposed project and that there is great risk to the residents of Manistee. Life is more than money. Life needs hopes and dreams and good education and delight in where one lives. Studs Terkel, an author who you might know, in his 92 years has championed the common person. He just released his latest book titled, "Hope Dies Last." He talks about the importance of hope for new generations. Hope grows in young people if they see integrity and not despair in their elders. Please keep hope alive for our young people. We don't need a few jobs that will keep them dependent on a company and not stretch their minds while that company violates their environment and threatens their health and the health of their children.

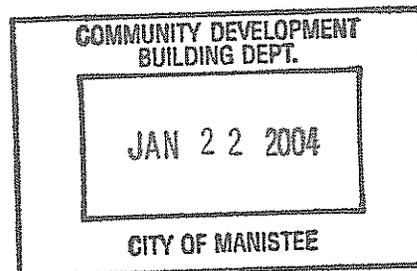
We have so much talent in this area that if enlisted by the city, the county and the economic development office, in partnership with state government and local educational institutions, we can develop this area in a way that will strengthen the economy, strengthen our environment and provide hope for the future and therefore our young people.

Thank you for listening. Please remember you are creating a legacy for yourselves and for all of us.

Sincerely,

  
Daniel W. Behring

Helen Ann Yunis  
444 Third Street  
Manistee, Michigan 49660



January 22, 2004

Manistee City Planning Commission  
City Hall  
Manistee, Michigan 49660

- RE:**
- 1. Legal Standard of Review for Conflict of Interest**
  - 2. Potential Conflicts of Interest**
  - 3. Filling vacancy on Planning Commission**

Dear Planning Commissioners:

The Commission has asked that persons write to the Planning Commission regarding any conflicts of interest. Prior to writing my comments about the potential conflicts of interest, I would like to address how the Planning Commission is reviewing the conflicts of interest disclosure.

**1. Legal Standard of Review for Conflict of Interest**

On December 24, 2003, Chris Bzdok, wrote a letter to the Manistee City Planning Commission ("Commission") informing the Commission that he had been retained by Manistee Citizens for Responsible Development ("Manistee CFRD"). In that letter, he outlined a standard of review that included eliminating any planning commissioners that had the appearance of a conflict of interest. He cited Michigan case law that quoted "The United States Supreme Court has disqualified judges and decisionmakers without a showing of actual bias in situations where 'experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.'"<sup>1</sup> Unfortunately, City Attorney, John Gretzinger disagreed. At the Planning Commission hearing that was held on January 8, 2004, Gretzinger stated "Contrary to the letter submitted to us, there has to be an existing conflict."<sup>2</sup>

Manistee CFRD has organized citizens of this community and hired an attorney. This group is watching each decisionmaking step of the Commission closely. As a result, I hope that the Commission responds with an equal amount of diligence and ensures that a fair process is created for each decision made in reference to the Tondu/Northern Lights application.

---

<sup>1</sup> *Crampton v Michigan Department of State*, 395 Mich 347, 235 NW2d 352 (1975).

<sup>2</sup> *Manistee New Advocate*, January 10, 2004.

If the Commission's ultimate decision results in being appealed to the Manistee Zoning Board Authority or Circuit Court, it would be beneficial to have the least amount of issues appealable. If the Commission continues the process of reviewing a "clear" conflict of interest, rather than an "appearance" of a conflict of interest and the ultimate decision on the Tondu/Northern Lights application is appealed, this will be one more way attorney fees will be incurred. As a citizen, taxpayer and homeowner in this City, I ask the Commission to review the conflict of interest issue based upon the appearance of a conflict of interest. To do otherwise may result in an unnecessary waste of taxpayer's money.

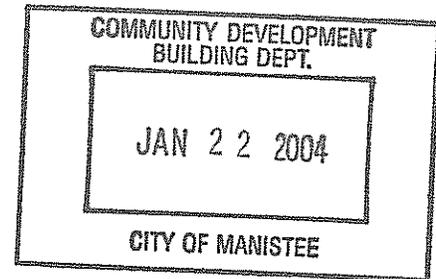
Please note that the conflict of interest issue has been raised in litigation locally by Joe Tondu. In 1997, Tondu Energy Systems, TES Filer City, filed a civil complaint against Manistee County, Manistee County Solid Waste Council, Manistee County Planning Commission and Stronach Township in US District Court for the Western District of Michigan. In his complaint, Tondu alleged violations of the Due Process Clause based on several conflicts of interest.

## **2. Potential Conflict of Interest**

During the last Planning Commission meeting, I raised comments that were made to me by Krista Ross. After the City Council meeting on the evening that Cindy Fuller and Mark Wittlieff were appointed, Krista Ross spoke to me about the appointments. She stated that she was disappointed that she was not appointed and did not understand since she was young, a real estate owner and business owner in town. She went on to explain that Meagan Kempf and another person (I did not recognize his name at the time but upon reflection it could have been Mark Ferguson – I had not heard his name in the past) had told her that the Planning Commission was not asking the right questions. She also stated that although Meagan Kempf would not influence her decision, Ms. Kempf could help her phrase the right questions to ask the Commission. At the time, I thought that these comments were inappropriate, but it did not matter since Ms. Ross was not appointed.

On the day Ms. Ross was appointed I left a message on her telephone. I wanted to tell her that I was concerned about her comments and thought that they were very inappropriate. She did not return my phone call. Later, I learned that she was informed that she could not speak to the public.

Also, several people have told me that PCA is discussing purchasing electricity from the proposed new plant. If this information is true, has Roger Yoder, who is employed by PCA, ever been involved in these discussions? Could this impact how he will make a decision?



January 22, 2004

To the Editor,

I support the Tondu Corporation's proposal to build a coal-fired power plant here in Manistee, because I feel it would be a great benefit to this community. I do not understand the reasoning behind those who oppose the project. I believe that much of there fear is based on bad information. The power utilities industry is a very closely regulated industry. Coal fired power plants operate under very strict air quality control standards and I do not believe a power plant of this type will adversely affect our quality of life here in the Manistee area.

I relocated to the Manistee area in 1989 because of the quality of life Manistee has to offer. I believe that any new industry developed in this area that will meet all state and federal E.P.A. standards plus provide jobs for this area will only improve our quality of life here in Manistee.

The economic benefits that this project will provide this community are many. Retail stores, hotels, motels, realtors, restaurants, taverns, industrial suppliers, vendors and contractors all will benefit. This new plant will also provide much needed good paying jobs for this community. As concerned citizens of the Manistee area we should not allow this great opportunity to pass us by.

Larry Lindroth

East Lake

PH. 723-6344

*Larry Lindroth*

Law Offices of  
**OLSON, BZDOK & HOWARD, P.C.**

James M. Olson  
Christopher M. Bzdok  
Scott W. Howard  
Karen L. Ferguson  
Kristyn J. Houle  
William Rastetter, Of Counsel

420 East Front Street  
Traverse City, MI 49686

231/ 946-0044  
FAX: 231/ 946-4807

**FAX COVER SHEET**

**DATE:** January 22, 2004

**OUR CLIENT NO.** 5311.00

**TO:** Manistee City Planning Commission

**FROM:** Christopher M. Bzdok, OLSON, BZDOK & HOWARD, P.C.

**FAX No.:** 231-723-1546

**OPERATOR:** Susan

**MESSAGE:** PLEASE SEE ATTACHED LETTER.

**TOTAL PAGES (INCLUDING THIS COVER SHEET):** 3

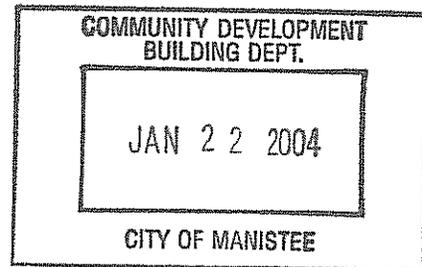
**The original will be mailed to you.**

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**NOTE:** The information contained in this transmission is intended only for the use of the individual or entity named above. It may be privileged, confidential and exempt from disclosure under applicable law.

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A Professional Corporation

James M. Olson \*  
Christopher M. Bzdok  
Scott W. Howard  
Karen L. Ferguson ‡  
Kristyn J. Houle †  
William Rastetter, Of Counsel ◦

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\* Admitted in Colorado  
‡ Admitted in Hawaii  
† Admitted in Louisiana  
◦ Admitted in Indiana

January 22, 2004

Manistee City Planning Commission  
City Hall  
70 Maple Street  
Manistee, MI 49660

Via Fax No.231-723-1546 &  
1<sup>st</sup> Class Mail

RE: Conflict; Disclosures  
Our File N<sup>o</sup>. 5311.00

Dear Members of the Planning Commission:

I am writing on behalf of the Citizens for Responsible Development to follow up on the request for more information related to conflicts disclosures. Specifically, I would like to address the disclosure issue as it relates to Planning Commission member Wittlief.

At the public meeting on January 8, 2004, Planning Commissioner Wittlief indicated that his wife works at the T.E.S. Filer City Station power generating facility. The draft minutes state:

Mr. Wittlief wanted to disclose that his Wife is an employee of CMS Energy based out of the T.E.S. Filer Station.

My notes indicate his statement was along the lines that his wife "works for CMS, and gets paid by CMS." (This is my best recollection, not an exact quote.)

These statements provide an incomplete picture of the employment relationship between Commissioner Wittlief's wife and the applicant for this project. The Special Use Permit application contains a page entitled "the Northern Lights Project" that explains the relationship between the applicant and the Tondu Corporation

**Project Overview**

The Northern Lights Project involves the development, construction, operation, and maintenance of a 425 MW (nominal net output) coal fueled power plant (the "Northern Lights Plant" or the "Plant") to be located at the current site of the General Chemical Plant in Manistee. Manistee Salt Works Development Corporation was formed by Tondu Corporation as a special purpose entity to acquire the General Chemical site, and has filed for several permits, including the air permit and the special use permit.

The Tondu Corporation website confirms that both "Filer City" and the proposed "Northern Lights" projects are developments of the Tondu Corporation. (Enclosed with this letter are the relevant website pages.)

Manistee City Planning Commission  
January 22, 2004  
Page 2

The T.E.S. Filer City Station is owned by the T.E.S. Filer City Station Limited Partnership. The partners in the T.E.S. Filer City Station Limited Partnership are CMS Generation Filer City, Inc. and Western Michigan Cogeneration Limited Partnership. The Western Michigan Cogeneration Limited Partnership is wholly owned by Tondue Energy Systems, Inc. As I mentioned, Tondue Energy Systems, Inc. owns the Manistee Salt Works Development Corporation.

When all the documentation is considered, it is irrelevant that the paychecks received by Commissioner Wittlief's wife say "CMS" on them. It is incomplete, and perhaps misleading, to say that she works for CMS. In reality, she works for a partnership owned by CMS and Tondue. According to the Tondue website, CMS owns 60% of the partnership, and Tondue owns 40%. I invite the Planning Commission, and the City's Special Counsel, to review the information from the website and to request corporate records confirming this relationship.

In addition, it is my third-hand understanding that Commissioner Wittlief's wife works as an assistant to one of the Tondue brothers at the T.E.S. Filer City Station. This information should be in the applicant's disclosures; if not, the disclosures are incomplete and the Planning Commission should obtain a specific answer to this question.

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Sincerely,

*Christopher M. Bzdok*

Christopher M. Bzdok

*olj*

CMB:djs

Enc: Website pages

xc: Jon Rose, Community Development (via fax)  
John Gretzinger, City Special Counsel (via fax)  
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## Project Development

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## Project Development

### Northern Lights Project

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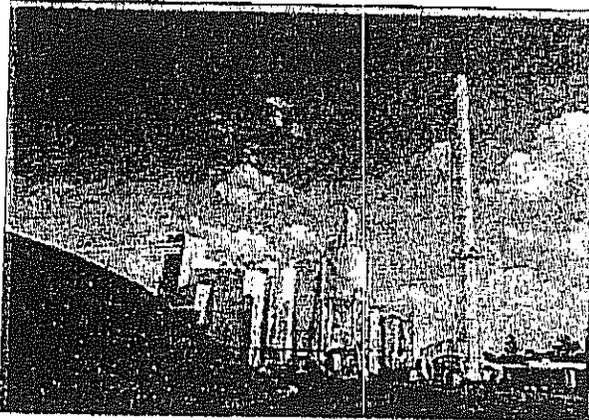
*Project Development*

**The Filer City Project**

Filer City, Michigan, United States.

**Description**

The Filer City Power Plant is a coal and wood waste fueled facility with a rated output of 54 MW and 100,000 pounds of 600 psi steam per hour. It was the first major industrial focused cogeneration power plant developed in the state of Michigan. Tondu Energy Company ("Tondu Energy"), a



predecessor to Tondu Corporation, identified the Filer City Power Plant project and was the project's developer.

**Principal Agreement**

Electricity from the Filer City Power Plant is sold under a 35 year contract to Consumers Power Company and steam is sold to Packaging Corporation of America for use in their adjacent paper mill.

**Financing**

Tondu Energy closed the construction financing for the Filer City Project on August 25, 1988. The Prudential Insurance Company of America provided \$78 million of the project's \$87 million total cost as debt with a 19-1/2 year term and a fixed interest rate. Tondu Energy led the effort to obtain the debt and equity for this project.

**Performance**

Since beginning commercial operations in June, 1990, the Filer City Power Plant has met or exceeded its performance targets in each year of operation.

**Technology**

The Filer City Power Plant is fueled with 90% coal and 10% wood waste and uses standard stoker boilers and dry gas scrubbers with a high pressure extraction turbine. The plant is operated by 31 full time employees under the management of a limited partnership of which Tondu Energy is co-general partner.

As the first major cogeneration power plant in Michigan to receive Qualifying Facility status under the federal regulations, contested Michigan Public Service Commission rate hearings for the Filer City Project were required to approve the electricity rates proposed in its power purchase agreement. These hearings resulted in setting a favorable precedent for Qualifying Facility electricity rates in the state of Michigan. In addition to leading the defense of these hearings, Tondue Energy organized a lobbying effort and actively supported the successful enactment of state legislation to encourage the development of independent power plants in Michigan. Based on the success of these rate hearings and the promulgation of the supporting state legislation, over 1,400 MW of new Qualifying Facilities at a cost exceeding \$600 million were subsequently developed in Michigan.

#### **Development Responsibilities**

Tondue Energy identified the project and was responsible for negotiating all of the project contracts including the site acquisition agreement, coal dock lease, steam sale agreement, power purchase agreement, coal purchase agreement, power interconnection agreement, and the financing documentation. In addition, Tondue Energy obtained the required environmental permits and actively participated in the project's construction management.

#### **Ownership and Management**

A Tondue Energy affiliate owns approximately 40% of the Filer City Project and, as co-general partner, is jointly responsible with the other major equity owner for the plant's continued operation and maintenance.

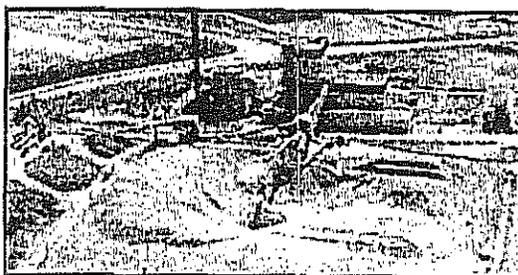
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#### ***The Williams Lake Project***

Williams Lake, British Columbia, Canada.

#### **Description**

The Williams Lake Power Plant is a 60 MW wood waste fueled electricity generating plant which consumes approximately 600,000 green tons of bark, sawdust and other wood waste products per year. The wood waste fuel is



provided by five surrounding sawmill operations which collectively process over one billion board feet of lumber per year.

#### **Principal Agreement**

Electricity from the Williams Lake Power Plant is sold under a 25-year electricity purchase agreement to The British Columbia Hydro and Power Authority.

#### **Financing**

LAW OFFICES OF  
**OLSON, BZDOK & HOWARD**

A Professional Corporation

James M. Olson \*  
Christopher M. Bzdok  
Scott W. Howard  
Karen L. Ferguson ‡  
Kristyn J. Houle †  
William Rastetter, Of Counsel ◦

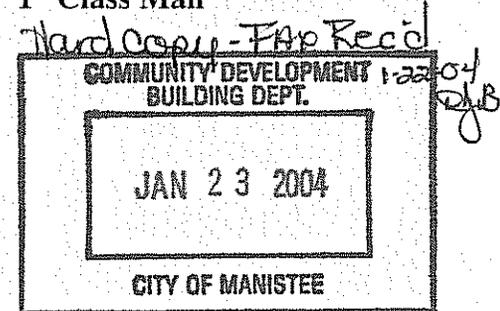
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January 22, 2004

\* Admitted in Colorado  
‡ Admitted in Hawaii  
† Admitted in Louisiana  
◦ Admitted in Indiana

Manistee City Planning Commission  
City Hall  
70 Maple Street  
Manistee, MI 49660

Via Fax No. 231-723-1546 &  
1<sup>st</sup> Class Mail



RE: Conflicts Disclosures  
Our File N<sup>o</sup>. 5311.00

Dear Members of the Planning Commission:

I am writing on behalf of the Citizens for Responsible Development to follow up on the request for more information related to conflicts disclosures. Specifically, I would like to address the disclosure issue as it relates to Planning Commission member Wittlief.

At the public meeting on January 8, 2004, Planning Commissioner Wittlief indicated that his wife works at the T.E.S. Filer City Station power generating facility. The draft minutes state:

Mr. Wittlief wanted to disclose that his Wife is an employee of CMS Energy based out of the T.E.S. Filer Station.

My notes indicate his statement was along the lines that his wife "works for CMS, and gets paid by CMS." (This is my best recollection, not an exact quote.)

These statements provide an incomplete picture of the employment relationship between Commissioner Wittlief's wife and the applicant for this project. The Special Use Permit application contains a page entitled "the Northern Lights Project" that explains the relationship between the applicant and the Tondu Corporation

**Project Overview**

The Northern Lights Project involves the development, construction, operation, and maintenance of a 425 MW (nominal net output) coal fueled power plant (the "Northern Lights Plant" or the "Plant") to be located at the current site of the General Chemical Plant in Manistee. Manistee Salt Works Development Corporation was formed by Tondu Corporation as a special purpose entity to acquire the General Chemical site, and has filed for several permits, including the air permit and the special use permit.

The Tondu Corporation website confirms that both "Filer City" and the proposed "Northern Lights" projects are developments of the Tondu Corporation. (Enclosed with this letter are the relevant website pages.)

Manistee City Planning Commission  
January 22, 2004  
Page 2

The T.E.S. Filer City Station is owned by the T.E.S. Filer City Station Limited Partnership. The partners in the T.E.S. Filer City Station Limited Partnership are CMS Generation Filer City, Inc. and Western Michigan Cogeneration Limited Partnership. The Western Michigan Cogeneration Limited Partnership is wholly owned by Tondu Energy Systems, Inc. As I mentioned, Tondu Energy Systems, Inc. owns the Manistee Salt Works Development Corporation.

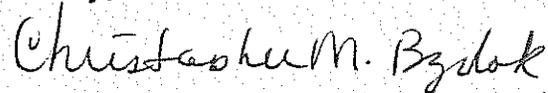
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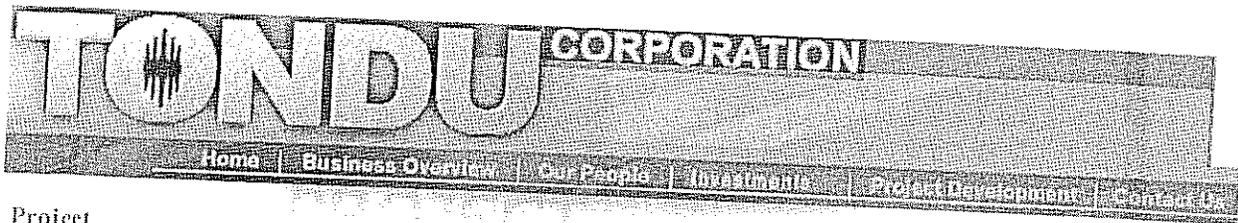
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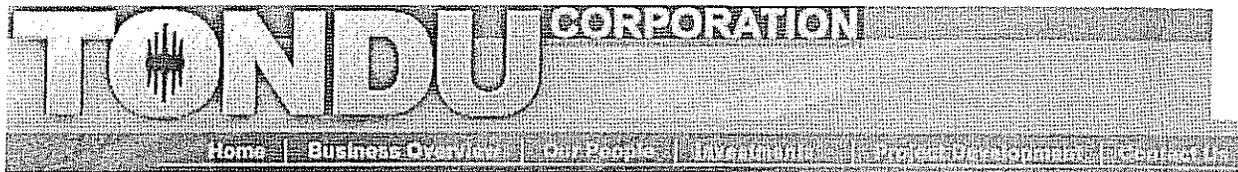
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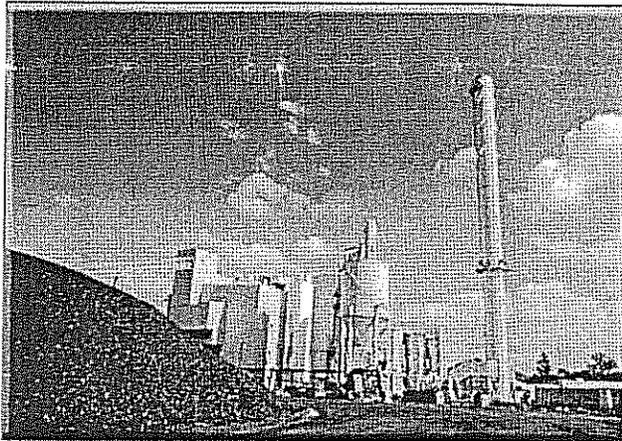
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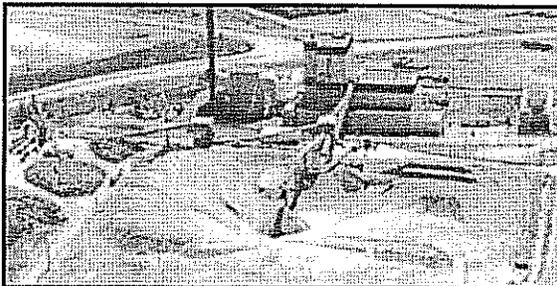
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