

Joint Planning Commission Ordinance  
Township of Benzonia  
Ordinance No. 4-11

Ordinance Approving an Agreement to Establish the  
West Benzie Joint Planning Commission

AN ORDINANCE TO APPROVE AN AGREEMENT ESTABLISHING THE WEST BENZIE JOINT PLANNING COMMISSION CONSISTING OF BENZONIA AND PLATTE TOWNSHIPS; TO SET FORTH THE TERMS OF SAID AGREEMENT; TO TRANSFER ALL THE POWERS AND DUTIES OF A PLANNING COMMISSION UNDER THE MICHIGAN PLANNING ACT, 2008 PA 33 (MCL 125.3801 *ET SEQ.*) TO THE WEST BENZIE JOINT PLANNING COMMISSION; TO TRANSFER ALL OF THE POWERS AND DUTIES OF A ZONING BOARD OR A ZONING COMMISSION UNDER THE MICHIGAN ZONING ENABLING ACT, 2006 PA 110 (MCL 125.3101 *ET SEQ.*) TO THE WEST BENZIE JOINT PLANNING COMMISSION; TO DESCRIBE THE JURISDICTIONAL AREA OF THE WEST BENZIE JOINT PLANNING COMMISSION; AND TO COMPLY WITH THE PROVISIONS OF 2003 PA 226 (MCL 125.133 *ET SEQ.*);

**THE TOWNSHIP OF BENZONIA HEREBY ORDAINS:**

**Section 1. Approval of Agreement; Purpose.**

A. Pursuant to the authority of the Joint Municipal Joint Planning Act (2003 PA 226, M.C.L. 125.133 *et seq.*) the Township of Benzonia hereby approves an agreement with Township of Platte to form a joint planning commission for the purpose of cooperating on joint planning and joint zoning for the participating municipalities; to act jointly in these matters so as to coordinate said activities in the respective municipalities; in order to avoid duplicative efforts and duplicative expenditures of funds; and to plan and regulate land use in a larger geographic area; to better manage valuable public resources; to foster collaborative efforts in land use programs in order to preserve natural resources; to ensure that land uses are situated in appropriate locations and relationships; to limit inappropriate overcrowding of land and congestion of population; to facilitate adequate and efficient provision for transportation systems, sewage disposal, water, energy, education, recreation, and other public service and facility requirements; and to promote public health, safety, and welfare.

B. The terms and conditions of the agreement between the participating municipalities are set forth in Sections 2 through 15 herein.

**Section 2. Name.**

A. The joint planning commission established by the Ordinance/Agreement shall be referred to as the "West Benzie Joint Planning Commission," (hereinafter, the "Joint Commission.")

### **Section 3. Jurisdictional Territory of the Joint Commission.**

A. The jurisdictional area of the Joint Commission shall comprise all of the territory within the corporate limits of the Townships of Benzonia and Platte, but not any area within the corporate limits of any village, city, and any tribal trust lands.

### **Section 4. Powers and Duties**

A. *Planning powers and duties.* Pursuant to 2003 PA 226 (MCL 125.135(2)) all the powers and duties of a planning commission under the Michigan Planning Enabling Act, 2008 PA 33 (M.C.L. 125.380 *et seq.*) ("MPEA") are hereby transferred to the Joint Commission, and the Joint Commission shall have the sole power and duty under the Michigan Planning Enabling Act (MPEA) to develop a joint master plan with respect to the jurisdictional area of the Joint Commission. In exercising this power and duty the Joint Commission shall follow the procedures of a township that on September 1, 2008, had a planning commission created under former 1959 PA 168. Further, any joint master plan developed and adopted by the Joint Commission shall be subject to review and approval by the legislative bodies of the participating municipalities.

B. *Zoning powers and duties.* Pursuant to 2003 PA 226 (MCL 125.135(2)) all the powers and duties of a zoning commission or a planning commission under the Michigan Zoning Enabling Act, 2006 PA 110 (MCL 125.3101 *et seq.*) ("MZEA") are hereby transferred to the Joint Commission, and the Joint Commission shall have the sole power and duty under the MZEA to develop a recommended joint zoning ordinance with respect to the jurisdictional area of the Joint Commission. In exercising this power and duty the Joint Commission shall follow the procedures of the MZEA which are applicable to a township.

C. *Capital Improvement Review (Public Project Review).* The Joint Commission shall be responsible for the review and approval function of public projects as provided in sections 61 and 62 of the Michigan Planning Enabling Act [M.C.L. 125.3861; 125.3862].

D. *Capital Improvements Program.* The Joint Commission shall not be responsible for the preparation of a capital improvements program for the Joint Commission's jurisdictional area as provided for in section 65 of the Michigan Planning Enabling Act (M.C.L. 125.3865). That function, if exercised shall be reserved to the legislative body, or its designee, of each participating municipality.

E. *Subdivision Review.* The Joint Commission shall be responsible for the recommendation of a subdivision ordinance and approval of subdivision plats as provided for in section 71 of the Michigan Planning Enabling Act (M.C.L. 125.3871).

F. *Zoning board of appeals.* The joint zoning ordinance adopted pursuant to this Agreement shall provide for a joint zoning board of appeals or a zoning board of appeals appointed by each respective municipality as may be determined from time to time.

G. *Administration.* This Agreement provides for a joint planning department with staff consisting of an individual(s) whom perform the duties of a planning director, planner, zoning administrator, and enforcement officer. These positions may be full or part time, and may be combined together as one job or separate jobs, or provided through contracted services as deemed necessary from time-to-time by the joint planning commission and within budgetary appropriations and other funds available to it for such purposes.

1. The Joint Commission shall hire or contract for a planning director who shall be under the supervision and control of the Joint Commission, or its designee.
2. Only the Joint Commission may hire or fire, or contract with or terminate a contract with the planning director, or firm providing those services.
3. The management of other employee staff, if any, including any with planner, zoning administrator, and enforcement officer duties shall be supervised by the planning director.

H. *Professional services.* The Joint Commission shall, within budgetary appropriations and other funds available to it for such purposes, have the authority to retain the services of such planning, legal, and other professional consultants as it deems necessary.

#### **Section 5. Composition of the Joint Commission.**

A. *Composition.* The Joint Commission shall be comprised of five members as provided in this Ordinance/Agreement. In the month this agreement takes effect appointments to the Joint Commission shall be made to a term of office that ends as specified here. In April of each subsequent year appointments to the Joint Commission shall be made to a term of office that starts May 1, of each year and ends April 30 three years later, as specified here.

1. One member shall be appointed by the Benzonia Township Board of Trustees to a term of office which ends April 30, 2012, and thereafter for three year terms of office.
2. One member shall be appointed by the Benzonia Township Board of Trustees to a term of office which ends April 30, 2013, and thereafter for three year terms of office.
3. One member shall be appointed by the Benzonia Township Board of Trustees to a term of office which ends April 30, 2014, and thereafter for three year terms of office.
4. One member shall be appointed by the Platte Township Board of Trustees to a term of office which ends April 30, 2013, and thereafter for three year terms of office.
5. One member shall be appointed by the Platte Township Board of Trustees to a term of office which ends April 30, 2014, and thereafter for three year terms of office.

B. *Continuation of Service.* Regular and alternate members shall continue to serve until their replacement is appointed and assumes the duties of his or her position on the Joint Commission. When a member serves on a case involving a site plan approval, special land use permit request, planned unit development which is not a

zoning amendment for a specific property, such member shall continue to serve in said case until a final decision is made, even if said member's term has expired.

D. *Per Diem and expenses.* Payment of per diem and travel expenses for annual, regular and special meetings of the Joint Commission shall not be a part of the Joint Commission budget, and shall be paid, if at all, by the respective participating municipality.

## **Section 6. Terms and Qualifications of Office**

A. *Residence.* A person must reside and be a qualified elector in the participating municipality to be appointed to the Joint Commission by the legislative body of that participating municipality. All members of the Joint Commission shall reside within the territory of the Joint Commission as defined in this Ordinance/Agreement. If a member changes his or her residence to another location within the territory of the Joint Commission but outside of the municipality from which that member was appointed, that member may complete the appointed term or the municipality may find the seat vacant and appoint a replacement. Regardless the person that moved would not be eligible for re-appointment from his or her original jurisdiction.

B. *Interests Represented.* The participating municipalities may strive to have a membership of the Joint Commission which is representative of the important segments of the community, such as the economic, governmental, educational, and social development of the territory of the Joint Commission.

### **C. Continuing Education.**

1. When funds are budgeted or otherwise available for such purposes, members of the Joint Commission shall attend not less than 6 hours of education programs designed for training members of Michigan planning commissions each year, and during a member's first year on the Joint Planning Commission shall attend a greater number of hours of training. Nothing in this paragraph shall prevent a member who has not had training from finishing his or her term of office unless the member resigns or is otherwise removed by as provided by law. Unless the appointing municipality finds that such member has special skills desired for service on the Joint Commission, a member who fails to attend the required training shall be ineligible for re-appointment at the conclusion of his or her term.
2. Training programs and hours which qualify to meet this requirement shall be established from time-to-time in the Joint Commission's bylaws.

## **Section 7. Removal from Office; Vacancies.**

### **A. Removal.**

1. The Joint Commission may request the removal of one of its members by submitting a written request to the appointing municipality. A member may also be removed upon the initiative of the appointing municipality. Only the legislative body of the municipality which appointed the member may remove such member.
2. A member of the Joint Commission may be removed for cause from office by the appointing municipality following written charges and a public hearing. "Cause" shall include, but not be

limited to: performance, conduct or behavior that adversely affects the orderly or efficient operation of the Joint Commission. Examples of performance, conduct or behaviors that constitute "cause" for purposes of this provision include:

- a. Conduct constituting a material breach of this Agreement;
- b. Violation of established by-laws, Code of Conduct, rules, regulations and policies, whether written or oral, including conduct violating provisions regarding conflicts of interest;
- c. Three consecutive absences from Joint Commission meetings;
- d. Conviction of any felony or misdemeanors involving a violation of his or her oath of office or Code of Conduct;
- e. Removal of residency from the Joint Commission jurisdictional area; and/or
- f. Any other situation which constitutes misfeasance, malfeasance, or nonfeasance in office, as provided by law.

B. *Vacancies.* The office of a member becomes vacant when the member dies, resigns, is convicted of any felony or of a misdemeanor involving a violation of his or her oath of office, Code of Conduct if any, is removed by the appointing municipality for cause, or ceases to be a resident of the territory of the Joint Commission. If a vacancy occurs, the vacancy shall be filled for the balance of the unexpired term by an appointment made by the legislative body representing the jurisdiction of the vacancy.

## **Section 8. Organization and Procedures.**

A. *Officers.* At the May meeting of each year, the Joint Commission shall elect a chairperson, vice chairperson, secretary, and treasurer from its members and fill other offices, as it considers advisable. The term of each officer shall be 1 year, with opportunity for reelection as specified in the Joint Commission's bylaws.

B. *Bylaws.* The Joint Commission shall adopt bylaws for the transaction of its business, and shall keep a public record of its resolutions, transactions, findings, and determinations. The Joint Commission may engage the services of a recording secretary for purposes of preparing minutes of its meetings.

C. *Committees.* The Planning Commission may appoint committees of its own membership or whose members may not necessarily be members of the Joint Commission.

D. *Annual Report.* During the month of December of each year, the Joint Commission shall prepare an annual report. The annual report shall be finalized by January 7 of each respective year. The annual report shall include three parts:

1. A report of activities for the calendar year that just ended and for the current fiscal year, including but not limited to operations and the status of planning and zoning activities; number of zoning permits broken down by type and by each participating municipality; the most current taxable value of each participating municipality; recommendations, if any, to the legislative body

of any or all of the participating municipalities regarding planning, zoning, and development; and any other matters as the Joint Commission may deem advisable.

2. A work plan for the coming fiscal year.
3. A proposed budget for the next fiscal year for the Joint Commission prepared pursuant to section 9 of this Ordinance/Agreement and showing the proposed transferred amounts from one fund to another, and the amount of the budget to be paid by each participating municipality.

The legislative bodies of all the participating municipalities shall approve or disapprove the budget, but the Joint Commission must operate within the sum of the funds appropriated by agreement of all of the legislative bodies of the participating municipalities.

E. *Annual Meeting.* The Joint Commission shall hold an annual meeting during the month of January each year. The annual meeting shall include the membership of the legislative bodies of each of the participating municipalities, the members of the Joint Commission, and others as may be deemed appropriate. Business at the annual meeting shall include a presentation of the annual report, review of the membership of the Joint Commission and terms of office which end during the calendar year, general discussion of planning and zoning, and any other matters as the Joint Commission may deem advisable.

F. *Regular Meetings.* The Joint Commission may meet monthly or at what ever interval is necessary to conduct its business, but shall hold not less than 4 regular meetings each year. The time and place of the meetings shall be established in the Joint Commission's bylaws. Unless the bylaws provide otherwise, a special meeting of the Joint Commission may be called by the chairperson or by two other members, upon written request to the secretary. Unless the bylaws provide otherwise, the secretary shall send written notice of the a special meeting to Joint Commission members not less than 48 hours before the meeting.

G. *Quorum.* The quorum of the Joint Commission shall be three or more members appointed and serving in attendance at the meeting, so long as at least one member of each participating municipality is present and counted toward the quorum.

H. *Open Meetings Act.* The business that the Joint Commission may perform shall be conducted at public meetings held in compliance with the Open Meetings Act, 1976 PA 267, M.C.L. 15.261 to 15.275. Public notice of the time, date, and place of a regular or special meeting shall be given in the manner required by that act.

I. *Freedom of Information Act.* A document prepared, owned, used, in the possession of, or retained by the Joint Commission and any staff members in the performance of an official function shall be made available to the public in compliance with the Freedom of Information Act, 1976 PA 442, and M.C.L. 15.231 to 15.246.

## **Section 9. Operating Budget.**

A. The Joint Commission shall be funded by the participating municipalities on an annual basis. The accounting for the funds, assets, and serving the role of the employer of record for staff of the Joint Commission shall be performed and maintained by the Township of Benzonia, but said funds shall be jointly held by all of the participating municipalities in proportion to their required contributions. The costs to the Township of Benzonia for providing this service shall be included in the annual budget of the Joint Commission, but in no case shall be greater than 10 percent (10%) of the total annual budget of the Joint Commission.

B. The funds for the Joint Commission shall be held in two funds. First shall be a Joint Commission Fund where each member municipality's share of the operating budget for the Joint Commission is deposited and where Joint Commission expenses are drawn from. Second is a Joint Commission Enterprise Fund (trust and agency fund) where Joint Commission zoning and other fees are deposited and where a fund balance is maintained.

C. Payment for goods and services shall be approved by the Joint Commission.

D. The Joint Commission's fiscal year shall be April 1 to March 31 of the next year. Each year the Joint Commission shall propose an annual budget and submit it to the legislative body of each participating municipality before the end of January. The annual budget requires the approval of all of the participating municipalities. The budget shall be adopted by the legislative body of each participating municipality during March, or sooner, of each year. Each municipality shall transfer its share of the funds necessary for the operating budget to the fiduciary municipality no later than the tenth day of the fiscal year of the Joint Commission.

E. Each year, funding for the annual budget shall be proportionally divided among the participating municipalities as follows:

1. The total Joint Commission budget (**B**) shall include revenues and expenses, including costs of the fiduciary, and all other operating expenses. Revenues shall include all revenues except income from zoning permit and other zoning fees, and a transfer from the Joint Commission Enterprise Fund.

2. At the close of the year the goal is for the funds in the Joint Commission Enterprise Fund be equal to or greater than 14 percent (14%) of the total Joint Commission budget (**B**) for that same year, for use as a fund balance:

$$B \times 0.14$$

At the end of the fiscal year up to or less than the balance in the Enterprise Fund (**E**) minus 14% times the Joint Commission budget (**B**) shall be transferred (**T**) to the Joint Commission Fund:

$$\leq (E - (B \times 0.14)) = T$$

The amount remaining in the Joint Commission Enterprise Fund is for use as a fund balance for the Joint Commission.

3. The amount to be transferred ( $\leq T$ ) from the Joint Commission Enterprise Fund to the Joint Commission Fund shall be subtracted from the total Joint Commission budget (**B**) to establish the part of the budget funded by the participating municipalities:

$$B - T = M$$

4. Intent is for one fifth (factor of 0.20) of the costs of operation of the Joint Commission reflect a multiple year average amount of resources devoted to planning. As used here, "planning" refers to periodic review and amendments to Master Plans and other plans, and amendments to the Joint Commission zoning ordinance which is initiated by the Joint Commission. Major

revisions, creation of a new Master Plan, other plan, and zoning ordinance are anticipated to be a special project and the cost is not included here. One fifth of the budget funded by participating municipality (M) shall be divided equally among each municipality (m):

$$M \times 0.20 = m$$

5. The remaining four fifths ( $\frac{4}{5}$ , or factor of 0.80) shall be divided between the participating members in the following proportions (where X is a variable which stands for each individual participating municipality):

5A. Half of the remaining four fifths ( $\frac{4}{5}$ , or factor of 0.80) (Xm1) shall be assessed to each participating member in the same proportion of the total taxable value (TV) to the taxable value (Xtv) in each participating municipality:

$$Xtv \div TV = Xm1$$

Data on taxable values shall be from the most recent data available from the Benzie County Equalization Department.

5B. Half of the remaining four fifths ( $\frac{4}{5}$ , or factor of 0.80) (Xm2) shall be assessed to each participating member in the same proportion of the total of the past five year average number of zoning permits (P) for all municipalities to the average number of zoning permits (Xp) in each participating municipality:

$$Xp \div P = Xm2$$

6. The participating municipality's share (XMS) of the part of the budget funded by participating municipalities (M) shall be the sum of the one fifth share divided equally among participating municipalities, plus the proportion based on taxable value, plus the proportion based on zoning permits:

$$m + Xm1 + Xm2 = XMS$$

## Section 10. Procedure for Joining the Joint Commission

- A. A city, village, or township may file a written request with the Joint Commission requesting to become a participating municipality in the Joint Commission. Such written request shall include a certified copy of a resolution adopted by the requesting municipality's legislative body supporting such request.
- B. A majority vote of all members of the Joint Commission appointed and serving shall be necessary to adopt a motion recommending the rejection or acceptance of a new participating municipality. member. If adopted, the recommendation shall be sent to the legislative body of each participating municipality.
- C. A motion to accept a new participating municipality shall be adopted by a majority of the participating municipalities' legislative bodies. If both participating municipalities legislative bodies vote to accept the petition to join, then the Joint Commission will develop and present recommendations concerning any revisions of this Ordinance/Agreement, a budget for the new participating municipality to pay for the costs of updating the Joint Commission master plan, zoning ordinance, and other documents as may be necessary.
- D. Upon the revision of this Agreement by a duly enacted ordinance adopted by each participating municipality and the requesting municipality, the requesting municipality shall become a participating municipality. The requesting municipality shall bear the entire cost of revising the Agreement and the ordinance, Joint Commission joint master plan, zoning ordinance, and other documents as deemed necessary.



## **Section 11. Procedure for Withdrawing from the Joint Commission**

A. A participating municipality shall have the right to withdraw from the Joint Commission only upon completion of the following conditions:

1. The withdrawing municipality shall have paid its proportional share of any and all obligations of the Joint Commission to the end of the current budget year, including the balance of any contractual fees, service contracts, legal and other costs minus the proportion of the sum of zoning permit fees collected for permits in that participating municipality in the current fiscal year to be transferred from the enterprise fund to the Joint Commission budget (T);
2. The legislative body of the withdrawing municipality shall have held a public hearing on its intent to withdraw from the Joint Commission. Notice of such public hearing shall be given to the Joint Commission and each of the participating municipalities not less than 90 days before the date the public hearing. Notice of such public hearing shall be published in a newspaper of general circulation in the local unit of government not less than 15 days before the date of the hearing.
3. Following such public hearing the legislative body of the withdrawing municipality shall have adopted a findings of fact, recitation of reasons, and its decision to withdraw from the Joint Commission which is delivered to the Joint Commission.
4. Following such public hearing the Joint Commission shall prepare a plan and a budget to accomplish the withdrawal and shall present its plan, budget and the request for withdrawal to each of the other participating municipalities.
5. If the remaining participating municipalities vote to approve the withdrawal plan and budget, the legislative body of the withdrawing municipality may enact an ordinance to withdraw from the Joint Commission.
6. The reasonable cost of any joint master plan amendments, joint ordinance amendments, Joint Commission ordinance and agreement remaining in effect in for the other participating municipalities, and other withdrawal costs shall be borne by the withdrawing municipality. If there are only two (2) participating municipalities at the time of withdrawal from the Joint Commission the reasonable cost of replacing any joint master plan, joint ordinance, and other withdrawal costs shall be borne by the withdrawing municipality for the remaining municipality unless another cost sharing formula is mutually agreed upon.

B. The withdrawal shall take effect at the end of the fiscal year of the date which is two months after the above requirements have been satisfied. When there are only two (2) participating municipalities in the Joint Commission, upon the withdrawal of either participating municipality, and after division of the assets and liabilities of the Joint Commission between the two municipalities in accordance with their proportional shares, this Agreement and this ordinance shall become null and void and the Joint Commission shall cease to function and shall have no further legal authority.

## **Section 12. Statutory powers.**

A. Except as may be provided in this ordinance, the Joint Commission shall have all the powers and duties provided for such joint planning commissions in the Joint Municipal Planning Act, 2003 PA 226 (M.C.L. 125.131 *et seq.*).

### **Section 13. Transition provision.**

A. The Master Plan for the territory of the Joint Commission shall continue to be the same as the *Benzie County 2020 Comprehensive Plan* (Benzie County Planning Commission Benzie County Planning Department, Anne Bourne, and Planning & Zoning Center, Inc., October 2000), which was adopted by each participating member, until the Joint Commission amends the Master Plan or adopts another master plan.

B. The Joint Commission shall adopt a single zoning ordinance which shall take effect on or before July 1, 2011. The zoning ordinance shall preserve the same zoning districts text and mapped areas (including zoning districts unique to a participating member), and the same general provisions and administrative provisions as currently exists within each zoning ordinance, as amended, adopted by each participating member, until the Joint Commission amends the Zoning Ordinance or adopts another zoning ordinance.

C. Zoning ordinances, as amended, in effect in each participating municipality shall remain in effect, and administered by each respective municipality until the Joint Commission zoning ordinance is in effect or July 1, 2011, whichever date comes first. If a zoning case involving a site plan approval, special land use permit request, planned unit development which is not a zoning amendment for a specific property, is in process, the respective participating member shall continue to administer that zoning ordinance for that case until final decision is made, even if the duration extends beyond the transition dates provided for in this section.

D. Any moratorium(s) properly adopted by a participating municipality concerning the issuance of zoning permits shall continue in full force and effect until the Joint Commission has finished any necessary revisions to zoning to address the purpose of the moratorium(s) or shall extend the length of time of the moratorium(s).

E. All other duties and responsibilities of a planning commission shall become the responsibility of the Joint Commission on July 1, 2011.

### **Section 14. Amendments**

A. This Agreement and Ordinance may only be changed by an amendment to this ordinance duly adopted by the legislative body of each participating municipality. All amendments shall be initiated by the Joint Commission.

### **Section 15. Effective date.**

- A. This Ordinance and the Agreement incorporated herein shall be effective on the later of the following:
1. the eighth day following the last date of publication by a participating municipality if no notice of intent to file a petition for a referendum is filed as provided for in MCL 125.139; or
  2. the 31st day following the filing of a notice of intent in any participating municipality to file a petition for a referendum if no petition for a referendum is filed within 30 days after the filing of the notice; or

3. the day following the day upon which a determination is made by the clerk of each municipality in which a petition for referendum is filed that the petition calling for the referendum is inadequate; or
4. the day the ordinance is approved by the electors in each municipality in which a referendum is held.


At a regular meeting of the board of trustees of Benzonia Township held on the 21<sup>st</sup> day of April, 2011, adoption of the foregoing ordinance was moved by Rice and supported by Burns.

Voting for: [ insert names ] Burns, Rice, Sheets, Mead, Delonnay

Voting against: [ insert names ] None

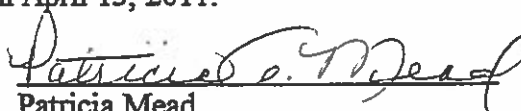
The Supervisor declared the ordinance adopted.

  
James Sheets  
Supervisor

  
Patricia Mead  
Clerk

#### CERTIFICATION

The foregoing is a true copy of Ordinance No.4-11 which was enacted by the board of trustees of Benzonia Township at a regular meeting of said board held on April 13, 2011.

  
Patricia Mead  
Clerk