

## Background

The Washtenaw County Comprehensive Plan encourages intergovernmental cooperation and coordination, since many of the issues facing local communities are not delineated by political boundaries. Indeed, the fourth most frequent comment during the public participation process for creation of the Plan involved intergovernmental cooperation. The Plan includes 188 recommendations that require some degree of intergovernmental and intersectoral cooperation.

The Washtenaw County Administrator's Office has encouraged and supported intergovernmental and intersectoral (e.g. public-private) cooperation among its seven guiding principles, and hence its day to day operating practices. This cooperation takes many forms; human services, community development, public health, environmental initiatives, regional food systems, transportation planning and regional open space planning, to name a few. Regional land use planning is a form of intergovernmental cooperation.

Cooperation makes sense when all parties gain from the interaction. Intergovernmental cooperation can easily breakdown, however, when the outcome of a cross-jurisdictional difference means one party wins and the other party loses. Annexation petitions easily fall into this category. Conflicts over annexation are the basis of many long standing resentments and mistrust between leaders of local governments. Further, annexation disputes, which may linger in the courts for months or even years, interfere with orderly planning and development decisions.

## Conditional Land Transfer Agreements

Michigan's Conditional Land Transfer Act, Public Act 425 of 1984, commonly referred to as P.A. 425, was passed by the legislature to promote cooperation among municipalities to facilitate creation of economic development opportunities while eliminating the win-lose dynamics of annexation disputes. These conditional land transfers are typically called "425 Agreements." 425 Agreements are crafted in the form of an intergovernmental contract. Most frequently, a 425 Agreement is created when a development in a township is proposed that would create an economic benefit for the area, but that needs to be served by a municipal (city or village) sewer and water system. The township "conditionally" transfers the land to the city for a specified period of time (up to 50 years) and the city extends its sewer and water. Both municipal parties "win" because both municipalities continue to receive tax revenue (since both municipalities continue to provide services), while at the same time can have their respective broader interests preserved in a 425 Agreement. Further, one provision of P.A. 425 is that annexation cannot occur in the area covered by the 425 Agreement.

## What does 'Conditional Land Transfer' mean?

Conditional land transfer means that "for all purposes" the transferred property comes under the jurisdiction of the local unit of government to which it is transferred (Taylor and Harvey, 2004).

In a 425 Agreement, conditionally transferred land can come under the complete control and jurisdiction of the unit to which it is transferred for the period of the agreement (the condition).

Control and jurisdiction *can* be limited if the “contract specifically provides otherwise.” The flexibility that is built into the PA 425 statutory language is a tool that can be used to enhance intergovernmental cooperation, and will be illustrated in the case example later in this paper.

#### What is permissive and what is mandated by statute?

The language of PA 425 is largely permissive in that whereas it directs local units to “consider” several factors, it does not specify any methodology, criteria or other means for weighing the significance of that which is “considered.” Many current 425 Agreements simply state that these factors have been considered, but do not state anything beyond that fact. While this may lead to some 425 Agreements paying too little attention to important community issues, it does provide a great deal of flexibility to cities, villages and townships.

As discussed in the Taylor and Harvey paper, the purpose of 425 agreements is to enhance economic development, housing and environmental protection. “Economic development” is defined as “land and existing or planned improvements suitable for use by an industrial or commercial enterprise, or housing development or protection of the environment, including but not limited to groundwater or surface water (PA 1984, No. 425 subsection 1).

The statute enumerates three components for a 425 Agreement as set forth below:

Factors to *consider* (Section 3) include:

- Population;
- Land area and land uses;
- Assessed valuation;
- Past and probable future growth, including population increases, and commercial and industrial development;
- The need for organized community services;
- The cost and adequacy of governmental services in the area to be transferred;
- Probable changes in taxes and tax rates in relation to the benefits expected to accrue from the transfer;
- The ability of the receiving jurisdiction to provide and maintain services; and
- The relationship of the proposed action to any relevant land use plans.

Provisions that *may be included* (Section 6):

- Any method by which the contract may be rescinded or terminated by any participating local unit prior to the stated date of termination.
- The manner of employing, engaging, compensating, transferring, or discharging personnel required for the economic development project to be carried out under the contract.
- The fixing and collecting of charges, rates, rents, or fees, where appropriate, and the adoption of ordinances and their enforcement by or with the assistance of the participating local units.

- The manner in which purchases shall be made and contracts entered into.
- The acceptance of gifts, grants, assistance funds, or bequests.
- The manner of responding for any liabilities that might be incurred through performance of the contract and insuring against any such liability.
- Any other necessary and proper matters agreed upon by the participating local units.

Mandatory provisions that *must be included* (Section 7):

- The length of the contract;
- Specific authorization of the sharing of taxes and any other revenues;
- Methods by which participating units can enforce the contract; and
- Identification of which unit will have jurisdiction of the transferred area upon expiration of the agreement.

### Public participation

Each participating jurisdiction must have at least one public hearing prior to its approval by majority vote of each participating legislative body. In addition, 425 Agreements can be subject to referendum either by adopting a resolution calling for a referendum, or by petition of 20% of the electors residing in the area to be annexed or by 50% of the property owners in the area to hold a referendum.

### Research Findings: Pros and Cons of P.A. 425 Agreements

Research by Taylor, Harvey and Shields (2005) and Bassett (2006) indicate that 425 Agreements are relatively popular ways for municipalities to share in economic development activities, while simultaneously protecting their individual community interests. Bassett's paper discusses that written comments in the 187 valid surveys received reflect a generally positive view of P.A. 425. One theme is that while negotiations can be difficult and can even break down, P.A. 425 provides a flexible framework for adjusting boundaries and pursuing economic development. P.A. 425 provides local governments an opportunity to foster positive intergovernmental relationships, to share in growth and to achieve regional goals. Quoting from Bassett's paper:

*“The simple fact is that townships have the land base and the cities/villages have the services. When utilized properly, a 425 can provide an equitable arrangement to allow land near the urban area to develop at a rational density and reduce the pressure on farmland further out.”*

Link to Planning: At the same time, this research also highlights certain limitations in the way many 425 Agreements have been crafted. From a land use perspective, the most salient potential problem is that P.A. 425 does not require that agreements be linked to planning. Too often, 425 Agreements are crafted in response to developer or land owner requests, rather than as part of intergovernmental strategic planning. Cities and townships would make better 425 Agreement-based decisions if they engaged in regional planning or coordinated planning activities that included an assessment of long range economic development strategies.

Communities, in a coordinated fashion, can identify areas of properties that are close to existing services and at least assess their future potential for economic development. Scio Township and the Village of Dexter did that in the Baker Road Corridor Joint Planning Initiative in October 2004. However, as noted below, this did not prevent an initial annexation petition being filed by the Village in 200\_.

Contiguity: Another limitation is that P.A. 425 is silent on the issue of contiguity. This has led to ‘leap-frogging,’ which occurred a couple of times in the Lansing area. Leapfrogging both defeats the intent of P.A. 425 and can contribute to sprawl.

Length of the Agreement: The potential length of a 425 Agreement of up to 50 years can lead to problems without oversight and periodic review being built into each agreement. Elections and turnover over a span of 50 years mean that the institutional memory in local governments will inevitably fail to keep track of these agreements. The absence of built-in oversight and review may mean a legacy of litigation for future generations as agreements expire and the original intent and built-in assumptions have been long forgotten.

Reversion of control at the end of a contract is another potential limitation. Local governments need to be very careful about this decision when making a long term agreement. Whereas by definition 425 Agreements are ‘conditional’ transfers of land, most 425 Agreements concern the financing, installation and maintenance of expensive infrastructure. The types of issues that should be addressed in the 425 agreement include questions like these:

- At the end of a 425 Agreement, which entity owns and is responsible for the sewer and water systems?
- Will a city or village that has invested significant resources in infrastructure be willing to relinquish that investment?
- Will a township having no sewer and water systems be able to maintain that component of the system that extends into a now reverted parcel?

### Washtenaw County Experience

Washtenaw County has benefited from the experience of other communities’ prior 425 Agreements, as well as the research noted above. The Department of Planning and Environment used planning principles and group facilitation skills to assist two municipalities, and utilized the following general approach.

Building on the recommendations and observations in the research, Planning & Environment has used the following approach as the framework for building a consensus for a 425 Agreement:

#### 1. Use a planning approach

- Have a reasonably sized planning committee that is comprised of elected or appointed officials who can credibly articulate a unit of government’s interests.
- What do recent planning documents say about the area proposed for development?

- Are there master plans, area plans, regional plans or studies that include the proposed area? What do they say?
  - Plans reviewed and drawn from: In this example, both Master Plans, the Baker Road Corridor Joint Planning Initiative, the Scio Township Open Space and Greenway Plan and the Washtenaw County Comprehensive Plan
  - Is the proposed development consistent with the community goals, objectives, policies and recommendations of these plans? If so, highlight them in a report. If not, highlight the inconsistencies.
  - Is the proposal consistent with local and regional growth projections?
  - Does either or both unit of government's Zoning Ordinance, particularly the PUD ordinance, have provisions that can be used to inform a 425 Agreement? Highlight them in a report. Highlight where a proposal is inconsistent with the PUD provisions.
2. Create a report that documents the crafting of the 425 Agreement
- The report explains what has gone into the 425 Agreement and provides background and analysis of key issues that inform the formal 425 Agreement
  - Identify the key factors important to each unit of government.
  - Key factors are based on land use master plans, zoning ordinances, other plans and comments from participants in the planning committee.
  - Sections of the report are: 1) Background and Purpose; 2) Factors Considered that include brief discussion of the analysis of each factor and the concluding findings; 3) Recommendations of the Planning Committee.
3. Periodic review should be a built-in requirement
- Review of the agreement should be at reasonable intervals e.g. every five years
  - The statute allows for a 50 year term with an additional 50 year renewal. Periodic review during that 50 year (or other duration) will assure that there is oversight.
4. Identify public benefits and tie them to planning and zoning documents
- Planned Unit Development (PUD) ordinances discuss a range of public benefits in as proposed development that need to be present in order to justify a PUD
  - Discussion of public benefits will become part of the report that accompanies the draft 425 Agreement as part of the review process prior to approval.
5. Include a 'Conditions of Land Use and Land Development' section in the Agreement
- This section will describe how the various community goals, the public benefit, are to be achieved.
  - In this section an agreement will describe, as appropriate; the development will be a PUD; their types and mix of development; the type of residential, commercial and industrial land uses to be permitted; residential density, preservation of natural areas, open space, agricultural and/or recreational space to

be preserved; a description of the plan review process and any other pertinent community factors.

#### 6. Joint Review

- This is a key provision that will structurally enable both municipalities' planning commissions to have a role in working with the developer during then preliminary site plan review process.
- Joint review as a component of the 425 Agreement can do much to facilitate a sense of intergovernmental cooperation with a given proposal.
- Perhaps as important, joint review sets the stage for ongoing intergovernmental relations and the resolution of conflicts and competing priorities.

Having considered the factors and issues discussed in numbers 1–6 above, the 425 Agreement should include these major provisions:

1. Parties to the agreement with legal corporate municipal name and address
2. Background and Purpose to explain that this is a cooperative agreement between the two parties that is designed to help manage growth by providing certain services, while preserving the environment and protecting the public health, safety and welfare
3. Definitions: Provides definitions of key terms.
4. Factors Considered: Lists the statutory considerations required by P.A. 425 that Municipality A and Municipality B have included in their deliberations about a potential 425 agreement for the Project Area.
5. Compliance With the Procedures of P.A. 425 of 1984: Documents when and where both Municipalities held public hearings regarding the proposed 425 agreement for the Project Area.
6. Transfer of Jurisdiction; Services to be Provided by City or Village: Documents the jurisdiction that will provide all municipal services to the Project Area.
7. Levying and Sharing of Taxes: Provides specific authorization and terms for sharing of taxes and other revenues.
8. Conditions of land use and land development: Assures that the goals of each community are achieved during the rezoning and development of the Project Area.
9. Term of Contract: Describes the number of years the agreement is valid.
10. Periodic Review: Provides for periodic review of the Agreement to ensure continued oversight of the agreement through successions of elected and appointed officials.
11. Identification of which unit has jurisdiction over the transferred area upon expiration of the agreement: Self-Explanatory. This is a statutorily required provision of a P.A. 425 agreement.
12. Enforcement of Contract; Termination: In the event of default by either party, this provision spells out the procedure either party must follow; it provides alternative forms of relief and allows for termination of the agreement by either party.
13. Amendment of Contract: Conditions to amend through mutual agreement.
14. Township grant of permission to use public right of ways; ownership of sewer and water facilities: Allows the City or Village to use rights of way and other public places in the Township in order to connect the City or Village's sewer and water system to the Project

Area. This provision states which unit of government will own the sewer and water system at the end of this agreement.

15. Contract to survive if either party incorporates as a city: If a participating village incorporates as city, this agreement will remain in effect and bind the city to it.
16. Effective date of contract; effective date of transfer of project area, cit or village clerk to file contract with Secretary of Sate and County Clerk: Self-Explanatory.

Sources:

1. "The Conditional Land Transfer Act: Research, Reflections and Policy Recommendations," Gary Taylor, Lynn Harvey and William Shields, April 2004, [http://swwcog.org/liaa\\_grant/liaa\\_harvey\\_paper\\_11\\_08\\_06.pdf](http://swwcog.org/liaa_grant/liaa_harvey_paper_11_08_06.pdf)
2. "Land Use Planning and Cooperation under Michigan's Conditional Land Transfer Act (Public Act 425, 1984): Finding from a Survey of Local Officials," Ellen M. Bassett, PhD., June 26, 2006  
<http://ippsr.msu.edu/Publications/ARPA425.pdf>
3. Public Act 425 of 1984  
<http://legislature.mi.gov/doc.aspx?mcl-Act-425-of-1984>