

**Village of Lexington  
Planning Commission  
7227 Huron Avenue, Lexington MI  
Monday, September 9, 2019  
7 PM**

**Call to Order Regular Meeting:** Mike Ziegler

**Roll Call:** Beth Grohman

Members: Ziegler    Stencil    McCombs    Reinhard    Macksey  
                 Kaatz    Picot    Morris    Huepenbecker

**Approval of Agenda:**

**Approval of Minutes:** August of August 5, 2019                      **Pages 1-3**

**Public Comment:** (3 minute limit)

**Zoning Administrator's Report    Page 4**

**Old Business**

1. Progress on the Master Plan – Holly Tatman
2. Capital Improvement Plan Committee Appointments - Kristen Kaatz

Much of the Capital Improvement Committee's work is scheduled for Sept/Oct.

**New Business**

1. Review zoning ordinance audit report                      **Pages 5-13**

**Public Comment:** (3 minute limit)

**Adjournment:**

VILLAGE OF LEXINGTON  
Planning Commission Regular Meeting  
Monday, August 5, 2019  
7 p.m.

**Meeting Called to Order:** 7:00 p.m. by Chairperson Mike Ziegler

**Roll Call** by Beth Grohman, Clerk

**Present-** Picot, Stencel, Morris, McCombs, Macksey, Reinhard, Kaatz, Huepenbecker, Ziegler

**Absent** – None

**Others Present** –Beth Grohman, Holly Tatman, Jerry Dawson, and 10 citizens

**Approval of Agenda:** Motion by Morris, seconded by Macksey, to approve the agenda as amended. NB#1 before ZA Report.

All Ayes

Motion carried

**Approval of Minutes** – Motion by Morris, seconded by McCombs, to approve the minutes of July1, 2019 as presented.

All Ayes

Motion carried

**Public Comment –**

Denny Balmer – 7214 Simons – Comments regarding 5382 Main Street

Denise Cardaris – Painted Paddle – Clarify if a decision will be made at the meeting, would like her attorney present

Richard Stapleton – 5427 Union – Questions regarding request for use at 5382 Main Street for a wedding venue.

Mary Ann Knoblauch -7127 Simons – Comments regarding 5382 Main, not commercial, it is residential.

Linda Bombard -7214 Simons – Comments regarding 5382 Main Street, owner knew it was residential not commercial.

**NB#1. 5382 Main Street** – Owner Denise Cardaris filed an application for a Short Term Rental at this address. Dawson reported that the application was denied in accordance with the ordinance; it cannot be within 300 ft. of an existing Short Term Rental Unit. Property had previously been used for a short term rental, but does qualify for grandfathered status because it was not registered by the July 31, 2018 deadline. Three complaints regarding this property: STR without registration, pool barrier a cover instead of fence (which is legal) and using property as wedding venue.

**Linda Bombard** - Presented a petition regarding 5382 Main Street – The undersigned, Lexington residents are opposed to any changes in status of the property to commercial or any variances to allow a short term rental.

**Denise Cardaris** – Disagrees with denial, stating this property was used as a short term rental in the past. Variances and exceptions have been made to other

properties, such as the Lake Huron Lodge. Prior to the amendments to the STR ordinance, measuring the 300 ft rule was not clarified and another STR was measured door to door.

**Ziegler-** Current ordinance does not allow for this property to operate as a short term rental due to the 300 ft requirement. It would be allowed to be used as a long term rental. The ordinance will be reviewed within a year.

**Macombs** – STR's are under review with the Michigan Legislature and ordinance may change.

**Kaatz** – Only option to request a rezone of the property.

**Richard Stapleton-** Union Street- Is noise the primary issue?

**Dennis Balmer-** Noise, nuisance issues. Having to close windows at night because of the noise.

**Zoning Administrator Report** – Six permits issued, fifty six phone calls, six letters of correspondence, fourteen complaints, sixteen blight letters (nine in compliance). Motion by Reinhard, seconded by Morris, to accept the Zoning Administrator report as presented.

All Ayes

Motion carried

#### **Old Business:**

1. Banner, Flags, and Pennants – Members discussed the banners that are not in compliance and not being removed. There are many more signs than in the past, and they need to be regulated. Recommendation to revisit the ordinance and enforcement. It will be addressed with all zoning updates with Wade Trim.

#### **New Business:**

2. Update on Master Plan Initiative – Charrette held at Tierney Park was successful and Planner happy with the turnout and the input from the residents and businesses that have participated. Planner will be bringing back to the Village to start putting things together. Work will start with Wade Trim on the zoning ordinances.
3. Capital Improvement Plan Appointments – Kristen has made no appointments yet. Picot recommended reaching out to the public.
4. Zoning Ordinance Update with Wade Trim – Adam Young would like a two Planning Committee members to review the Zoning Ordinance audit with Holly Tatman, Jerry Dawson, Jackie Huepenbecker, and him. Picot and Macksey volunteered.

**Correspondence** – Dennis Balmer and Linda Bombard – Opposition to 5382 Main Street operating a short term rental in a residential area not registered and possible rezoning of the property.

**Public Comment –**

Linda Bombard- Residents named in the petition would like to commend Jim Macksey and Jackie Huepenbecker for their help.

Dennis Balmer – Comments regarding the public input. Holly to follow up with Balmer.

**Adjournment** - Motion by Huepenbecker, seconded by Macksey, to adjourn at 8:15 p.m.

All Ayes

Motion Carried

Beth Grohman  
Village Clerk

DRAFT

Zoning Administrator Report

August 1-31, 2019

Permits Issued -7

3- decks

2 -garages

2-parking & driveway

28 incoming calls

34 outgoing calls

7 complaints

5 letters sent

1 ticket issued



Wade Trim Associates, Inc.  
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September 3, 2019

Village of Lexington  
7227 Huron Avenue  
Suite 100  
Lexington, MI 48450

Attention: Planning Commission

Re: Zoning Ordinance Audit

Dear Commissioners:

As a key component to the Village's ongoing Master Plan update project (being led by SmithGroup), we will be leading the Village through various Zoning Ordinance amendments. Although the master planning phase is not yet complete, we can work in advance to develop selected Zoning Ordinance amendments while the master planning phase is ongoing. Additional zoning amendments will likely be necessary after the Master Plan update phase is completed.

To kick-off the Zoning Ordinance amendments, we prepared a detailed Zoning Ordinance Audit and presented our findings to a group of Village representatives including several Planning Commissioners, the Zoning Administrator and Village Manager (the "Zoning Amendments Committee"). Based on comments received from the committee, we made a few revisions and are enclosing the finalized Zoning Ordinance Audit for your information and review. If you have comments or suggestions relating to the Audit, please share them with members of the Zoning Amendments Committee.

Following the recommendations of the Audit, we will be working with the Zoning Amendments Committee to develop the actual Zoning Ordinance amendment language. We will begin by addressing the following topics listed in the Audit:

- Federal Laws, State Laws, and Court Cases (all items)
- Contemporary/Emerging Topics (items 1-3 only)
- RRC Best Practices (items 1-4 only)
- Inconsistencies, Cumbersome Language and Sound Planning Practice (all items)

We will likely wait until after a complete draft of the updated Master Plan is available to begin work on the remaining items noted in the Audit.

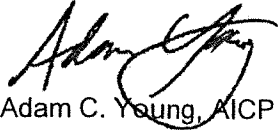
As amendments are developed and accepted by the Zoning Amendments Committee, they will be provided to the Planning Commission for your information and review. Ultimately, any amendments will need to be reviewed by the Planning Commission and a public hearing will need to be held; adoption of any amendments would need to occur by Village Council.

Village of Lexington  
September 3, 2019  
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We look forward to working with the Village throughout this process. If you have any questions, please do not hesitate to contact us.

Very truly yours,

Wade Trim Associates, Inc.

A handwritten signature in black ink, appearing to read "Adam C. Young". The signature is fluid and cursive, with a large loop at the end of the last name.

Adam C. Young, AICP

ACY:ka  
LEX 6000-01D  
Zoning Ordinance Audit Cover Letter 9-03-19.docx  
Enclosure

# Village of Lexington

## Zoning Ordinance Audit

Prepared by Wade Trim  
September 3, 2019



The Village of Lexington Zoning Ordinance was adopted in 2004 and various amendments have been enacted since that time (the most current version is dated January 2019). Based on feedback received during various Master Plan update engagement sessions; best practices identified as part of the Michigan Economic Development Corporation's Redevelopment Ready Communities (RRC) program and other needs identified during recent discussions, we have conducted a detailed Zoning Ordinance audit. Below is a listing of our findings for your consideration, generally organized by topic.

### Federal Laws, State Laws, and Court Cases

1. The process for zoning text amendments and zoning map amendments (rezonings) is specified in the Zoning Enabling Act (ZEA), Public Act 110 of 2006. However, most communities provide a general description of the process, as well as criteria for review and approval, within the Zoning Ordinance. We recommend that a new "amendments" article be added to the Zoning Ordinance.
2. The ZEA specifically authorizes the practice of "conditional rezoning." Essentially, it provides that an owner of land may voluntarily offer, in writing, and the local unit of government may approve, certain use and development of the land as a condition to a rezoning of the land or an amendment to a zoning map. We would recommend that a "conditional rezoning" section be added to the recommended new "amendments" article of the Ordinance which outlines the process to be followed, as well as criteria for review and approval.
3. At present, "churches and other institutions for religious worship" are allowed as a conditional land use only in the residential districts. Recent court interpretations of the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) have made it clear that zoning codes may not exclude religious assemblies in places (i.e., districts) where they permit theaters, meeting halls, and other places where people might assemble for secular purposes. Currently, Lexington allows clubs, social organizations, and theatres (secular assembly) in the commercial districts, but does not allow churches (religious assembly). The Village should consider amending the Ordinance by adding churches as conditional land uses within the commercial districts to be consistent with RLUIPA.
4. "Public and private elementary, middle and high schools" are identified as a conditional land use in the residential districts. In a relevant court case (*Northville v. Northville Public Schools*, Michigan Court of Appeals, 2001), it was concluded that the State superintendent of schools (not local zoning) has complete control over the review and approval of site plans for school buildings. For consistency with the court determination, we would suggest that the Village consider allowing public school buildings as a permitted use instead of a conditional use in the residential districts.



5. Section 5.24 of the Ordinance regulates wireless communication facilities. Recently, the ZEA was amended to include new requirements for wireless communication facilities. Additionally, recent Federal Communication Commission (FCC) findings have clarified the applicability of the Federal Telecommunications Act of 1996 to local zoning laws. Of particular relevance to the Village of Lexington, these new requirements and findings stipulate the following:
  - Local governments cannot adopt policies that ban or effectively preclude new cellular towers.
  - Wireless collocation, in most cases, is a principal permitted use of land and is not subject to special land use approval. These mandated cases include where the collocation would not: 1) require an increase in the support structure by more than 10% of its current height or 20 feet; 2) increase the width of the support structure by more than the minimum necessary to permit collocation; or, 3) increase the area of the existing equipment compound to greater than 2,500 square feet.
  - “Shot-clock” provisions now stipulate a minimum timeframe for local government review and approval of wireless collocation applications and tower applications. The “shot-clock” ranges from 60 to 120 days depending on the type of application.

Our review of the current Section 5.24 has found it to be somewhat cumbersome to understand. We wonder whether the Village agrees with this and has found it difficult to enforce. Further, the current language does not properly identify the State-required circumstances for when collocation must be allowed as a permitted use in any district. Finally, the current language does not address the State-mandated approval timeframes. We recommend that a new wireless communication section be developed which is easier to understand and enforce and which complies with State Law.

6. Consistent with the ZEA, Sections 5.8 and 5.9 of the Zoning Ordinance correctly notes that family day care homes and adult foster care small group homes are allowable uses in the residential districts. However, these uses are not specifically listed as being permitted within the various zoning districts (Sections 4.4.1 through 4.4.5); yet other types of facilities, such as group day care homes and adult foster care facilities, are specifically listed. We suggest the various types of child care uses and adult foster care uses be specifically listed within the zoning districts.
7. The Village’s sign regulations are found in Article 8. We do not suggest significant revisions to this section. However, in light of a recent Supreme Court decision (Reed vs. Gilbert), we suggest a review and revisions to verify content neutrality in the regulations, particularly for temporary signage. Also, we suggest adding a new “substitution clause” which would help the Village avoid potential future litigation. A substitution clause provides that any sign otherwise allowed may substitute non-commercial copy in lieu of any other commercial or non-commercial copy.

#### **Contemporary / Emerging Topics**

1. The Zoning Amendments Committee expressed the need to address the type of temporary signs commonly known as tear drop flags, feather flags or windfeather flags. These are becoming increasingly popular throughout the county. We will develop regulations for the Village’s

consideration that will define and either prohibit or allow, with conditions, these types of temporary signs.

2. The Zoning Amendments Committee expressed the need to address window-wrap lighting. This type of lighting is becoming increasingly popular and commonly consists of neon or fluorescent "tube" lights that frame the windows (or in some cases buildings) and are intended to draw attention to businesses. As a means to prevent visual clutter and minimize distractions to motorists, we will prepare regulations for the Village's consideration that prohibit window-wrap lighting.
3. We understand that a work group has been established by the Village to research and develop an approach to address food trucks / food vendors. If applicable, amendment language developed by this group could be incorporated into this broader zoning amendments effort.
4. We suggest that the Village consider developing language to define, allow, and regulate breweries, wineries, and distilleries. We suggest that these uses be allowed within the C-2, CBD, and I-1 Districts.
5. Accessory dwelling units are increasingly being recognized as providing certain benefits, including increasing the availability of affordable housing; generating income for property owners; and accommodating children, in-laws, or other relatives in a smaller dwelling on the same site. Presently, Section 5.4.4 of the Zoning Ordinance prohibits living quarters within a detached garage. The Village may wish to consider allowing accessory dwelling units within certain districts, subject to appropriate use and development standards that would mitigate potential impacts to surrounding properties. Please note that allowing accessory dwelling units in the Zoning Ordinance is also a RRC-recommended best practice.
6. Recent trends have shown an increasing desire for smaller dwelling unit sizes. The Village may wish to review and consider adjusting the minimum floor areas for dwelling units as outlined in Section 4.5.1,(8).

#### **RRC Best Practices**

1. Presently, the Zoning Ordinance (Section 3.3) gives authority for the final approval of conditional land uses to the Village Council, upon recommendation from the Planning Commission. In line with RRC best practices to promptly act on development requests, we suggest the Village consider amending the Zoning Ordinance to give final authority to the Planning Commission. This would eliminate one step in the development review process. Many Michigan local governments, particularly villages and cities, give this authority to the Planning Commission.
2. Presently, Section 3.4 of the Zoning Ordinance gives the authority for the final approval of site plans to the Village Council, upon recommendation from the Planning Commission. This is uncommon for Michigan local governments and adds an unnecessary step to the development review process. In line with RRC best practices to promptly act on development requests, we suggest the Village consider amending the Zoning Ordinance to give final authority to the Planning Commission.

3. RRC best practices suggest that an administrative site plan review process be established with eligibility given to small projects such as changes of use, minor building additions, and minor site changes. We agree and suggest a new administrative review section be developed and incorporated within Section 3.4.
4. Sections 3.4.2 and 3.4.3 establish a “preliminary site plan” review process followed by a “final site plan” review process. However, there is contradictory language in the Ordinance regarding whether the preliminary site plan process is optional or mandatory and who can make that determination. Section 3.4.2,(1) indicates that an applicant “may submit” a request for preliminary site plan. Later, Section 3.4.4 implies that preliminary site plan review “may be waived by the Planning Commission.” RRC best practices suggests that a “conceptual site plan review” process be established as an optional process at the discretion of the applicant. We agree and suggest revisions to Section 3.4.2 accordingly.
5. As recommended by the RRC, we suggest the Village review and consider adding “new-economy businesses” within the commercial and industrial districts, as appropriate. This review will likely occur after a complete draft of the updated Master Plan is prepared and will be based on the future land use classification descriptions.
6. Section 9.3.3 of the Zoning Ordinance allows for a single parking lot to serve two or more uses, “provided such facilities collectively shall not be less than the sum of the requirements for the various individual uses computed separately.” Commonly, many municipalities also allow for a reduction in the total number of spaces in a shared parking lot where the peak operating hours of the businesses do not overlap. In some cases, municipalities may allow for a parking space reduction even when operating hours do overlap, recognizing the possibility that some customers will park in one space and then walk from one destination to another. Overall, the benefit of shared parking provisions is that they result in less area unnecessarily dedicated to parking, which frees up more space for business activities, pedestrian circulation, open space, and landscaping. Environmental benefits, such as reduced storm water runoff, would also result from less parking. Therefore, we encourage the Village to consider amendments to allow for shared parking reductions.
7. Sections 4.4.7 through 4.4.9 (C-1, C-2, and CBD Districts) do not specifically indicate whether mixed-use buildings are allowed, other than building with multiple-family housing on the upper floors. Following RRC best practices, mixed-use buildings should be specifically stated as being allowed.
8. RRC best practices suggest that the Zoning Ordinance should allow for a variety of housing options, such as accessory dwelling units, townhouses / rowhouses, stacked flats, and live / work units. We suggest the Village consider amendments to define these types of housing units and allow them in the various districts, as appropriate.
9. RRC best practices suggest that a Zoning Ordinance should include standards to improve non-motorized transportation. An example is to require that all new developments include at least one site amenity that enhances safety and promotes walking and bicycling, such as bike racks, drinking fountains, and benches. We also believe that the Ordinance could be improved by stronger regulations pertaining to site design that verifies separation of pedestrian and vehicular pathways and a direct pedestrian connection from the building to the public sidewalk.

### Inconsistencies, Cumbersome Language and Sound Planning Practice

1. Section 2.2 includes definitions for “outdoor display of goods” and “outdoor sales.” However, the language does not define the terms; rather, it outlines regulations for outdoor displays and outdoor sales. It is poor practice to include regulations within definitions; they become “hidden” in a location where one would not expect to find them. Therefore, we suggest the regulations be moved elsewhere in the Ordinance, likely either within Section 5.15 (Outdoor Sales and Open Air Businesses) or Section 5.18 (Outdoor Displays of Products or Materials Intended for Retail Sale or Rental).
2. The definition for “sidewalk café” found in Section 2.2 is so broad that it could include any food establishment. It should be revised.
3. A definition for “sign,” as well as definitions for various sign sub-types (i.e., freestanding sign, wall sign) are found in two locations: Section 2.2 and Section 8.4. Further, the definitions contradict. The contradictions should be fixed and all sign definitions should be located in Section 2.2.
4. Certain definitions in Section 2.2 refer to figures. However, no figures are found in the Ordinance. Either the figure references should be deleted, or new figures should be created and added.
5. Section 3.3.2,(3) includes three lengthy paragraphs describing the public hearing notice procedures for conditional land uses. This also occurs later in Section 11.6.3 for Zoning Board of Appeals’ public hearings. Instead of including these lengthy paragraphs, they could simply be replaced by a reference to the State-required public hearing notice procedures found in the ZEA. This would also avoid the need for future amendments if the Act’s requirements are changed at a later date.
6. Section 3.4.1,(3) establishes a “design review” process for cottage lots. Under the definition for cottage lot in Section 2.2, it says that design review will be conducted by the Planning Commission “as deemed necessary.” This contradicts Section 3.4.1,(3), which implies that design review “shall” be conducted by the Planning Commission.
7. Related to the uses allowed within each zoning district, Section 4.3.1 provides welcome flexibility to allow uses which are not specifically listed, but which “are similar to such listed uses.” This flexibility is given to both permitted uses and conditional uses. However, the Ordinance does not clarify who has the authority to determine whether uses are similar to such listed uses. We suggest this authority be given to the Zoning Administrator.
8. Section 4.3.4,(3) includes an incorrect cross reference that should be fixed.
9. Within Section 4.4.4 (R-2 District), two-family dwellings are listed twice, under both permitted uses and conditional land uses. We suggest it be allowed as a permitted use.
10. Within Section 4.4.5 (R-3 District), two-family dwellings are listed twice, under both permitted uses and conditional land uses. We suggest it be allowed as a permitted use.

11. Sidewalk café service is listed as a conditional land use within the C-1, C-2, and CBD Districts. It is our opinion that conditional land use approval, which requires significant application fees, the submittal of a preliminary site plan, and a public hearing are an overly restrictive approval process for a sidewalk café. Rather, we recommend that sidewalk cafés, which contribute to the vibrancy of commercial districts, be allowed after administrative review by the Zoning Administrator. Existing language in Section 5.19 contradicts where sidewalk cafés can be allowed and who has the authority to approve them; therefore, amendments to this section are also necessary.
12. Within Section 4.4.8 (C-2 District), bars / lounges are listed twice, under both permitted uses and conditional land uses. We suggest it be allowed as a conditional use.
13. Within Section 4.4.9 (CBD District), “multiple-family housing and/or apartment dwelling second floor and above” is listed twice, under both permitted uses and conditional land uses. We suggest it be allowed as a permitted use.
14. Within Section 4.4.9 (CBD District), bars / lounges are listed twice, under both permitted uses and conditional land uses. We suggest it be allowed as a permitted use.
15. Within Section 4.4.9 (CBD District), fast food restaurants are allowed as a conditional use. We recommend that this use be deleted, as it does not fit in with one of the stated purposes of the CBD to prohibit automotive-related services.
16. Within Section 4.4.10 (I-1 District), “restaurants and cafeteria facilities for employees” is listed as a conditional land use. We are unsure why this use needs to be regulated as a conditional land use; it would seem that there is a low potential for negative impacts stemming from this type of use.
17. We are unsure of the public purpose in mandating a minimum size (1,000 square feet) for commercial units. We suggest that Section 4.5.1,(9) be deleted.
18. To eliminate confusion, we suggest that Section 4.5.1,(14) be reworded to clarify that it applies to cottage lots only.
19. Section 5.2.4 (Mailboxes), which is hidden under Section 5.2 (Cluster Housing), outlines nearly four pages of regulations pertaining to mailboxes. Unless this provision was established to address a particular problem within the community and remains utilized, we suggest this provision be deleted.
20. Section 2.2 of the Zoning Ordinance includes a specific definition for “garage,” as well as a general definition for “accessory building.” In Section 5.4.1, various regulations are applicable to accessory buildings, such as a maximum height (12 feet). In Section 5.4.4, separate regulations are outlined for detached garages, including a maximum height of 24 feet. It is unclear if garages are subject to the regulations of both sections or just Section 5.4.4. This discrepancy should be clarified through amended language.

21. Section 5.10.3,(1) requires that minor home occupations must be registered with the Village Zoning Administrator. We do not believe that this registration process is currently taking place or being enforced. The language should probably be deleted.
22. The introductory paragraph under Section 5.23 includes an incorrect cross reference that should be fixed.
23. Section 6.2.2 of the Ordinance requires “all uses for which site plan review is required” to comply with the landscaping requirements of Section 6.2. This is a very important provision that gives the Village the ability to require and enforce the Ordinance’s landscaping requirements. However, we have found that most municipal ordinances provide the Planning Commission some flexibility in modifying, reducing, or waiving the landscaping provisions in certain circumstances, such as where existing conditions on the property prevent compliance or where adequate existing landscaping is already present at the site. We would recommend that such a provision be added to the Lexington Zoning Ordinance to provide flexibility in the application of the landscaping requirements, but continue to verify that any adjustments are in keeping with the intent of the Ordinance.
24. Section 9.3.5 gives flexibility to the Village Council to deviate from the strict parking requirements of Section 9.4, “whenever it finds that such deviations are more likely to provide a sufficient number of parking spaces to accommodate the specific characteristics of the use in question.” We like this flexibility option; however, instead of giving this authority to the Village Council, we suggest it be given to the Planning Commission.

#### **Other Amendments**

1. The Zoning Amendments Committee suggested that the R-1A, Single-Family Residential (Low Density) District and the R-1B, Single-Family Residential (Medium Density) District be merged into one district. Presently, these districts are identical in terms of the uses allowed. The only difference are the dimensional requirements, where the R-1A requires a greater width, size and setbacks in comparison to the R-1B. We understand that the R-1A District was established to encompass portions of the Village that are not served by public utilities. As public utility coverage extends (or will soon extend) throughout the Village, the justification for a separate R-1A District is lessened. The merged R-1 District would be based on the dimensional standards of the current R-1B District.
2. It is likely that Zoning Map changes will be necessary to implement the recommendations above (for example, the merger of the R-1A and R-1B into a single R-1 District) or to implement the recommendations of the master plan update.
3. The Village’s Master Plan update project is currently underway. After a full draft is finalized, we will know of any additional zoning ordinance amendments necessary to implement the recommendations of the plan.