

Chapter 9

The Comprehensive Plan

9-100 Introduction

This chapter examines the comprehensive plan, including its legal status, the required contents of a comprehensive plan, the need for internal consistency within a comprehensive plan, using the comprehensive plan as a tool for assuring that public facilities are adequate and growth is achieved in an orderly manner, and other related issues.

Since 1980, each Virginia locality has been required to have a comprehensive plan. A comprehensive plan is a plan for the physical development of the territory within the locality's jurisdiction. *Virginia Code § 15.2-2223*. It provides "a guideline for future development and systematic change, reached after consultation with experts and the public." *Town of Jonesville v. Powell Valley Limited Partnership*, 254 Va. 70, 76, 487 S.E.2d 207, 211 (1997). A comprehensive plan is a product of the state statutory scheme that assures that these changes are not "made suddenly, arbitrarily, or capriciously but only after a period of investigation and community planning." *Board of Supervisors of Fairfax County v. Snell Construction Corp.*, 214 Va. 655, 658, 202 S.E.2d 889, 892 (1974).

More specifically, the purpose of the comprehensive plan is to guide and accomplish a coordinated, adjusted and harmonious development of the territory which will, in accordance with present and probable future needs and resources, best promote the health, safety, morals, order, convenience, prosperity, and general welfare of the inhabitants, including the elderly and persons with disabilities. *Virginia Code § 15.2-2223*.

A comprehensive plan is general in nature, and with its accompanying maps, plats, charts, and descriptive information, shows the locality's long-range recommendations for the general development of the territory. *Virginia Code § 15.2-2223*.

What Goes Into Developing a Comprehensive Plan

- The planning commission is directed to make "careful and comprehensive surveys and studies of existing conditions and trends of growth, and of the probable and future requirements of the territory and its inhabitants." *Virginia Code § 15.2-2223*.
- The plan is developed in consultation with experts and the public. *Town of Jonesville v. Powell Valley Limited Partnership*, 254 Va. 70, 76, 487 S.E.2d 207, 211 (1997). It should be a very public process.
- A comprehensive plan is to be "made with the purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the territory" in order to "best promote the health, safety, morals, order, convenience, prosperity and general welfare of the inhabitants, including the elderly and persons with disabilities." *Virginia Code § 15.2-2223*.
- A comprehensive plan is composed of "maps, plats, charts, and descriptive matter." *Virginia Code § 15.2-2223*.

A comprehensive plan is adopted or amended only after careful and comprehensive surveys and studies of the existing conditions, trends of growth, and the probable future requirements of the area. *Virginia Code § 15.2-2223*. The subject of these surveys and studies may include the use of land, the preservation of agricultural and forestal land, characteristics and conditions of existing development, natural resources, dam break inundation zones, and other matters. *Virginia Code § 15.2-2224(A)(1)*; see *Huber v. Loudoun County Board of Supervisors*, 55 Va. Cir. 318 (2001) (planning commission not required to survey and study all of the matters set forth in *Virginia Code § 15.2-2224*; only required to study "such matters as" those listed in the statute). *But see Virginia Code § 15.2-2223*, requiring that the planning commission survey and study road and transportation improvements and their costs.

The comprehensive plan must be reviewed by the planning commission once every five years. *Virginia Code § 15.2-2230*.

9-200 The contents of the comprehensive plan

A comprehensive plan is general in nature. It designates the general or approximate location, character, and extent of each feature, including any road improvement and any transportation improvement, shown on the plan. *Virginia Code § 15.2-2223.*

9-210 Required content

The Virginia Code requires that a comprehensive plan contain the following elements and plans:

- *Long-range recommendations for general development of the locality:* A comprehensive plan must show the locality's long-range recommendations for the general development of the locality. *Virginia Code § 15.2-2223.*
- *Transportation plan:* A comprehensive plan must include a transportation plan that designates a system of transportation infrastructure needs and recommendations that may include the designation of new and expanded transportation facilities and that support the planned development of the territory covered by the plan. *Virginia Code § 15.2-2223. See also section 9-700 for a comprehensive discussion of the requirements for transportation planning.*
- *Road and transportation map:* A comprehensive plan must contain a map showing road and transportation improvements, including cost estimates, of the road and transportation improvements to the extent that information is available from VDOT. The plan must take into account the current and future needs of the residents in the locality while considering the current and future needs of the planning district within which the locality is situated. *Virginia Code § 15.2-2223. See also section 9-700 for a comprehensive discussion of the requirements for transportation planning.*
- *Affordable housing:* The comprehensive plan must designate areas in the locality for the implementation of measures to promote the construction and maintenance of affordable housing, sufficient to meet the current and future needs of residents of all levels of income in the locality while considering current and future needs of the planning district within which the locality is situated. *Virginia Code § 15.2-2223.*

The Virginia Code also requires that a comprehensive plan include the following in the specific circumstances described below:

- *Road impact fee service areas:* If a locality adopts an ordinance to impose road impact fees, impact fee service areas must be designated in the comprehensive plan. *Virginia Code § 15.2-2320.* In addition, the comprehensive plan must include a road improvements plan showing the necessary road improvements within an impact fee service area and the schedule for those improvements. *Virginia Code § 15.2-2321.* Localities with a population of 20,000 or more and a growth rate of 5% or more (between the next to last and last decennial census) or in localities with a growth rate of 15% or more are eligible to adopt such an ordinance. *Virginia Code § 15.2-2318.*
- *Traditional neighborhood design:* If urban development areas are designated in the comprehensive plan, the comprehensive plan must incorporate principles of traditional neighborhood design in the urban development area, which may include but is not limited to: (1) pedestrian-friendly street design; (2) the interconnection of new local streets with existing local streets; (3) connectivity of street and pedestrian networks; (4) the preservation of natural areas; (5) mixed-use neighborhoods, including mixed housing types; (6) the reduction of front and side yard building setbacks; and (7) the reduction of subdivision street widths and turning radii at subdivision street intersections. *Virginia Code § 15.2-2223.1(B)(6).*
- *Planning for projected sea level rise and recurrent flooding.* Any locality included in the Hampton Roads Planning District Commission must incorporate into the next scheduled and all subsequent reviews of its comprehensive plan strategies to combat projected relative sea-level rise and recurrent flooding. *Virginia Code § 15.2-2223.3.*

Summary of the Required Content of a Comprehensive Plan

- A transportation plan that designates a system of infrastructure needs and recommendations that include designating new and expanded transportation facilities and that support planned development of the locality.
- Long-range recommendations for general development, which may include optional elements.
- Designating areas and implementation measures for constructing, rehabilitating, and maintaining affordable housing, sufficient to meet current and future needs of residents of all income levels.
- Designating impact fee service areas, if the locality adopts an ordinance to impose a road impact fee.
- Principles of traditional neighborhood design, if the comprehensive plan designates urban development areas.
- Planning for sea level rise and recurrent flooding in the Hampton Roads area.

9-220 Optional content pertaining to the long-range recommendations for general development in the locality

The required long-range recommendations for general development in the locality may include, but need not be limited to, the following:

- *Land use:* A comprehensive plan may designate areas for various types of public and private development and uses, such as different kinds of residential, business, industrial, agricultural, mineral resources, conservation, active and passive recreation, public service, flood plain and drainage, and other areas. *Virginia Code § 15.2-2223.*
- *Community service facilities:* A comprehensive plan may designate a system of community service facilities such as parks, sports playing fields, forests, schools, playgrounds, public buildings and institutions, hospitals, community centers, waterworks, nursing homes, assisted living facilities, sewage disposal or waste disposal areas, and the like. *Virginia Code § 15.2-2223.*
- *Capital improvements program, land use regulations, maps of certain districts:* A comprehensive plan may include a capital improvements program, recommendations for subdivision and zoning ordinances, and maps of mineral resource districts and agricultural forestal districts. *Virginia Code § 15.2-2223.*
- *Historical areas and renewal:* A comprehensive plan may designate historical areas and areas for urban renewal or other treatment. *Virginia Code § 15.2-2223.*
- *Groundwater protection:* A comprehensive plan may designate areas for the implementation of reasonable ground water protection measures. *Virginia Code § 15.2-2223.*
- *Recycling centers:* A comprehensive plan may include the location of existing or proposed recycling centers. *Virginia Code § 15.2-2223.*
- *Military bases:* A comprehensive plan may include the location of military bases, military installations, and military airports and their adjacent safety areas. *Virginia Code § 15.2-2223.*
- *Utility line corridors:* A comprehensive plan may include the designation of corridors or routes for electric transmission lines of 150 kilovolts or more. *Virginia Code § 15.2-2223.*
- *Urban development areas:* Any locality may designate one or more urban development areas. *Virginia Code § 15.2-2223.1(B).* Urban development areas are areas designated by the locality that may be appropriate for higher density development specified in Virginia Code § 15.2-2223.1(B)(1) due to proximity to transportation facilities, the availability of a public or community water and sewer system, or a developed area and, to the extent feasible, to be used for redevelopment or infill development. *Virginia Code § 15.2-2223.1(A).* Urban development areas may be sufficient to meet projected residential and commercial growth in the locality for an ensuing period of 10 to 20 years (40 years in Fairfax County), and may include the phasing of development. *Virginia Code § 15.2-2223.1(B)(2).*

**Summary of the Optional Content Pertaining to
the Long-range Recommendations for General Development in the Locality**

- Designating areas for various types of public and private development and uses.
- Designating a system of community service facilities such as parks, athletic fields, forests, schools, playgrounds, public buildings and institutions, hospitals, nursing homes, assisted living facilities, community centers, waterworks, sewage disposal areas, and waste disposal areas.
- Establishing a capital improvements program, land use regulations, and maps of districts.
- Designating historical areas and areas for urban renewal.
- Designating areas for implementing reasonable groundwater protection measures.
- Designating the location of existing and proposed recycling centers.
- Identifying the location of military bases, military installations, and military airports and their adjacent safety areas.
- Designating corridors or routes for electric transmission lines of 150 kilovolts or more, in consultation with the electric utility.
- Designating one or more urban development areas.

A comprehensive plan may be more extensive than what is required by law.

9-300 Ensuring that the comprehensive plan is internally consistent

Internal consistency within a comprehensive plan is essential because, without it, a zoning ordinance can never be truly aligned with the comprehensive plan. Without consistency, the comprehensive plan “cannot effectively serve as a clear guide to future development. Decision-makers will face conflicting directives; citizens will be confused about the policies and standards the community has selected; findings of consistency of subordinate land use decisions such as rezonings . . . will be difficult to make; and land owners, business, and industry will be unable to rely on the general plan’s stated priorities and standards for their own individual decision-making. *General Plan Guidelines, California Governor’s Office of Planning and Research (2003)*.

Comprehensive Plan Consistency

Consistency Sought

- *Equal status among the elements:* Resolve potential conflicts through clear language and policy consistency.
- *Consistency between the elements:* All of the elements of the comprehensive plan should be consistent with one another.
- *Consistency within the elements:* Each element’s policies, goals, and objectives should be internally consistent with one another, and the strategies should be consistent with and complement one another.
- *Community plan consistency with the comprehensive plan:* A community plan’s policies, goals, objectives, and strategies should be consistent with the comprehensive plan’s policies, goals, objectives, and strategies.
- *Text and map consistency:* Maps and any other illustrations in the comprehensive plan should be consistent with the text.

Reasons for Seeking Consistency

- Consistency allows the comprehensive plan to serve as a clear policy guide.
- Consistency reduces confusion about the locality’s policies, goals, and objectives and allows the public to rely on them.
- Consistency ensures that decision-makers will not have conflicting policies to consider, and this will result in better decisions.

For example, it makes no sense for a comprehensive plan’s land use element to plan for an increased population in a particular area of the locality, but then for its transportation element to fail to plan for the traffic impacts resulting from that increased population; or for one part of a transportation plan to state that county roads are sufficient to accommodate the projected level of traffic while another element of the same plan to describe a worsening traffic situation aggravated by continued subdivision activity.

9-400 Aligning the zoning ordinance with the comprehensive plan

The comprehensive plan should be one of the key sources, if not the key source, of guidance on every legislative zoning decision (*see sections 9-800 and 9-900 for a discussion of the role of the comprehensive plan in rezoning and other legislative land use decisions*). A comprehensive plan serves no purpose if it is relegated to a box in a storage room or the bookshelf, and is never referenced except to extract the plan's recommended density and land use designations.

If a comprehensive plan was adopted or amended after careful and comprehensive surveys and studies of the existing conditions and trends of growth, and of the probable future requirements of the area, then it should provide a wealth of ideas for how to foster change by amending existing zoning regulations.

In addition to stating goals and objectives, a comprehensive plan also should identify a number of *strategies* to implement those goals and objectives. Many of those strategies may be recommendations to amend the zoning regulations in order to implement the goals and objectives of the plan. In other words, the comprehensive plan should be viewed as one big legislative "to-do" list.

9-500 Amending the comprehensive plan

If the governing body desires to amend the comprehensive plan, it may prepare the amendment and refer it to the planning commission for public hearing or direct the planning commission to prepare the amendment and submit it to public hearing within 60 days or a longer timeframe as specified by the governing body. *Virginia Code § 15.2-2229*. Albemarle County allows the planning commission and landowners to initiate amendments. In fact, it is generally advisable for owners seeking to rezone their property to consider first obtaining an amendment to the comprehensive plan if their rezoning proposal is inconsistent with the existing plan. Landowner-initiated amendments in Albemarle County proceed only if either the planning commission or the board of supervisors adopts a resolution of intent to amend the comprehensive plan.

The planning commission reviews the proposed amendment, holds a public hearing, and approves, amends and approves, or disapproves the matter. Upon approval of the amendment, the planning commission then reports its recommendation to the governing body. *Virginia Code § 15.2-2225*. If the planning commission fails to make a recommendation on the amendment within the applicable timeframe, the governing body may conduct a public hearing on the amendment. *Virginia Code § 15.2-2229*. The governing body must thereafter act on the proposed amendment within 90 days of the date of the planning commission's recommending resolution. *Virginia Code § 15.2-2229*.

Before an amendment to the comprehensive plan is adopted, the locality must submit the amendment to VDOT for review and comment. *Virginia Code §§ 15.2-2222.1*. VDOT must provide its comments within 90 days. *Virginia Code § 15.2-2222.1*.

The criteria applied by the planning commission and the governing body for considering an amendment to the comprehensive plan are not specified by state law. Rather, both the commission and the governing body must be guided by the purposes of the comprehensive plan itself in reaching their decisions.

Once a comprehensive plan is adopted or amended, it must be posted on the locality's website, though the inadvertent failure of the planning commission or the governing body to do so does not invalidate the action. *Virginia Code §§ 15.2-2225 and 15.2-2226*.

9-600 Reviewing proposed public facilities for consistency with the comprehensive plan

A comprehensive plan does not, by itself, act as an instrument of land use control. *1987-88 Va. Op. Atty. Gen. 212*. However, it does act as an indirect instrument of land use control with respect to public areas, public buildings, public structures, public utility facilities, and public service corporation facilities (collectively, "public facilities"), whether publicly or privately owned. *Virginia Code § 15.2-2232* (but excluding railroad facilities and underground natural gas or underground electric distribution facilities of a public utility as defined in *Virginia Code § 56-265.1(b)*)

within its certificated service territory); 1987-88 Va. Op. Atty. Gen. 212. The location, character and extent of these public facilities must be submitted and approved “as being substantially in accord with the adopted comprehensive plan.” *Virginia Code § 15.2-2232(A)*. This review is often referred to as 2232 review, and is required whenever a project is proposed to construct, establish or authorize a public facility not shown on the comprehensive plan, or to vacate a public road. Proposed public facilities that are identified within, but not the entire subject of, a subdivision plat or a site plan, may be deemed to be features already shown on the comprehensive plan. *Virginia Code § 15.2-2232(D)*.

Projects subject to 2232 review include, but are not limited to, privately constructed wireless facilities in the VDOT right-of-way (*Board of Supervisors of Fairfax County v. Washington, D.C. SMSA*, 258 Va. 558, 522 S.E.2d 876 (1999)); sanitary landfills, whether publicly or privately owned (1983-84 Va. Op. Atty. Gen. 81; 1987-88 Va. Op. Atty. Gen. 212); school sites (1976-77 Va. Op. Atty. Gen. 237); parks (1976-77 Va. Op. Atty. Gen. 193); electric transmission lines of 138 kilovolts or more (*Virginia Code § 56-265.2* (allowing an alternative procedure to obtaining a certificate of need from the State Corporation Commission)); and water impoundment projects proposed by a city, to be located in a county (*Board of Supervisors of Roanoke County v. City of Roanoke*, 220 Va. 195, 257 S.E.2d 781 (1979)). Businesses such as apartments, hotels, filling stations and stores are not public facilities subject to review under Virginia Code § 15.2-2232. 1964-65 Va. Op. Atty. Gen. 258. As of July 1, 2016, a proposed telecommunications tower or a facility constructed by an entity organized under Virginia Code § 56-231.15 is deemed to be substantially in accord with the comprehensive plan and planning commission approval is not required if the proposed telecommunications tower or facility is located in a zoning district that allows telecommunications towers or facilities by right. *Virginia Code § 15.2-2232(G)*.

In a 2232 review, the planning commission may hold a public hearing, but is not required to do so unless the governing body directs that a public hearing be held. *Virginia Code § 15.2-2232(A)*. The commission then communicates its findings to the governing body, indicating its approval or disapproval with the written reasons for its decision. *Virginia Code § 15.2-2232(B)*. The governing body may overrule the action of the planning commission. An owner may appeal the decision of the commission to the governing body. *Virginia Code § 15.2-2232(B)*. Third parties have no right to challenge the decision in court. *Miller v. Highland County*, 274 Va. 355, 650 S.E.2d 532 (2007) (declaratory relief not available to a third party to challenge a 2232 decision because that remedy is available for preventive relief, but not to provide a right of appeal that does not exist by statute). The failure of the commission to act on a 2232 review within 60 days of a submission is deemed to be an approval, unless the governing body extends the time for the commission to act. *Virginia Code § 15.2-2232*.

As noted above, the issue for both the commission and the board is whether the proposed public facility is in substantial accord with the comprehensive plan. Virginia Code § 15.2-2232, standing alone, does not anticipate a public facility being mentioned but later proposed to be constructed in a location significantly removed from the location shown on the plan. *Board of Supervisors of Loudoun County v. Town of Purcellville*, 276 Va. 419, 441, 666 S.E.2d 512, 523 (2008). The determination of whether a feature is already shown on the adopted plan “must be made in light of the requirement that the ‘general or approximate location’ of the feature” is required in Virginia Code § 15.2-2223. *Town of Purcellville, supra*. In *Town of Purcellville*, the Virginia Supreme Court held that the circuit court erred when it determined that a proposed high school was a feature shown on the area master plan where the plan area was approximately three miles wide and the proposed location of the high school was two miles from the location of the feature shown on the area master plan. If a public facility does not conform to the comprehensive plan, it may not be constructed. *City of Roanoke, supra*. The solution to this problem is to amend the comprehensive plan to *show* the proposed public facility.

Normal service extensions of public utilities and public service corporations are one class of public facilities exempt from review under Virginia Code § 15.2-2232 except in certain circumstances. *Virginia Code § 15.2-2232(C)*. *Normal service extension* is not defined and it is left to the locality to establish criteria as to what a normal service extension is. *Kernan v. Fairfax County Water Authority*, 70 Va. Cir. 212 (2006) (rejecting claim by landowners that extension of water facilities by water authority required 2232 review).

9-700 Transportation planning under the comprehensive plan

Virginia Code § 15.2-2200 declares the legislative intent of the General Assembly in adopting the laws pertaining to planning, zoning, and the subdivision of land. The following passage highlights those statements most applicable to transportation:

This chapter is intended to encourage localities to improve public health, safety, convenience and welfare of its citizens and to *plan for the future development of communities to the end that transportation systems be carefully planned*; that *new* community centers be developed with *adequate highway . . . facilities* . . . and that the growth of the community be consonant with the efficient and economical use of public funds. (italics added)

In summary, Virginia Code § 15.2-2200 speaks to *planning* transportation systems for *future* development, and assuring that *new* community centers have adequate highway facilities.

In recent years the General Assembly has amended and added key pieces of enabling authority to require that transportation planning be coordinated with a locality's comprehensive plan and its zoning decisions. One of those key pieces of legislation was adopted as Chapter 896 of the 2007 Acts of Assembly. In *Marshall v. Northern Virginia Transportation Authority*, 275 Va. 419, 657 S.E.2d 71 (2008), the Virginia Supreme Court held that the portion of the legislation that vested taxing authority in a regional transportation authority that was not a county, city, town or regional government and was not an elected body, was unconstitutional.

Virginia Code §§ 15.2-2223 and 15.2-2224 require that the comprehensive plan designate the general or approximate location, character, and extent of each road and transportation improvement shown on the plan. In addition, the planning commission shall, in the preparation of a comprehensive plan, survey and study road and transportation improvements and their costs.

A comprehensive plan must include a transportation plan that designates a system of transportation infrastructure needs and recommendations that may include the designation of new and expanded transportation facilities and that support the planned development of the territory covered by the plan. *Virginia Code § 15.2-2223(B)(1)*. The transportation plan must include, as appropriate, but is not limited to, roadways, bicycle accommodations, pedestrian accommodations, railways, bridges, waterways, airports, ports, and public transportation facilities. *Virginia Code § 15.2-2223(B)(1)*. The transportation plan also must recognize and differentiate among a hierarchy of roads such as expressways, arterials, and collectors. *Virginia Code § 15.2-2223(B)(1)*. In developing the plan, the locality shall take into consideration how to align transportation infrastructure and facilities with affordable, accessible housing and community services that are located within the territory in order to facilitate community integration of the elderly and persons with disabilities. *Virginia Code § 15.2-2223(B)(1)*. Upon request by the locality, the Virginia Department of Transportation ("VDOT") is required to provide the locality with technical assistance in preparing the transportation plan. *Virginia Code § 15.2-2223(B)(1)*.

The transportation plan must include a map that shows road and transportation improvements, including the cost estimates of the road and transportation improvements from VDOT, taking into account the current and future needs of residents in the locality while considering the current and future needs of the planning district within which the locality is situated. *Virginia Code § 15.2-2223(B)(2)*.

The transportation plan must be consistent with the Statewide Transportation Plan (VTRANS), the Six-Year Improvement Program (SYIP) and the location of routes that are part of the state highway system. *Virginia Code § 15.2-2223(B)(3)*. The locality is required to consult with VDOT to assure that this required consistency is achieved. *Virginia Code § 15.2-2223(B)(3)*. The transportation plan is required to reflect only those changes in the annual update of the Six-Year Improvement Program that are deemed to be significant new, expanded, or relocated roadways. *Virginia Code § 15.2-2223(B)(3)*.

Before a transportation plan or any amendment to it is adopted by the governing body, the locality must submit it to VDOT to review and provide written comments to the locality on the consistency of the plan or amendment.

Virginia Code § 15.2-2223(B)(4). After a transportation plan or amendment is adopted by the governing body, the locality must submit it to VDOT for informational purposes. *Virginia Code* § 15.2-2223(B)(5). If VDOT determines that the transportation plan is inconsistent with VTRANS, the SYIP, or the location of routes that are part of the state highway system, VDOT will notify the Commonwealth Transportation Board so that it may take appropriate action as provided by statute. *Virginia Code* § 15.2-2223(B)(5).

Virginia Code § 15.2-2223.1(F) requires that, to the extent possible, localities direct federal, state, and local transportation funding for new and expanded facilities to the locality’s urban development area (or for grandfathered localities, to the area determined to accommodate growth).

Virginia Code § 15.2-2239 requires that capital improvement programs include estimates of the cost of each road and transportation improvement adopted as an amendment to a locality’s comprehensive plan.

See 24 VAC 30-155-30 for the regulations for a traffic impact analysis required for a comprehensive plan or a comprehensive plan amendment.

9-800 The role of the comprehensive plan in legislative zoning decisions

A comprehensive plan does not have the status of a zoning ordinance. *Board of Supervisors of Fairfax County v. Allman*, 215 Va. 434, 211 S.E.2d 48 (1975). It is advisory only and serves as a guide for the development and implementation of the zoning ordinance. *Allman, supra*; *Board of Supervisors of Stafford County v. Safeco*, 226 Va. 329, 310 S.E.2d 445 (1983); see *Huber v. Loudoun County Board of Supervisors*, 55 Va. Cir. 318 (2001) (as an advisory document, the comprehensive plan cannot be the basis for a declaratory relief action since no injury arises from its approval).

In guiding zoning decisions, the comprehensive plan is one of approximately ten relevant factors required to receive “reasonable consideration” by the planning commission and the locality’s governing body. *Virginia Code* § 15.2-2284; *Board of Supervisors of Fairfax County v. Pyles*, 224 Va. 629, 300 S.E.2d 79 (1983) (governing body must consider, among other things, the general boundary guidelines set forth in the comprehensive plan to determine the boundaries of a zoning district).

The Comprehensive Plan as a Guide for Zoning Decisions

- Although the comprehensive plan is only one of several factors to be considered in making a zoning decision, it may be the most important and most commonly relied upon factor.
- Because a comprehensive plan is only advisory and serves as a guide in making a zoning decision, a zoning decision is not unreasonable simply because the governing body chooses not to follow the comprehensive plan.
- However, relying on the comprehensive plan facilitates reasonable and well-informed decisions, and decisions that conform to the comprehensive plan are more likely to be found reasonable and they reduce the potential for a claim of discrimination in the decision-making process by individual landowners.
- The comprehensive plan is not considered as a guide for ministerial actions such as subdivision plats and site plans.

A comprehensive plan may properly form the basis to approve or deny a rezoning or a special use permit. *Board of Supervisors of Loudoun County v. Lerner*, 221 Va. 30, 267 S.E.2d 100 (1980) (rezoning); *National Memorial Park, Inc. v. Board of Zoning Appeals of Fairfax County*, 232 Va. 89, 348 S.E.2d 248 (1986) (special use permit). However, because the comprehensive plan is only a guide, it is not required that land only be rezoned or permitted in accordance with it. See *Board of Supervisors of Fairfax County v. Robertson*, 266 Va. 525, 587 S.E.2d 570 (2003); *Lerner, supra*; *Clark v. Town of Middleburg*, 26 Va. Cir. 472 (1990). In *Lerner*, the Virginia Supreme Court upheld the board’s decision to deny the landowner’s rezoning application because the proposed project failed to satisfy the minimum standards of the county’s comprehensive plan. In upholding the board’s authority to rely on its comprehensive plan to deny the application, the Court stated:

While the minimum standards of the Comprehensive Plan may be only guidelines and not requirements to be applied inflexibly by the Board, it was still a matter within the Board’s discretion

to decide whether to adhere to those standards or to follow some other reasonable approach in determining whether to grant or to deny the rezoning application.

Lerner, 221 Va. at 37, 267 S.E.2d at 104.

This rule was repeated in *City Council of City of Salem v. Wendy's of Western Virginia, Inc.*, 252 Va. 12, 18, 471 S.E.2d 469, 473 (1996): “[T]he City elected to adhere to the standards of its comprehensive plan, a matter within the council’s discretion.” See also *Robertson*, 266 Va. at 535, 587 S.E.2d at 577 (assuming the circuit court was correct that the comprehensive plan required one sound level and continuous 24-hour monitoring, the board “had the discretion to decide whether to adhere to the guidelines in the Comprehensive Plan or to follow some other reasonable approach in making its decision”).

Although the comprehensive plan is a guide, rather than a set of requirements, decision-makers should strive to assure that their decisions are consistent with the plan. Conformance to the comprehensive plan not only facilitates reasonable and well-informed decisions, but also removes the potential for discrimination in the decision process against individual landowners.

As a guide, the comprehensive plan does not supersede the existing zoning designation and its associated regulations for a particular parcel. Moreover, the comprehensive plan does not apply to ministerial acts such as the approval of a subdivision plat or a site plan. By that point in the development process, the policy decisions related to the use of the land – made in conjunction with the planning and zoning processes – have already been made. Thus, a subdivision plat cannot be denied on the ground that the future development that may result from the subdivision is inconsistent with the comprehensive plan. *Rackham v. Vanguard Limited Partnership*, 34 Va. Cir. 478 (1994) (the comprehensive plan may not be a basis for denying a subdivision which is otherwise in conformity with duly adopted standards, ordinances, and statutes). Lastly, there is no requirement that the existing zoning designation for a particular parcel be consistent with the use called for in the comprehensive plan.

9-900 The role of the comprehensive plan as a tool to control the timing of growth

Planning for growth and, more specifically, planning for how and where growth should occur, should be a priority for all localities.

- Localities generally do not develop adequate capacity to plan for and manage growth *until it is too late to effectively channel development*.
- Urban growth processes are well understood, strategically *directing development* to the most favorable areas well in advance of urban pressures offers the greatest hope for controlling growth.
- Local governments should *proactively plan* to accommodate potential growth.

Development at the Urban Fringe and Beyond: Impacts on Agriculture and Rural Land. By Ralph E. Heimlich and William D. Anderson. Economic Research Service, U.S. Department of Agriculture, Agricultural Economic Report No. 803.

A comprehensive plan allows a locality to be both proactive and strategic in how it will physically develop. In addition, the comprehensive plan is one of the factors governing bodies are to consider in making a zoning decision. *Virginia Code § 15.2-2284*. The governing body is also directed to consider, among other things, the transportation requirements of the community and the requirements of the community for airports, housing, schools, parks, playgrounds, recreation areas and other public services. *Virginia Code § 15.2-2284*. All of these factors are analyzed in chapter 10. In addition, the zoning enabling authority requires that zoning ordinances be designed to give reasonable consideration “to protect against . . . overcrowding of land, undue density of population in relation to the community facilities existing or available . . .” *Virginia Code § 15.2-2283(vi)*.

A governing body may deny a rezoning application or a special use permit if it is inconsistent with the comprehensive plan. *Board of Supervisors of Loudoun County v. Lerner*, 221 Va. 30, 267 S.E.2d 100 (1980) (rezoning);

National Memorial Park, Inc. v. Board of Zoning Appeals of Fairfax County, 232 Va. 89, 348 S.E.2d 248 (1986) (special use permit). Therefore, it appears that if the comprehensive plan contains specific, objective standards for adequate public facilities and when land use may intensify, a rezoning or special use permit may be denied if the public facilities are inadequate and the standards are not satisfied, *i.e.*, the proposed project is inconsistent with the comprehensive plan.

A locality may time or phase development to assure that adequate public facilities are in place if its comprehensive plan identifies specific, objective criteria as to when development may occur.

9-910 *Board of Supervisors of Fairfax County v. Williams: a very general policy calling for undefined adequate public facilities before development occurs is insufficient*

In *Board of Supervisors of Fairfax County v. Williams*, 216 Va. 49, 216 S.E.2d 33 (1975), the board of supervisors denied rezoning applications that would have increased the density from one to 2.9 single family dwelling units per acre. One reason cited by the board for its denial was inadequate public facilities, including roads. The county's comprehensive plan included a statement that higher density development of the area in question "should not occur until public facilities are adequate." The Virginia Supreme Court held that the county's denial of the rezoning application was invalid for a number of reasons.

Although *Williams* may be unique to its facts, it is important to note that, as for the inadequacy of the roads, the Virginia Supreme Court found the evidence that the road system was being improved, and was slated for further improvement, to be persuasive. In fact, the Court said that it had "no quarrel with the Board concerning its contention . . . that in its zoning actions it must protect against 'undue density of population in relation to the community facilities existing or available' and must make provision for public facilities 'consonant with the efficient and economical use of public funds.'" *Williams*, 216 Va. at 51, 216 S.E.2d at 36. However, the *Williams* court gave no consideration to the board's argument that denial was appropriate because the rezoning was, at least facially, inconsistent with the comprehensive plan. One may surmise that the standard in the comprehensive plan, because of its vagueness, was no standard at all.

9-920 *Board of Supervisors of Fairfax County v. Allman: relying on an unwritten policy for promoting development elsewhere first is insufficient*

In *Board of Supervisors of Fairfax County v. Allman*, 215 Va. 434, 211 S.E.2d 48 (1975), the board denied the applicant's request to rezone its property to a higher density which was consistent with the density recommended for the property in the comprehensive plan. The Virginia Supreme Court held that the denial of the rezoning was unreasonable.

Although the comprehensive plan considered in *Allman* spoke to density, it was silent as to whether necessary public facilities should be provided in advance of higher density zoning. The *unwritten* policy of the county was to promote Reston for development first, followed by the lands on the periphery, such as the applicant's land. The Court noted: "The obvious inference is that Allman and other property owners zoned RE-1 should await the full development of Reston before seeking a rezoning, even though the proposed zoning is in accordance with the County's Master Plan." *Allman*, 215 Va. at 441-442, 211 S.E.2d at 53.

Allman may be unique to its facts because, at the time the board was denying Allman's rezoning application, it was approving other similar rezonings in the area. The Virginia Supreme Court noted that the board had denied the zoning application "primarily because of its timing, rather than because of its impact on public facilities." *Allman* may be instructive, however, to the extent that it makes it clear that if a locality uses its comprehensive plan as a basis to deny a rezoning application, it must be certain that it applies the plan in a nondiscriminatory manner. *See more recent cases considering discrimination in land use decisions in section 6-330.* *Allman* also makes it clear that land use policies must be in writing as part of the comprehensive plan if they are to be relied upon (the policy to promote development in Reston first), and the policies must be internally consistent.

9-930 Board of Supervisors of Loudoun County v. Lerner: specific, objective, criteria in the comprehensive plan may support a decision that the requested rezoning is premature

In *Board of Supervisors of Loudoun County v. Lerner*, 221 Va. 30, 267 S.E.2d 100 (1980), the board denied the applicant’s request to rezone its property from industrial park to shopping center. The board’s decision was based upon the proposed rezoning’s inconsistency with the comprehensive plan, which required that regional shopping centers have a minimum supporting population of 100,000 to 200,000 within a radius of 5 to 15 miles for a center containing 400,000 to 1,000,000 square feet. The Virginia Supreme Court concluded that the plan’s standard was a valid basis to deny the rezoning application, thereby supporting the county’s policy of timing or phasing development to a particular land use when the standards of the comprehensive plan are satisfied.

The principles that can be learned from *Lerner* are four-fold: (1) the decision to phase or time development should be expressed in the comprehensive plan; (2) the criteria for timing or phasing development should not be so vague so as to permit their discriminatory application; (3) the actual timing of development should be determined by the application of reasonably objective criteria, rather than by general statements that public facilities should be adequate; and (4) the comprehensive plan must likely provide the means for a locality to absorb, in reasonable measure, its fair share of growth.

Distinguishing <i>Allman</i> and <i>Lerner</i>	
Summary of <i>Allman</i>	Summary of <i>Lerner</i>
<ul style="list-style-type: none"> • Rezoning to higher density was denied, even though it was consistent with the density in the comprehensive plan. • The comprehensive plan was silent as to whether necessary public facilities had to be provided in advance of higher density zoning. • The unwritten county policy was to promote Reston development first; Allman’s property was on the periphery of Reston, but not in it. • Denial was held to be unreasonable. 	<ul style="list-style-type: none"> • Rezoning from industrial park to shopping center was denied. • The comprehensive plan provided that regional shopping centers between 400,000 and 1,000,000 square feet needed to have a minimum population of 100,000 to 200,000 within a 5 to 15 mile radius. • The application did not satisfy the applicable thresholds. • Denial of rezoning was upheld because the comprehensive plan standards were a valid basis to deny. • The comprehensive plan provided reasonably objective criteria on which to base the decision.
How the cases are distinguishable from one another	
<ul style="list-style-type: none"> • The policy that thwarted the applicant in <i>Allman</i> (promote development in Reston first) was not a part of its comprehensive plan, but was an <i>unwritten policy</i> of Fairfax County. • To the extent that the Fairfax County board of supervisors was applying its comprehensive plan in <i>Allman</i>, it was not doing so in a consistent manner because it approved other similar rezoning applications, but not Allman’s, even though the applications raised the same issues and concerns. • The Loudoun County board of supervisors in <i>Lerner</i> applied a comprehensive plan that articulated a specific requirement before development could occur. 	

In *2002 Va. Op. Atty. Gen. LEXIS 51, 2002 Va. Op. Atty. Gen. WL 1008350*, the Attorney General issued an opinion concluding that a locality could adopt, as part of its comprehensive plan, a proffer policy that considers an adequate public facilities requirement. After a survey of the applicable Virginia law, including *Allman* and *Lerner*, the Attorney General recommended that the following criteria be used by a locality:

- The impact of the proposed development on public facilities.
- The protection against undue density of population with respect to the public facilities in existence to serve the proposed development.
- The planning by the locality to provide public facilities consonant with the efficient and economical use of public funds to serve the proposed development.

- The locality’s interpretation and application of its comprehensive plan concerning the timing of the development as determined by reasonably objective criteria.

From the foregoing, the implementation of an effective adequate public facilities policy must ensure that a locality’s comprehensive plan reasonably and objectively: (1) identifies all public facilities and their existing population capacities; (2) identifies the impacts of proposed developments on those facilities; (3) identifies the population threshold at which an existing public facility can no longer support without adversely impacting the public health, safety or welfare; and (4) quantifies the *pro rata* share (money, land or other) that a proposed development must contribute to allow the public facility to be expanded, enlarged or modified to accommodate the additional population arising from the proposed development, or to establish a new public facility to serve not only the proposed development but other new population.

9-1000 The role of the comprehensive plan in promoting economic development and tourism

Creating and maintaining a healthy, attractive, and livable community in a way that attempts to capitalize on local assets (in other words, “placemaking”) not only benefits a locality’s residents. It also promotes economic development and tourism.

9-1010 The link between good land use planning and economic development

The link between good land use planning and a community’s economic strength and success is evident in recurring themes from both the economic development and the land use planning perspectives. From the economic development perspective, these three themes arise:

- Communities must have a vision for the future.
- Communities must develop a sense of place.
- Businesses want a place, not just a site.

Christopher Lloyd, McGuireWoods Consulting, January 30, 2014.

From the land use planning perspective, the three themes identified above are discussed in Edward T. McMahon’s article *The Secrets of Successful Communities (PlannersWeb.com, July 29, 2013)*, which summarizes the key elements of successful communities, including:

- Successful communities capitalize on their distinctive assets – their architecture, history, natural surroundings, and home-grown businesses, rather than adopting a new or a generic identity.
- Successful communities pick and choose among development projects because some projects will make a community a better place to live, work, and visit; other projects will not. They reject generic designs from developers and insist on designs that are sensitive to local character. McMahon cites a development consultant who stated that “when a chain store developer comes to town they generally have three designs ranging from Anywhere USA to Unique.” The unique design is sensitive to local character.
- Successful communities pay attention to aesthetics by controlling signs, planting street trees, protecting scenic views and historic buildings, and encouraging new construction that fits in with the existing community. McMahon explains why aesthetics are important: “The image of a community is fundamentally important to its economic well-being. Every single day in America people make decisions about where to live, where to invest, where to vacation and where to retire based on what communities look like.”

McMahon also states that when “it comes to 21st century economic development, a key concept is community differentiation. If you can’t differentiate your community from any other, you have no competitive advantage.” *The*

Distinctive City, Urban Land Institute, April 2012. He notes in the same article that “education, technology, connectivity and distinctiveness have all become more important.” On the matter of distinctiveness, McMahon quotes Joseph Cortright, an authority on economic development: “the unique characteristics of place may be the only truly source of competitive advantage for communities.” Mc Mahon adds more recently: “Enlightened cities, towns, and counties are investing more in placemaking because they believe these features attract younger workers – especially the most sought-after segment, skilled Millennials.” Edward T. McMahon, *Becoming a Place People Want to Live*, Virginia Town & City, May 2015.

The following excerpts from various commentaries and studies sum up a range of reasons why good land use planning should matter to a locality interested in economic development:

- In a study on the effect of zoning on economic development in rural areas, the authors concluded that planning and zoning facilitated economic development rather than impeded it. The authors summarized the benefits of zoning to include: “(1) business and citizen preference for land use predictability; (2) assurance for business prospects and residents that their investment will be protected; (3) the ability to guide future development and prevent haphazard (e.g., patchwork), harmful, or unwanted development; and (4) the minimization of potential conflict between industry and residents.” *Does Rural Land-use Planning and Zoning Enhance Local Economic Development? Economic Development Journal*, Fall 2006, Joy Wilkins, B. William Riall, Ph.D., Arthur C. Nelson, Ph.D., with Paul Counts and Benjamin Sussman.
- “Having a distinctive identity will help communities create a quality of life that is attractive for business retention and future residents and private investment. Community economic development efforts should help to create and preserve each community’s sense of uniqueness, attractiveness, history, and cultural and social diversity, and include public gathering places and a strong local sense of place.” *Local Government Commission (California)*, Principle 14.
- “Quality urban development . . . wants no part of an unstable, unplanned, uncontrolled environment as they know this is not a place to make a long-term investment.” *Planning America’s Communities: Paradise Found? Paradise Lost?* Herbert Smith (1991)
- “The states that do the most to protect their natural resources also wind up with the strongest economies and the best jobs.” *Institute for Southern States Study* (1994).

9-1020 The link between good land use planning and tourism

Tourism is also a beneficiary of good land use planning. The Virginia Tourism Corporation reports that in 2016, domestic tourism in Virginia generated \$23.7 billion in visitor spending, supported 229,300 jobs, and provided approximately \$1.6 billion in state and local taxes to Virginia’s communities. In Albemarle County and the City of Charlottesville, the Virginia Tourism Corporation reports that in 2016 tourism generated \$600 million in direct visitor spending, supported over 5,850 jobs, and generated \$20.9 million in local tax revenue for the County and the City. Needless to say, tourism is a significant part of economic development.

In discussing the role that a community’s image plays in tourism, Edward T. McMahon, in his article *The Secrets of Successful Communities* (*PlannersWeb.com*, July 29, 2013), writes: “The more any community in America comes to look just like every other community the less reason there is to visit. On the other hand, the more a community does to protect and enhance its uniqueness whether natural or architectural, the more people will want to visit. Tourism is about visiting places that are different, unusual, and unique. If everyplace was just like everyplace else, there would be no reason to go anywhere.” “This is the reason why local land use planning and urban design standards are so important.” Edward T. McMahon, *Responsible Tourism: How to Preserve the Goose that Lays the Golden Egg*, Virginia Town & City, May 2015.

Other writers have expressed a similar sentiment, which confirm why good land use planning matters:

- “Tourism simply doesn’t go to a city that has lost its soul.” *Arthur Frommer, Travel Writer.*

- “The most central feature that needs protection is the natural beauty and setting of a place. Once lost, it can seldom be restored.” *Leisure Travel: Making it a Growth Market . . . Again*, Stanley Plog.

In summary, these excerpts advocate managed development and growth. They also caution localities to avoid losing their unique identity. Creating and maintaining a healthy, attractive, and livable community not only benefits a locality’s residents. It also promotes economic development and tourism.

For additional information as to why good planning matters, see section 3-600.