



Development Services

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MEMORANDUM

Date: 14 APR 2016
To: Planning Commission
RE: Planning Commission Public Workshop – Zoning Regulation Objections

At the direction of Planning Commission President DeMasters, a preliminary framework for a public workshop has been developed to discuss continued zoning regulation objections. The following three (3) documents are attached hereto and are intended to initiate Planning Commission discussion and direction for a public workshop.

- **Workshop Intent Statement and Process Flow (DRAFT)**
This document generally frames the preliminary context, purpose, and intent of a public workshop. It also provides a broad spectrum of potential discussion or focal topics. This document, once finalized, should serve to provide structure to the workshop in terms of expectations, organization, and facilitation.
- **Planning 101: An Introduction to Land Use Planning in West Virginia**
This document is intended to serve as a resource and a baseline of understanding concerning comprehensive plans in West Virginia.
- **Zoning 101: An Introduction to Zoning Ordinances in West Virginia**
This document is intended to serve as a resource and a baseline of understanding concerning zoning regulations in West Virginia.

The workshop should be a structured and facilitated assembly of comments, concerns, and ideas relating to continued objections to the City's zoning regulations and the administration thereof. The Planning Office is working with Chris Rodgers, AICP (Newark, DE) and Chet Parsons, AICP (Morgantown, WV) of AECOM to facilitate the workshop. Outsourcing facilitation should serve to capitalize on the impartial perspective of professional land use planners well-informed and practiced in policy, regulations, and civic engagement.

The Planning Office respectfully requests direction from the Planning Commission concerning the workshop intent statement, expectations, and the narrowing of discussion or focal topics necessary to plan, prepare, and execute an efficient and effective public workshop.

1. Workshop Intent

This workshop is intended to inform the Planning Commission on outstanding issues related to the zoning ordinance that may be worthy of consideration for updates.

A significant number of development proposals have been received by the planning office over the last 3-5 years. With each of those proposals, especially as they become larger in scope and scale, it is becoming more commonplace for challenges to occur on the grounds of perceived inconsistent zoning decisions and related interpretation of city ordinances.

This workshop will allow for organized discussion of the current zoning ordinance with Planning Commission members as well as creative thinking about improvements that might be made. The ultimate goal of the planning commission is to have a zoning ordinance that:

- Best reflects the community's values and goals and is reflective of the adopted Comprehensive Plan
- Is more user-friendly
- Encourages compatible redevelopment
- Expedites the review and permitting process

2. Workshop Process Flow

- Introductions
- Workshop Purpose
- Workshop format
- Expected conduct
- Discussion topics
 - Review and Approval Process
 - Planning Commission
 - Planning Staff

- Application Process
 - Plans review
- Public Involvement
- Zoning Districts
 - Gaps in coverage
 - Suggested metrics
- Transportation, streetscape and public realm
 - Traffic Studies
 - WVDOH Coordination
 - Pedestrian Realm
 - Parking Requirements
- Neighborhood Character
 - Floor Area Ratio
 - Building Height
 - Density and setbacks
 - Design considerations
 - Transparency
 - Air Flow / Sunlight
 - Housing Capacity



Planning 101: An Introduction to Land Use Planning in West Virginia

City of Morgantown, West Virginia

Date: 04/04/2016

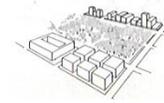
Authored By: Chet Parsons, AECOM



A comprehensive plan is the vision of what the community wants to become and the steps needed to meet that goal.

Comprehensive plans are composed of a series of separate, but interrelated, core elements that address specific topics defined in the West Virginia Code, Chapter 8A, Article 3 (Comprehensive Plan). The common elements to be addressed in this planning effort are shown to the right.

The elements of the plan are interrelated in that they share common assumptions about population and economic growth, the geographic area to which the plan applies, and the time frame, typically from 10 to 20 years. The elements must reinforce and not conflict with each other. For example, a comprehensive plan whose economic development element anticipates substantial employment growth must address housing needs for the new employees. If that is not done, the need for new housing will impact nearby communities and traffic congestion will increase.



PLANNING ELEMENTS

Required

1. Land use
2. Housing
3. Transportation
4. Infrastructure
5. Public Services
6. Rural
7. Recreation
8. Economic Development
9. Community Design
10. Preferred Development Areas
11. Redevelopment
12. Financing
13. Historic Preservation

Optional

14. History
15. Environmental
16. Tourism
17. Conservation
18. Safety
19. Natural Resource Use



ALL COMPREHENSIVE PLANS INCLUDE A SET OF CORE COMPONENTS

- ◆ A statement of authority to prepare and adopt the plan.
- ◆ Background data and analysis, including area history, a description of existing social, economic and physical (natural and man-made) conditions and trends, and economic and demographic projections.
- ◆ Documentation of stakeholders' interests (e.g., interests of residents, public officials, the business community, developers) and involvement in the process.
- ◆ A vision statement and/or statement of desired goals and objectives.
- ◆ Evaluation of the selected plan and design alternatives.
- ◆ A future plan map or maps depicting various components, including land use, transportation, community facilities, and housing areas.
- ◆ An implementation framework or schedule that describes specific measures to carry out the plan, their costs (if known), and the time frame for execution.



WHAT ARE THE PURPOSES OF A COMPREHENSIVE PLAN?

Present the big picture and state the vision.

A plan gives community members an opportunity to clarify their ideas about the kind of community they are creating through their many specific decisions. Through information gathering, analysis, and evaluation of alternatives, the plan ensures that public actions are based on factual analysis. The preparation of a comprehensive plan is an opportunity to create a vision for the community, an overall image in words that describes what the local government wants to be and how it wants to look at some point in the future. The vision serves as the unifying concept for the plan.

Involve the citizenry.

In many communities, the preparation of a comprehensive plan is the local government's most visible means of involving the public. Workshops, questionnaires, interviews, interactive Web sites, planning exercises, and public hearings are all ways to gauge public sentiment regarding where the community should be going and what it should look like.

Guide regulation and public investment.

A comprehensive plan, through the adoption of goals and policies, establishes a framework for the administration of zoning and



subdivision regulations and the location, financing and sequencing of public capital investment. When individual proposals for developments are reviewed by the local government for zoning changes or development applications such as for subdivisions, the comprehensive plan provides guidance for location, use and type of roads, and similar improvements. Similarly, when a community is reviewing its annual capital budget or long-term capital improvement program, the comprehensive plan aids in setting priorities.

Give direction.

Since it indicates how a local government will act over time regarding development and redevelopment, the comprehensive plan provides direction to the private sector that will shape private initiatives such as development proposals.

Protect the community.

If, unfortunately, the jurisdiction finds itself in court over land use issues, having a comprehensive plan that explains the community's goals and future plans is an excellent defense. Similarly, if a municipality's comprehensive plan is outdated and has not been updated recently, this can hurt a community if its land use decisions are challenged.



HOW DOES WEST VIRGINIA DEFINE A COMPREHENSIVE PLAN?

Several statutes contain general descriptions of what a comprehensive plan is and what it should contain, each with different yet complementary emphases.

Under the *West Virginia Code, Chapter 8A, Article 3-3*, a planning commission is charged with preparing and recommending “a comprehensive plan for the development of land within its jurisdiction. A planning commission shall then recommend the comprehensive plan to the appropriate governing body for adoption.”

- ◆ A county, multicounty, regional or joint comprehensive plan may include the planning of towns, villages or municipalities to the extent to which, in the planning commission's judgment, they are related to the planning of the unincorporated territory of the county as a whole: *Provided*, That the comprehensive plan shall not be considered a comprehensive plan for any town, village or municipality without the consent of the planning commission and/or the governing body of the town, village or municipality.
- ◆ A comprehensive plan should be coordinated with the plans of the department of transportation, insofar as it relates to



highways, thoroughfares, trails and pedestrian ways under the jurisdiction of that planning commission.

- ♦ A county planning commission may prepare a comprehensive plan for either the entire county or a part of the county.

HOW DOES A COMMUNITY GET STARTED ON A COMPREHENSIVE PLAN?

In West Virginia, the planning commission oversees the process of preparing the comprehensive plan, after being charged to do so by the City Council. After the draft plan is completed, the planning commission forwards it to the City Council for adoption.

Sometimes, such as for watershed or special area plans, an advisory group of stakeholders oversees the plan's creation.



Between initiation and adoption, many steps must occur. These include:

Decide who is going to write the plan.

In larger communities, the planning staff may have the professional experience and resources, including mapping and geographic information systems (GIS), to put together a plan. It may also make sense to invest in hiring staff to lead the planning efforts, rather than hiring an outside consultant. Alternatively, the planning department staff may be small, overworked or inexperienced, or there may be no planning department at all. In such cases, communities should consider retaining a private planning consultant or contracting with a public agency such as a regional planning commission, or a nonprofit organization. To begin the process, the community should develop a scope of work and a request for qualifications, interview the organizations or individuals that respond, and select those that best suit its needs.

Establish a schedule and budget for completing the plan.

The planning process must have a beginning, middle and end, and result in a document that is ready to be adopted. If the process goes too long, it will wear out and lose the attention of citizens and officials, as well as run up costs. A



schedule advises everyone when drafts of the plan are due for review and for adoption. A budget allows the village board, city council, or county board to set aside money for the project; lets the local government staff know how much time can be charged to the plan; and determines how much can be spent on consultants. It also is important to budget for the cost of production, graphic design, and layout. Many communities today are reducing the cost of their comprehensive plans by making them available online and/or on a CD-ROM, instead of printing them. Regardless of the final format, a community should make sure its plan is readily available during both the public involvement process and once the plan is adopted.

Decide how residents are to be involved.

Early involvement by the public is crucial to ensure understanding of the planning process, facilitate the development of new ideas and consideration of alternatives, and, ultimately, build support for implementation.

A common technique used to involve residents is a visioning process, intended to allow a community to better understand the values and concerns of its residents and use them as a basis for planning. Visioning highlights the trends and forces that are affecting the community.



Agree on issues to be addressed.

Comprehensive plans typically have two focuses: (1) broad issues such as those relating to the physical composition of the community, its relation to the region, and management of growth and conservation; and (2) specific issues, often stated in terms of problems, such as development in certain neighborhoods, traffic congestion on specific streets, a lack of affordable housing, or changes in business districts. Defining and refining the issues will come from the citizen involvement process as well as debate among the plan commission and village or county board or city council.

Collect and analyze data, as appropriate.

Data to be collected will depend on the particular plan section involved and are described for individual elements (such as transportation or housing). Data can be in the form of historical or descriptive accounts, statistics in tabular form, graphs and charts, and, increasingly, interpretative mapping through GIS.



Agree on goals, policies and guidelines that pertain to the vision.

A *goal* is a statement of a desired end. Sometimes the term “objective” is used in place of a “goal.” A *policy* is a general rule for action on a specific issue, derived from more general goals. A *guideline* provides more specific direction on how the policies may be implemented, preferably with time and responsibility identified. Goals, policies and guidelines are usually developed gradually, as the concerns of the comprehensive plan crystallize and are refined.



HOW CAN RESIDENTS BECOME INVOLVED IN COMPREHENSIVE PLANNING?

- ◆ **PUBLIC HEARINGS:** These are meetings that are required to be held before a plan can be adopted. They require public notice. At such hearings, residents offer their opinions on the proposed plan.
- ◆ **WORKSHOPS:** These are informal meetings to discuss sections of a plan. Resident comments should be included in the talks among plan commission members and others involved in creating the plan.
- ◆ **CHARRETTES:** These are design workshops where participants quickly develop and evaluate alternative plans.
- ◆ **SOCIAL MEDIA:** Many local governments use the Internet to provide information about the planning process, schedules, and drafts of planning documents, as well as allow the public to comment by e-mail.
- ◆ **SURVEY RESEARCH:** Whether by mail, telephone or the Internet, survey research gauges public reaction to various issues considered in the planning process.
- ◆ **INTERVIEWS:** These can be done either one on one or in small focus groups, and are especially appropriate when highly detailed information is needed.



Public involvement can occur in a variety of ways:

- ◆ **FLYERS OR INSERTS IN LOCAL NEWSPAPERS, NEWSLETTERS:** These are vehicles for providing communication to a wide audience of residents.
- ◆ **PROFESSIONAL FACILITATION:** This is an excellent tool to help large groups define issues and reach agreement. Since facilitators are neutral regarding the issues, their function is to ensure that all points of view are heard and considered, and that no one point of view or person dominates. They are particularly valuable when issues surrounding the comprehensive plan are controversial.
- ◆ **SMALL GROUP MEETINGS:** Conducted in neighborhoods or focus groups, these are especially appropriate when detailed, area-specific information about planning issues is desired.
- ◆ **ADVISORY TASK FORCE:** A legislative body or planning commission may create an advisory task force to broaden the scope of representation and knowledge base of the commission, and receive advice on specific parts of the plan. Advisory task forces also are helpful when the planning commission is occupied with current planning issues.



Zoning 101: An Introduction to Zoning Ordinances in West Virginia

City of Morgantown, West Virginia

Date: 04/04/2016

Authored By: Chet Parsons, AECOM



A zoning ordinance is a tool available to local government agencies to realize the vision set forth in their Comprehensive Plan.

Zoning ordinances, along with subdivision ordinances, are the teeth that local governments can use to implement their adopted land use plans.

A zoning ordinance may cover all or part of a county's jurisdiction. For municipalities, the zoning ordinance must cover the entirety of its jurisdiction. A municipality may adopt, by reference, the zoning ordinance of the county in which it is located.

The governing body of a municipality or county may regulate land use within its jurisdiction after the following steps are fulfilled:

- ◆ Adopting a comprehensive plan;
- ◆ Working with the planning commission and the public to develop a zoning ordinance; and
- ◆ Enacting a zoning ordinance.



CONSIDERATIONS FOR ENACTING A ZONING ORDINANCE

1. Promoting general public welfare, health, safety, comfort and morals;
2. A plan so that adequate light, air, convenience of access and safety from fire, flood and other danger is secured;
3. Ensuring attractiveness and convenience is promoted;
4. Lessening congestion;
5. Preserving historic landmarks, sites, districts and buildings;
6. Preserving agricultural land; and
7. Promoting the orderly development of land.

A zoning ordinance shall.....

- ◆ Create a board of zoning appeals;
- ◆ Specify certification requirements for zoning district maps that are consistent with the governing body's comprehensive plan;
- ◆ Adopt procedures and requirements for nonconforming land uses;
- ◆ Adopt procedures and requirements for variances; and
- ◆ Adopt procedures and requirements for conditional use permits.



WHAT ARE THE PARTS OF A ZONING ORDINANCE?

A zoning ordinance may address the following:

1. Regulating the use of land and designating or prohibiting specific land uses;
2. Authorizing flexible planning standards to create, redevelop, reuse, protect and enhance the physical qualities of the community;
3. Designating historic districts and regulating the uses of land and the design of buildings within the historic district;
4. Establishing corridor overlay districts to achieve land design goals and regulating the uses of land within the corridor overlay districts;
5. Establishing design standards and site plan approval procedures;
6. Dividing the land of the governing body into different zone classifications regulating the use of land, establishing performance standards for various land uses when dividing is not desired or any combination of both;
7. Authorizing overlay districts and special design districts within which specific additional development standards for each permitted, accessory and conditional use shall apply;
8. Regulating the height, area, bulk, use and architectural features of buildings, including reasonable exterior architectural features and reasonable aesthetic standards for factory-built homes;



9. Authorizing a process and standards for factory-built homes: Provided, That a governing body is prohibited from establishing a process and standards for regulating factory-built homes that is more restrictive than a process and standards for site-built homes;
10. Preserving green spaces and requiring new green spaces, landscaping, screening and the preservation of adequate natural light;
11. Regulating traffic flow and access, pedestrian flow and access, parking and loading;
12. Identifying flood-prone areas subject to periodic flooding and regulating with specific control the permitted use, type of construction and height of floor levels above base flood elevation permitted in the area so as to lessen or avoid the hazards to persons and damage to property resulting from the accumulation of storm or flood waters;
13. Designating an airport area and establishing land-use regulations within a specific distance from the boundaries of the airport;
14. Authorizing planned unit developments to achieve more efficient use of land and setting standards and regulations for the developments; and
15. Identifying, establishing and designating urban growth boundaries, as defined in section 4A, article 6, chapter 8 of the WV State Code, for municipalities.



WHAT ARE GENERAL THINGS TO KNOW ABOUT ZONING?

Jurisdiction.

A zoning ordinance may cover a county's entire jurisdiction or parts of its jurisdiction. It cover the entirety of a municipality's jurisdiction.

Territory.

The different zones created in a zoning ordinance by a governing body do not have to cover or include the same territory, and may overlap.

Additional Standards.

Overlay districts and special design districts may have specific additional development standards for each permitted, accessory and conditional use.

Consistency.

Each zone will be subject to the same rules, regulations, standards and designations throughout the zone, unless specific provisions are made by the governing body in the zoning ordinance.

Essential utilities.

Essential utilities and equipment are a permitted use in any zoning district.



Non-contiguous lands.

Several areas of a municipality or county may be classified in a zone even though the areas are not contiguous.

Zoning boundaries.

The boundaries of each zone and the designated classifications must be shown on a zoning district map. The boundaries may only be changed after appropriate public hearing and zoning district map changes are adopted by the governing body.

Certification of zoning maps.

A governing body shall certify the original zoning district map. Subsequent versions of the zoning district map shall be certified and clearly identified with an effective date. All certified zoning district maps must be filed with the clerk of the applicable governing body, the applicable planning commission and the office of the clerk of the applicable county commission.

HOW DOES A COMMUNITY MAKE CHANGES TO THEIR ZONING ORDINANCE?

- ◆ Before amending the zoning ordinance, the governing body, with the advice of the planning commission, must find that the amendment is consistent with the adopted comprehensive plan. If the amendment is inconsistent, then the governing body, with the advice of the planning commission, must find that there



have been major changes of an economic, physical or social nature within the area involved which were not anticipated when the comprehensive plan was adopted and those changes have substantially altered the basic characteristics of the area.

- ◆ When a proposed amendment to the zoning ordinance involves a change in the zoning map classification of any parcel of land, or a change to the applicable zoning ordinance text regulations that changes the allowed dwelling unit density of any parcel of land, the governing body shall, at least thirty days prior to the enactment of the proposed amendment (if there is not an election), or at least thirty days prior to an election on the proposed amendment to the zoning ordinance:
 - ◆ Give written notice by certified mail to the landowner(s) whose property is directly involved in the proposed amendment to the zoning ordinance; and
 - ◆ Publish notice of the proposed amendment to the zoning ordinance in a local newspaper of general circulation in the area affected by the zoning ordinance, as a Class II-o legal advertisement, in accordance with the provisions of article 3, chapter 59 of the WV State Code.



THE GOVERNMENT WANTS TO AMEND THE ZONING ORDINANCE. HOW DO THEY DO IT?

Between initiation and adoption, many steps must occur. These include:

Determine if there will be an election.

The governing body can decide to amend the zoning ordinance in three different ways. First, the ordinance can be amended without an election. Secondly, an election can be held on the proposed amendment. Finally, an election can be held on the proposed amendment pursuant to a petition by the owners of 10% or more of eligible voters in the related area.

Follow a mandated procedure for the election, if desired to proceed in that manner.

There are a number of steps that must be followed to properly amend the ordinance. The governing body must:

- ◆ Publish notice of the election and the proposed amendment to the zoning ordinance in a local newspaper of general circulation



in the area affected by the zoning ordinance, as a Class II-o legal advertisement, in accordance with the provisions of article 3, chapter 59 of the WV State Code; and

- ◆ Hold an election on the question of adopting or rejecting the proposed amendment to the zoning ordinance at any primary, general or special election for the qualified voters residing in:
 - ◇ The entire jurisdiction of the county, if the zoning ordinance applies to the entire county; or
 - ◇ The specific area to which the zoning ordinance applies, if the zoning ordinance only applies to a part of the county.
- ◆ If an election is held, then the proposed amendment to the zoning ordinance does not take effect until a majority of the voters approve it.
- ◆ If an election is held and the proposed amendment to the zoning ordinance is rejected, then the proposed amendment does not take effect. The governing body of the county may resubmit the proposed amendment to the zoning ordinance to the voters at another election.
- ◆ A special election may be held upon written request to the governing body of the county.
- ◆ The election laws of this state apply to any election on a proposed amendment to a zoning ordinance.



Following adoption, the enacted zoning ordinance takes precedence.

After enactment of a zoning ordinance by a municipality or county, all subsequent land development must be done in accordance with the provisions of the zoning ordinance.

All zoning ordinances, and all amendments, supplements and changes thereto, legally adopted under any prior enabling acts, and all actions taken under the authority of any such ordinances, are hereby validated and continued in effect until amended or repealed by action of the governing body of the municipality or the county taken under authority of this article. These ordinances shall have the same effect as though previously adopted as a comprehensive plan of land use or parts thereof.

Land, buildings or structures in use when a zoning ordinance is enacted can continue the same use and such use cannot be prohibited by the zoning ordinance so long as the use of the land, buildings or structures is maintained, and no zoning ordinance may prohibit alterations or additions to or replacement of buildings or structures owned by any farm, industry or manufacturer, or the use of land presently owned by any farm, industry or manufacturer but not used for agricultural, industrial or manufacturing purposes, or the use or acquisition of additional land which may be required for the protection, continuing development or expansion of any agricultural, industrial or manufacturing operation of any



present or future satellite agricultural, industrial or manufacturing use. A zoning ordinance may provide for the enlargement or extension of a nonconforming use, or the change from one nonconforming use to another.

If a use of a property that does not conform to the zoning ordinance has ceased and the property has been vacant for one year, abandonment will be presumed unless the owner of the property can show that the property has not been abandoned: Provided, That neither the absence of natural resources extraction or harvesting nor the absence of any particular agricultural, industrial or manufacturing process may be construed as abandonment of the use. If the property is shown to be abandoned, then any future use of the land, buildings or structures must conform with the provisions of the zoning ordinance regulating the use where the land, buildings or structures are located, unless the property is a duly designated historic landmark, historic site or historic district.

Variance relief may be granted in some circumstances.

A variance is a deviation from the minimum standards of the zoning ordinance and shall not involve permitting land uses that are otherwise prohibited in the zoning district nor shall it involve changing the zoning classifications of a parcel of land.



The Board of Zoning Appeals may grant variance relief from the underlying zoning ordinance if it finds that the proposed use:

- ◆ Will not adversely affect the public health, safety or welfare, or the rights of adjacent property owners or residents;
 - ◆ Arises from special conditions or attributes which pertain to the property for which a variance is sought and which were not created by the person seeking the variance;
 - ◆ Would eliminate an unnecessary hardship and permit a reasonable use of the land; and
 - ◆ Will allow the intent of the zoning ordinance to be observed and substantial justice done.
-