

Appendix D

Tools for Comprehensive Plan Implementation in Virginia

*Adapted from the **Managing Growth and Development in Virginia***

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by the American Planning Association, Virginia Chapter, 2010

Planning is a multi-faceted process localities use to prepare for change. In many respects, it is like the sequencing of steps and activities people and organizations have used for centuries to prepare for the future. In Virginia, community planning is primarily the responsibility of local governments. Thus, this report focuses on the tools that are legally available to localities to plan for change of all kinds.

The practice of land use planning in Virginia can be traced to the English settlement at Jamestown, 400 years ago. The fort that sprang up along the James River in 1607 was, in many respects, a planned community. The schematic that became Jamestown featured principles long associated with the 20th century planning technique known as PUDs, or Planned Unit Developments. Planning concerns influencing the Jamestown of 1607 included security issues, access and internal movement considerations, the use and preservation of indigenous natural resources, the procurement and storage of drinking water, the collection and disposal of waste, as well as discernment regarding the location of residential areas within the fort in relationship to needed processing and manufacturing enterprises. On this point, standards governing the minimum distance separating residential areas from processing and manufacturing operations, as well as outdoor privies, were established and strictly enforced. In short, the settlement at Jamestown was designed, constructed and managed with full consideration given to the well-being and general welfare needs of its inhabitants.

Addressing the public safety, convenience and welfare needs of all Virginians is a fundamental reason the state of Virginia has mandated that all local governments plan for the future.

The Reasons for Planning. Localities in Virginia plan for two major reasons. One is that state law mandates that every local government in Virginia prepare and adopt a comprehensive plan (§ 15.2-2223). In turn, the state code (§ 15.2-2224) identifies four primary tools communities can use to implement local plans (The Official Map, Subdivision Regulations, Zoning, and Capital Improvements Program). Those four primary tools will be described in the following section of this report, along with the many other major tools that derive from, or are meant to supplement those primary tools. (The other major reason Virginia localities undertake planning is to prepare for and cope with change. Change is inevitable, and whether it is a positive or negative force may depend on the effectiveness of the locality's planning efforts in managing change.)

A. The Official Map

The official map is one of four primary tools localities can use to implement the local comprehensive plan. According to § 15.2-2233 of the Virginia Code, a local planning commission may make a map showing the location of any:

- 1. Legally established public street, alley, walkway, waterway and public area of the locality; and*
- 2. Future or proposed public street, alley, walkway, waterway and public area.”*

If developed, the official map must establish the centerline, width and right-of-way of streets and the metes and bounds of public areas in relation to known, fixed and permanent monuments either by physical or aerial survey. This admonition applies to mapping existing streets, alleys, walkways and public areas, as well as mapping future or proposed streets, alleys, walkways and/or public areas. The official map is a discretionary tool of plan implementation. This means localities are not mandated to adopt an official map.

B. Subdivision and Site Plan Regulations

Each local government in Virginia is required to adopt a subdivision ordinance to assure that land development occurs in an orderly and safe manner. The subdivision ordinance establishes the procedures, platting and design requirements, as well as surety guarantees for public infrastructure improvements, associated with the subdivision of land into parcels or lots of development.

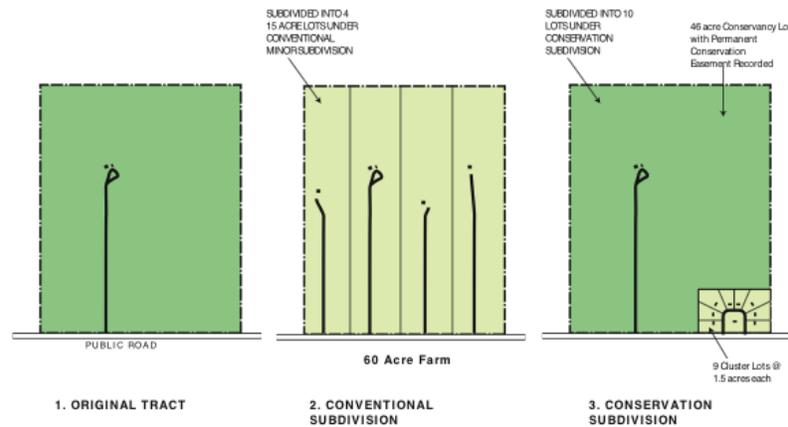
C. The Capital Improvement Program

The Capital Improvement Program (CIP) is an integral component of a locality's overall growth management program. It outlines the multi-year scheduling of public physical improvements and related costs to help guide the locality's decisions on how to allocate available funds over a 5-year period. The CIP is sometimes called a Capital Improvement Budget or Capital Improvement Plan. Localities must have a CIP if they exercise the authority to accept proffers of cash or physical improvements that benefit the community outside of the development associated with the proffers.

D. Zoning Tools

Zoning is considered the quintessential tool of comprehensive plan implementation. Zoning divides a locality into specific districts and establishes regulations concerning the use, placement, spacing and size of land and buildings within the respective districts. A few of the major variants on zoning that are used in the commonwealth, including Agricultural or Large Lot Zoning, Cluster Zoning (example shown below), Traditional Neighborhood Development, and Historic District Zoning. (Also, Conditional Zoning/Cash Proffers are discussed under financing tools rather than zoning tools).

Example of Rural Cluster



Graphic courtesy of Paradigm Design

According to the Virginia Code (§ 15.2-2280) any locality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof, into districts of such number, size and shape as deemed important to needs of the community and the purposes of zoning as defined by the code. Accordingly, zoning is a discretionary tool of plan implementation. It is not a mandated tool like the subdivision ordinance.

Zoning is intended to avoid disruptive land use patterns by preventing activities on one property from generating external effects that are detrimental to other properties. Zoning ordinances, if drafted by the planning commission and adopted by the governing body, must feature a text describing each district and the district regulations, as well as a map detailing the location and extent of each district throughout the community.

Conventional zoning is called —Euclidean, named after the Town of Euclid, Ohio, whose zoning ordinance was upheld by the U. S. Supreme Court in a landmark case in 1926. This conventional approach divides the land within the jurisdiction into discreet geographic districts based on the general use and intensity that is permitted for land and buildings. Typical zoning districts under this approach are residential, commercial and industrial. Many variations on this approach have been devised during the past 80 years to correct the overly rigid districts, and many of these are used in various localities in Virginia. One prominent variation —Planned Unit Development (PUD), in which some amount of flexibility is permitted for lot sizes and uses within the district, based upon a detailed conceptual development plan submitted by the applicant.

On its own initiative or at the direction of the governing body, the planning commission may prepare a zoning ordinance, including text and maps dividing the community into districts; detailing the regulations applicable in each district; and providing for enforcement, variances, conditional zoning, special exceptions, appeals and penalties. To date, every city in Virginia, most towns and 87 of the 95 counties have chosen to adopt zoning to regulate land use and to help manage local growth.

E. Tools for Managing the Form and Location of Growth

- **The “2232” Review**

As noted in Section II of this report, the comprehensive plan is considered advisory and it serves as a guide for the physical development of the territory within the locality’s jurisdiction. However, according to § 15.2-2232 of the Virginia Code, the comprehensive plan —shall control the general and approximate location, character, and extent of each feature shown. Thus, while the comprehensive plan itself does not directly regulate land use, the plan does have status as a fundamental instrument of land use control once it is adopted by the local governing body.

Section 15.2-2232 provides that unless a feature is already shown on the adopted plan, no street or connection to an existing street, park or other public area, public building or public structure, public utility facility or public service corporation, whether publicly or privately owned, shall be constructed, established or authorized until its location has been approved by the local planning commission as being substantially in accord with the adopted comprehensive plan. As of 2009 localities are required to show on the transportation plan map of the Comprehensive Plan transportation corridors of statewide significance upon notification by the Commonwealth Transportation Board that such a corridor has been designated in the Statewide Transportation Plan.

- **Urban Growth Boundaries (*Land Use and Infrastructure Coordination*)**

Extensions of infrastructure, particularly water and sewer lines and major streets, significantly affect the timing and density of development. The comprehensive plan can designate areas which are planned for immediate or long-term utility service, thereby coordinating development approvals (rezonings) and utility extensions to achieve an orderly and compact development pattern adjacent to existing settlements. Urban Growth Boundaries in Virginia are not zoning designations per se, but rather policy designations established in the comprehensive plan so as to guide decisions about rezoning applications and public infrastructure investments.

- **Special Exception Permitting (*Conditional/Special Use Permitting*)**

Zoning ordinances usually delineate a number of uses that are allowed as a matter of right, and a number of uses that are allowed by special exception. (Special exceptions are also called —special use permits|| or —conditional use permits||, which mean the same thing). Uses allowed by special exception are those considered to have a potentially greater impact upon neighboring properties or the public than those uses permitted by right in the district. By classifying them as special exceptions, separate and specialized regulations or conditions can be imposed by the locality to mitigate the adverse impacts. These conditions may be imposed and need not be negotiated or agreed to by the applicant. Such conditions must be specific, reasonable and enforceable.

- **Density Incentives**

A zoning ordinance is a principal planning tool used by localities to achieve their development objectives. Historically, zoning ordinances were purely regulatory tools that established minimum standards for new development. However, because —minimum standards|| many times become —maximum performance, zoning ordinances have evolved to include incentive-based approaches to community development objectives.

Although different types of incentives can be incorporated into a zoning ordinance (fast track plan reviews, reduced application fees, etc.), the most positive incentive to developers is often increased density.

- **Community Design Concepts: Traditional Neighborhood Development and New Urbanism**

Traditional Neighborhood Development (TND) and New Urbanism are forms of development that reflect the principles of New Urbanism, which is aimed at achieving a —human-scale built environment of mixed uses and interconnected streets that is conducive to pedestrian movements, as well as to motor vehicle movements.

- **Transferable Development Rights (TDR)**

TDR, or transfer of development rights, is a concept in which some or all of the rights to develop a parcel of land in one district (the sending district) can be transferred to a parcel of land in a different district (the receiving district). TDR is a tool used to preserve open space, farmland, water resources and other resources in areas where a locality wishes to limit or curtail development.

F. Tools for Managing the Financial Impacts of Growth

In addition to the Capital Improvements Program (CIP) which was discussed as one of the four primary tools of plan implementation in Part C above, other tools are available for managing the fiscal impacts of growth.

1. Conditional Zoning / Cash Proffers

Conditional zoning was enabled by the Virginia General Assembly 30 years ago to address the shortcomings of traditional zoning methods when competing and incompatible land uses conflict. While it is actually a zoning tool, it is discussed here as a tool for managing the financial impacts of growth, since that is the way this tool is used by many localities.

As designed, conditional zoning allows reasonable conditions, known as proffers, to be offered by the applicant during a rezoning process as a way of mitigating the impacts of the proposed rezoning. Proffers may include land, infrastructure, cash or other conditions/constraints on the use of the property. These proffers, if accepted by the governing body as part of the rezoning approval, become part of the zoning ordinance as it applies to that property. In theory, conditional zoning allows land to be rezoned that might not otherwise be rezoned because the proffers will protect the community or area affected by the rezoning.

2. Level of Service Standards

Level of service (LOS) standards specify the public facilities needed for new residential developments in an effort to determine if those facilities are adequate to support a proposed rezoning. Level of service standards are typically set out in a guidance document or comprehensive plan for public facilities such as schools, roads, libraries, parks, public transit, water and sewer systems. For example, Prince William County has linked the demand for public services created by new development with the County's fiscal ability to provide those services at the level of service standards set forth in the plan. If the development does not meet the LOS established in the plan, either a proffer for improvements or cash proffer can be used to offset the impact.

3. Impact Fees

Making growth —pay its own way|| is a major reason local governments across America have adopted impact fee programs through which developers are required to pay for, in whole or in part, the infrastructure improvements required by the new growth associated with each development project. The costs to be paid are often for utilities and streets, as well as schools, parks and other public facilities. Where impact fees are permitted, they must be specific, based on a reasonable formula, and uniformly applied. Classic impact fee programs provide for the fees to be collected at the time of building permit approval, thereby applying to —by-right ministerial development approvals, as well as to rezonings. (Floyd County may not be eligible to use this at this time, as excluded from the Urban Development Area requirement.)

4. Service Districts

Service Districts (sometimes called Special Service Districts) are legally defined geographic portions of a jurisdiction established by the local governing body. They are created to provide additional, more complete, or more timely services of government than are desired in the locality as a whole. Property owners within the special service district may pay a higher tax rate in exchange for these enhanced services. Any locality may by ordinance, or any two or more localities may by concurrent ordinances, create service districts within the locality or localities. Once created, the additional revenue derived from service districts is used for a wide variety of public enhancements including, but not limited to, water supply and sewerage facilities; garbage removal and disposal; fire-fighting equipment; sidewalks; economic development services; promotion of business and retail development services; beautification and landscaping; beach and shoreline management and restoration; public parking; extra security, street cleaning; snow removal; sponsorship and promotion of recreational and cultural activities and other services, events, or any other activities that will enhance the public use and enjoyment of, and the public safety, public convenience, and well-being within, a service district.

5. Community Development Authorities

A community development authority (CDA) is a political subdivision of the Commonwealth. A CDA can be authorized and created by a local governing body upon petition by at least 51% of the land owners within the proposed CDA boundaries. CDAs are authorized and created for the purpose of providing public infrastructure associated with the development or redevelopment of an area.

6. Fiscal Impact Analysis

A fiscal impact analysis is used to forecast the net operating expenditures and capital outlays for public services required to serve a proposed development. Net expenditures equal total expenditures less the revenues a government expects to receive as a result of the development.

G. Tools for Revitalization

- **Targeted Development Areas**

A targeted development area (TDA) designates a specific area within a locality for development and growth. It is an area of a jurisdiction where a local government would like to see most new growth occur, and a local government can utilize its own criteria to define a TDA. Targeted development areas are depicted on comprehensive plan maps, and can be defined by comprehensive plan policies. Implementation of targeted development areas can occur through many means including the adoption of zoning standards applicable only to the TDA, and through public capital facility investment within the targeted development areas.

- **Revenue Sharing (*Tax Sharing*)**

The sharing of revenues between jurisdictions involves the transfer of some portion of a locality's revenue receipts, with the individual political subdivisions retaining full autonomy over tax rates applied within their jurisdiction. Revenue-sharing programs have been employed to offset inequitable consequences (service costs v. revenue attained) in an area from the nature and pattern of development and to address problems caused by local reliance on the property tax.

- **Enterprise Zones**

An enterprise zone is defined by the state code as an economically distressed, distinct geographical area of a county, city or town. The Enterprise Zone Program is based upon a state and local partnership in which both parties seek to improve economic conditions within a targeted area of distress. Enterprise zones are designated by the Governor.

- **Empowerment Zones**

An Empowerment Zone is a community characterized by poverty, unemployment and general distress. A local government and the Commonwealth must nominate a local area meeting the required size, population and poverty criteria. Originally selected Empowerment Zones were awarded block grants from the Department of Health and Human Services under Title 20 of the Social Security Act.

- **Tax Increment Financing**

Tax increment financing is a redevelopment funding tool that earmarks anticipated increases in tax revenues from a defined redevelopment area to pay the debt service issued to finance the public improvements in the redevelopment area. Based on the earmarking of increased revenues, public debt can be issued for public improvement in a redevelopment area. These public improvements serve as a catalyst for private investment.

H. Tools for Rural and Natural Areas Preservation

This section describes the major tools available to local governments to preserve the State's agricultural and natural, open space resources. These tools, like those that help ensure adequate public facilities, are enhanced by a strong comprehensive plan that clearly articulates the value of open space and farmland preservation to the community, and indicates clear priorities for areas to be preserved. A common limitation of these tools is the funding they require to administer the program, to publicize it, and often, to operate it.

- **Use Value Assessment and Taxation (“Land Use”)**

The Use Value Assessment and Taxation Program uses discounts in property tax assessments to promote and preserve agricultural, forestal, and/or open space lands.

- **Agricultural and Forestal Districts (AFD)**

The Virginia Code provides for the voluntary creation of Agricultural and Forestal Districts (AFDs) in order to —provide a means for a mutual undertaking by landowners and localities to protect and enhance agricultural and forestal land as a viable segment of the Commonwealth's economy and as an economic and environmental resource of major importance.

Agricultural and/or Forestal Districts are established by local ordinance to run for a set number of years (from 4 to 10), during which the property owner continues to hold fee simple title to the land, and enjoy various benefits provided by the code for such districts. The local ordinances usually include provisions that permit the landowner to withdraw from the program under certain defined circumstances.

AFDs are established at the request of landowners, who must assemble at least 200 acres of contiguous land and be approved for a district by the local governing body. Districts last from 4 to 10 years and can be renewed. Being in a district ensures a landowner that his land will continue to be eligible for Use Value Assessment, even if the program is otherwise rescinded by the locality. The AFD also provides some extra protection against certain public infrastructure improvements. In and of itself, an AFD does not change the zoning within its borders. However, an AFD can be a factor in the locality's zoning decisions and planning policies. Further, in adopting an AFD, the governing body may require, as a condition to creation of the district, that any parcel in the district shall not, without the prior approval of the governing body, be developed to any more intensive use or to certain more intensive uses (other than uses resulting in more intensive agricultural or forestal production), during the period which the parcel remains within the district.

Other protections for landowners in AFDs include:

- The local governing body may adopt programs offering incentives to landowners to impose land use and conservation restrictions on their land within the district.
- Local ordinances, comprehensive plans, land use planning decisions, administrative decisions and procedures affecting parcels of land adjacent to any district must take into account the existence and purposes of the district.

- No special district for sewer, water or electricity or for non-farm or non-forest drainage may impose benefit assessments or special tax levies on the basis of frontage, acreage or value on land used for primarily agricultural or forestal production within a district, except a lot not exceeding one-half acre surrounding any dwelling or nonfarm structure located on such land.

Any agency of the Commonwealth or any political subdivision which intends to acquire land in an AFD must provide individual notice to landowners in the AFD. The local governing body then holds a public hearing on the proposal. If the local governing body determines that the proposed action is not necessary to provide service to the public in the most economic and practical manner and will have an unreasonably adverse effect upon state or local policy, it is to issue an order prohibiting the proposed action.

- **Conservation Easements (including Purchase of Development Rights)**

A conservation easement (also known as an Open Space or Scenic Easement) is a legal agreement between a landowner and a land trust or government agency that limits the use of the land by recording deed restrictions that prohibit or severely restrict further development in order to protect the conservation value of the property, such as farmland, watersheds, wildlife habitat, forests, and/or historical lands. Each easement is unique in terms of acreage, description, use restrictions, and duration. These details are negotiated between the property owner granting the easement, and the organization that will be holding the easement.

Conservation easements are typically established in perpetuity, but may be established for shorter periods. The easement allows a property owner to continue to own any underlying interest in the land that is not specifically limited by the easement, to use the land within the terms and restrictions of the easement, and to sell the land or pass it on to heirs (with the easement restrictions conveying with the land). Conservation easements do not permit public access unless specifically provided.

Conservation easements may be established through *purchase*, *lease* (short term), or through *donation*. In all of these easement programs, the easement is established through the voluntary cooperation or initiative of the landowner.