Comprehensive Planning
Authority and Implementation

Paul J. Cucuzzella
Counsel, Office of the Attorney General
Maryland Department of Planning
Authority to Plan and Zone?

Tenth Amendment

- Powers not delegated to federal gov’t are “reserved to the States . . . or to the people.”

- Among these are the “Police Power”:
  - Governmental authority to regulate in order to protect public health, safety, welfare
  - Belongs to the States
  - Delegated to local governments
Authority to Plan and Zone?

*Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) – Zoning is a valid exercise of the police power and does not constitute a taking when there is a “rational basis” and is not done in an arbitrary and capricious manner.
Authority to Plan and Zone?

From *Euclid*: “...with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands. . . . Regulations . . . [which] are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive.”
Legal Origins of the Comp Plan Authority to Prepare & Adopt?

- Adopted nearly verbatim by Maryland in 1933.
  - Authorized creation of planning commission
  - “It shall be the function and duty of the commission to make and adopt a master plan for the physical development of the municipality.”
Legal Origins of the Comp Plan Authority to Prepare & Adopt?

• Content of Plan:
  – “general location, character, and extent” of streets, subways, bridges, parks, aviation fields, open spaces, public buildings, public utilities, etc.
  – Zoning plan for control of height area, bulk, location, and uses of buildings

• Intent of Enabling Act:
  – Long-term planning – Land-use decisions should be made in accordance with a long-term and carefully-created plan
  – Non-political – Plan should be insulated from the short-term political pressures on a locality’s elected officials
Legal Origins of the Comp Plan
Authority to Prepare & Adopt?

- **Enabling Act Drafter’s Justification?** Planning Function v. Legislative Function:
  - Planning and legislation “are quite different . . . and involve differing considerations,” and thus “need to be reposed in two separate bodies”
  - Legislators serve only for an elected terms, with their “time and energies taken up with the problems of current legislation and current control of the public moneys”
  - Comprehensive planning, by contrast, is “a continuous and permanent” endeavor designed “for a long period of future years . . . cover[ing] the incumbency of many successive [legislators]”
  - Thus, a planning commission, or “board,” should be entrusted with the planning process “free from the pressures of purely current problems”

- **Their Conclusion** – Legislative body was to have NO ROLE in the preparation, approval or adoption of comp plan.
Legal Origins of the Comp Plan Implementation

• Under the Enabling Act:
  – Approval of Public Infrastructure – Streets, parks, public buildings, utilities, or other public improvements must be approved by the planning commission
    • PC’s determination on such improvements could be overruled by the legislature only upon a super majority vote
  – Subdivision Control – Gave PC authority to adopt subdivision regulations and approve subdivision plans
Evolution of Authority to Adopt
1966: Maryland Planning and Zoning Law Study Commission

- Appointed by General Assembly in 1966, concluded that:
  - the separation of planning from the legislative process led to “fragmentation” of and a “lack of elective accountability” in the planning process
  - plans “lacked legal sufficiency” because not adopted by elected officials
  - plans too often ignored by local governments

- Applies only to non-charter counties and municipalities
1966: Maryland Planning and Zoning Law Study Commission

Recommendations:

– **Preparation** – PC prepares and approves plan and recommends it for adoption to legislative body

– **Adoption** – Legislative body “adopts” the PC’s approved plan

– **Amend** – Legislative body should have authority to “amend” the PC’s approved plan
1970 Revision of Article 66B

• **Enacted** Art. 66B § 3.08 – “The local legislative body shall adopt the plan as a whole or for one or more major geographic sections or divisions of the jurisdiction. . . .”

• **But**, struck from bill – “If the local legislative body desires to amend the plan . . ., the local legislative body shall hold a public hearing on said amendment before any such action is taken.”
Revisor’s Note to 2012 Land Use Article Code Revision

• In 2012, General Assembly re-codified Art. 66B into Division I of the new Land Use Article of the Maryland Code.

• Revisor’s Note on the new LU § 3-205(d) – “The current provision forces the legislative body to approve or reject the recommended plan . . . outright, which might be considered cumbersome by both bodies, and might unnecessarily prolong an adoption process that may involve the need to make minor changes to a recommended plan.”
Section 3-205(d)(1) of the Land Use Article does not grant to the [legislative body] the authority to adopt material changes to a comprehensive plan . . . once the plan . . . has been prepared and approved by the . . . [p]lanning [c]ommission. Instead, a local legislative body’s authority to influence the content of a plan or plan amendment is limited to (i) voting not to adopt the plan or plan amendment as approved by the planning commission and (ii) sending the plan back to the planning commission with recommendations that it be revised.
2015 General Assembly

HB 919/SB 551 – deleted LU § 3-205(d) and amended LU § 3-204:

- Legislative body may “adopt, modify, remand, or disapprove” the planning commission’s plan
- Must hold a public hearing before adopting or modifying the PC’s plan
- If it remands or disapproves the PC’s plan, must hold a public hearing before submitting a new plan to the PC
- PC’s plan considered approved is not acted on within 90 days, with possible 60-day extension
Implementation:
The “Consistency” Requirement
Comp Plan Requirements

• **Limits on Local Authority** – Local governments may exercise planning and zoning authority only to the extent and in the manner directed by the General Assembly

• **Must Adopt Comp Plan** – Every jurisdiction that exercises planning and zoning powers, including charter counties, must adopt a comprehensive plan. See LU §§ 1-405, 3-101, 3-204(a).

• **Required Content** – Comp plan must incorporate the State’s twelve planning “visions” and include certain mandatory “elements.”

• Created “consistency” requirement:
  – Local implementing “mechanisms” – including the granting of special exceptions and the enactment of zoning, planned development, subdivision, and other land use ordinance – must be “consistent with” the jurisdiction’s comp plan

• designed to ensure that comp plans were “implemented through appropriate local ordinances and regulations”
Trail v. Terrapin Run, LLC, Court of Appeals, 2008

• Facts:
  – Special exception request for PUD of 4,300 units on 935-acre parcel in Allegany County, zoned agricultural and for conservation
  – BOA found PUD to be “in harmony with” comp plan
  – Decision appealed on grounds that “consistent with” standard should have been applied

• Court of Appeals held that comprehensive plans are “advisory, guides only, and not normally mandatory insofar as rezonings, special exceptions, conditional uses and the like are concerned.”
Smart and Sustainable Growth Act of 2009

• General Assembly acted to “overturn Trail” because the decision:
  – “could undermine the importance of making land use decisions that are consistent with the comprehensive plan”
  – “could be interpreted to mean that local land use ordinances and regulations need not be consistent with the locally adopted plan”
Defined “consistent with” to mean that local law and action (e.g., special exceptions) shall “further, and not be contrary to,” the various elements and items in the jurisdiction’s comprehensive plan, including those that address “implementation of the plan,” “development,” “land uses,” and “densities and intensities.” See LU § 1-303.
Today: So, what does “consistency” mean?

Anne Arundel County v. Harwood Civic Assoc., Court of Appeals, Sept. Term 2014:

- County comprehensive rezoning permits up-zoned a number of South County parcels
- Parcels located in “Rural Area” – meaning area “characterized by rural residential land use and limited local commercial uses” – in County’s GDP
  - Trial court concluded that limited number of re-zoned parcels (7) means deviations from GDP were “rare,” and therefore not inconsistent with GDP
- Court of Appeals ruled on standing; did not address consistency issue
- Stay Tuned!