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Abstract

This instructional paper gives local leaders an overview of ways in which to implement comprehensive planning in their communities. The paper covers such topics as: a definition of comprehensive planning, the purpose of developing a comprehensive plan, how and when to implement the plan, the authority under which communities are able to implement the plan, and a description of what limitations and concerns may come up.

Resource

SERIES I: Basic Tools and Techniques

Issue Number 1

COMPREHENSIVE PLANNING

DEFINITION:

The New York State Court of Appeals noted in *Udell v. Haas* that "the comprehensive plan is the essence of zoning. Without it, there can be no rational allocation of land use." Indeed, the statutes require that all land use regulations must be made "in accordance with a comprehensive plan." Therefore, planning should precede any adoption or amendment of a land use regulation.

New York statutes define a comprehensive plan as the "materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long range protection, enhancement, growth and development of the [locality]."

While there are no required components of a comprehensive plan, the statutes suggest fifteen elements for inclusion:

- * a general statement of goals, objectives and standards upon which proposals for the immediate and long range growth and development of the municipality are based;
- * consideration of regional needs and official plans of other government units within the region;
 - * existing and proposed location and intensity of land uses;
 - * consideration of agricultural uses, historic and cultural resources, coastal and natural resources and sensitive environmental areas;
 - * consideration of population, demographics and socio-economic trends and future projections;
 - * the location and types of transportation facilities;
 - * existing and proposed location of public and private utilities and infrastructure;
 - * existing housing and future housing needs, including affordable housing;
 - * present and future location of historic sites, educational, cultural, health and emergency services;
 - * existing and proposed recreational facilities and parkland;
 - * present and future locations of commercial and industrial facilities;
 - * specific policies and strategies for improving the local economy in coordination with other plan topics;
 - * proposed measures, programs, devices and instruments to implement the goals of the comprehensive plan;
 - * all or part of the plan of another public agency; and
 - * any and all other items which are consistent with the orderly growth and development of the municipality.

PURPOSE:

The comprehensive plan creates a blueprint for the future development and preservation of a community. Often referred to as the "master plan," it is the essential foundation upon which communities are built. A good comprehensive plan guides not only the physical and economic development of the municipality, but also accommodates social, environmental and regional concerns.

There are several important advantages achieved by communities that engage in comprehensive planning. First, although adoption of a comprehensive plan is not mandatory, the statutes require that "all land use regulations must be in accordance with a comprehensive plan." Land use regulations are defined to include "zoning, subdivision, special use permit or site plan regulation or other regulation which prescribes the appropriate use of property or the scale, location and intensity of development." If the validity of a local land use regulation is challenged, a written, up-to-date comprehensive plan provides the court with the necessary information upon which to base its decision. Second, after a comprehensive plan is adopted, all other governmental agencies planning capital projects within the municipality must first consider the local plan. Additionally, the comprehensive planning process presents an opportunity for a local government to inventory the needs and assets of the community, to develop a shared vision for the future and to build consensus and support for actions that will implement the comprehensive plan.

Finally, with a comprehensive plan in place, strategic land use regulations can be adopted to implement that vision, protecting the locality's natural resources and encouraging economic development where desired.

WHEN:

Comprehensive planning may be engaged in at any time and an adopted plan should be reviewed and amended when necessary. Although many plans contain long-term strategies for community development and conservation, comprehensive plans need to be revisited as change occurs. Planners recommend reviewing the plan every five years and updating it as necessary. The statutes require localities to set forth in the comprehensive plan "the maximum intervals at which the adopted plan shall be reviewed."

If the mechanics of creating and revising the plan are seen as a process that involves citizens and community leaders in developing a collaborative strategy for achieving a municipality's objectives, then frequent attention to the plan will have a positive impact on day-to-day decision-making and the practical progress of the community toward its long range goals.

AUTHORITY:

The local legislature may adopt, by resolution, a comprehensive plan or any amendment. The local legislature is also authorized by statute to prepare or amend the comprehensive plan. Alternatively, the legislature may direct, through resolution, the planning board or a special board to prepare or amend the plan. A special board is defined as "a board consisting of one or more members of the planning board and such other members as are appointed" by the local legislature. If the plan is prepared by other than the local legislature, that board must forward to the local legislature an adopted resolution recommending the plan or amendment.

IMPLEMENTATION:

Good comprehensive planning begins with information gathering. Physical data should be compiled and considered including, for example, roads and transportation, wetlands, water, sewer, utilities, soils and drainage. Additionally, the community should inventory its assets including natural, historical, cultural and geographical and consider to what extent these features should be enhanced or protected. The municipality must also consider its needs; for example, is there adequate housing, parks, economic development, capital infrastructure and open space in the community? Are there areas that are particularly appropriate for growth and others in need of conservation? The plans of neighboring municipalities should also be examined as well as regional economic, environmental and social needs.

Based on this information, the locality can determine and set forth a statement of its objectives in the comprehensive plan. This statement should address both the intermediate term objectives as well as the long range goals of the municipality. Further, the comprehensive plan may include specific land use techniques that can be utilized by the municipality to achieve each of its objectives. These techniques include overlay, cluster,

incentive and agricultural zoning; designating critical environmental areas and floating zones, transfer of development rights and planned unit developments, among others strategies more fully described in Series III of this guide. Non-regulatory techniques such as land acquisition, tax incentives, infrastructure investment, streamlined permit review as well as grant or loan programs should also be considered.

The formation of the comprehensive plan and its implementation strategies should involve, to the greatest extent possible, the local citizens. Many techniques are available to involve local citizens in this process including surveys and polls, town meetings, charettes and focused workshops. A plan that not only addresses the needs of the community but is developed with citizen input and through consensus will be more effective in creating a viable work plan for the future.

To assure that the public is given ample opportunity to comment on the components of the plan, the statutes require that one or more public hearings be held during the plan's preparation and, if the plan is prepared by the planning board or a special board, the local legislature must hold a public hearing within 90 days after receiving the proposed plan. Notice of all required public hearings must be given in a newspaper of general circulation at least ten calendar days before the hearing. During that time, a copy of the proposed plan or amendment must be made available, at the clerk's office, for the public to review.

If the proposed plan is prepared by the special board or the legislature, the planning board may be given an opportunity to review the proposal and make recommendations prior to action by the local legislature. The proposal must, however, be referred to the county for its review and recommendations. Additionally, prior to adoption, a comprehensive plan is subject to the provisions of the State Environmental Quality Review Act and the impacts of the plan must be considered and mitigated if required.

LIMITATIONS AND CONCERNS:

As discussed above, there are many benefits and values to good comprehensive planning. It does, however, take time, cost money and require great effort. Additionally, many good plans are created, and even adopted, only to lie dormant on a shelf in the clerk's office. This needn't be the case. The comprehensive plan can serve as an opportunity for the community to create a shared vision for the future and a strategy to accomplish that vision. It often requires updating of the local zoning ordinance and other land use regulations, as well as incorporating new ideas and techniques to achieve the community's objectives. Costs, however, may be reduced through strategic use of available funds and volunteers.

Adoption of a comprehensive plan is not required in New York, only encouraged by statute, and even if a plan is adopted, its provisions cannot be enforced against a property owner. Rather, the regulations enacted to implement the plan serve as the legal basis for realizing the locality's vision.

Land use regulations are often challenged as "not in accordance with a comprehensive plan." When there is a written, up-to-date plan, the court is best able to discern whether the

regulation is a permissible exercise of local authority. These plans are given great weight and courts are hesitant to invalidate a regulation adopted to implement such a plan. There is little doubt that a regulation that accomplishes an express objective of the comprehensive plan "substantially advances a legitimate public objective," the judicial standard by which challenged regulations are measured.

Difficulty can arise when a locality has no comprehensive plan or the plan is out-of-date. In these cases, the court looks for comprehensiveness of planning" by "examining all relevant evidence" which can include the municipality's previous land use decisions, as well as the zoning ordinance. Based on the information presented, the court will decide whether the challenged action was adopted in conformance with the community's "total planning strategy" or reflects "special interest, irrational ad hocery." Obviously, this approach allows the court great discretion. In the absence of a comprehensive plan, a regulation can appear to be arbitrary or capricious, simply a response to the complaints or concerns of neighbors.

Insuring that land use regulations advance the objectives of the comprehensive plan has been mentioned in numerous scholarly articles as the community's best insurance against claims that its regulations violate substantive due process guarantees or constitute a taking of property without just compensation.

CITATIONS:

1. The definition of a comprehensive plan and the suggested elements that it may contain, as well as all procedural requirements can be found at Village Law § 7-722, Town Law §272a and General City Law § 28-a.
2. Village Law § 7-704, Town Law § 263 and General City Law § 20(25) require that zoning be in conformance with a comprehensive plan. *Udell v. Haas*, 21 N.Y.2d 463, 288 N.Y.S.2d 888 (1968) provides an interpretation of the "in accordance with requirement." In this case the court was faced with a challenge to a land use regulation where no comprehensive plan for the community had been adopted.
3. In *Tilles Investment Co . Town of Huntington*, 74 N.Y.2d 885, 547 N.Y.S.2d 835 (1989) the Court of Appeals upheld the town's zoning as in conformance with the comprehensive plan.

REFERENCES:

1. Comprehensive Land Use Planning: Learning How and Where to Grow, John R. Nolon, 1993, available via the Land Use Law Center's web site on the Internet -- www.law.pace.edu.
2. The Practical Guide to Comprehensive Planning, New York Planning Federation, 1996, 488 Broadway, Albany, New York 12207; (518) 432-4094.

EFFECTIVE COMPREHENSIVE PLANNING

The Town of Pittsford, New York, located on the Erie Canal in Monroe County, was concerned with the loss of its farmland, open space and other natural resources. In 1995, it decided to update its comprehensive plan and create a vision for the town's future. With the help of many individuals and community organizations, the town drafted A Greenprint for the Future, "an action plan for protecting important resources It will guide public and private actions to a balanced blend of farmlands, open spaces and appropriate development."

The recently adopted plan identifies and recommends specific strategies including purchase of conservation easements, incentive zoning and other land use techniques to protect important resources in the town. In the words of the plan, "the Greenprint provides a comprehensive solution to the resource protection needs of the developing landscape of the town. When it is finished, the community of Pittsford can reflect on its commitment to the future and look with pride on the balanced blend of open space with development, on the working farm lands and active recreation centers, on the successful commercial areas and quiet preserves."