

The Regional Planning Commission
Involvement in the Zoning Process
And
The Role of Comprehensive Plans

*Philip Laurien AICP
Executive Director
Delaware County Regional Planning Commission
Delaware, Ohio*

I. THE COMPREHENSIVE PLAN

“Make no small plans; they have no magic to stir men’s blood and probably will not be realized. Make big plans; aim high in hope and work, remember that a noble logical diagram once recorded will never die, but long after we are gone will be a living thing, asserting itself with ever growing insistency. "Remember that our sons and grandsons are going to do things that would stagger us. Let your watchword be order and your beacon beauty.”

Quote: Daniel Hudson Burnham, Father of the American City Planning Movement

Preface- City and community planning in the United States is a fairly young child, birthed in the city beautiful movement of the turn of the century. Open space was the deliverance from the stuffy, overcrowded and disease filled tenements of American cities in the late eighteen hundreds. The city beautiful movement used parks and public open spaces as centerpieces of the future city, oases of respite from the hustle and bustle. After the First World War, the movement evolved from its landscape architecture revitalization roots to a legal instrument for planning for orderly future growth.

The intent of the city planning movement was to plan for the future. At first this was done by the creation of zones with separate land use regulations attached to each zone. In some communities, there was plan, which was the basis for the zoning map and resolution. However, in most communities, zoning itself was seen to be the plan.

Zoning was tested immediately, and found to be an appropriate legislative power. However, with regard to planning, Ohio has never taken the additional step to require land use planning as a mandatory underpinning of zoning or other land use controls.

The weakness in the Ohio Revised Code was studied and recommended for correction in 1978 by a committee of the Ohio General Assembly, however, no reforms were passed, despite an omnibus bill which would have included an emphasis on planning underlying and guiding zoning regulation and public investment, a recognition of state interests in land use control such as protecting environmentally sensitive areas, and preserving agriculture, together with an

acknowledgment of the intergovernmental context of planning.

A. City (ORC 713) Vs County (ORC 303) vs. Township (ORC 519)

1.) County and Township (ORC 303 and 519)

Current Ohio enabling legislation treats the need for a comprehensive plan the same. "For the purpose of promoting the public health, safety, and morals, the board of county commissioners [township trustees] *may, in accordance with a comprehensive plan, regulate* the location, height, bulk, number of stories, and size of buildings and other structures, including tents, cabins, and trailer coaches, percentages of lot areas which may be occupied, setback building lines, sizes of yards, courts, and other open spaces, the density of population, the uses of buildings and other structures including tents, cabins, and trailer coaches, and the uses of land for trade, industry, residence, recreation, or other purposes...and for such purposes may divide all or any part of the ... territory into districts or zones of such number, shape and areas as the board determines. All such regulations shall be uniform for each class or kind of building or other structure or use throughout any district or zone, but the regulations in one district or zone may differ from those in other districts or zones."

Note: The ORC does not specify for Counties or Townships what must constitute a Comprehensive plan. This stems from the 1922 Standard Zoning Enabling Act. Despite Ohio's early leadership in planning, we have not kept pace with the many reforms in land use law by more progressive states.

2. Cities and Villages (ORC 713.01)

The legislative authority of each city having a board of park commissioners *may* establish a city planning commission of seven members, expandable to up to 12 members. Where there is no board of park commissioners, the legislative authority of a city *may* establish a board of five members. Similar provisions are made for city manager and city commission types of governments.

"The planning commission established under 713.01 *shall* make plans and maps of the whole or any portion of the municipal corporation, and any land outside thereof, which,

in the opinion of the commission, is related to the planning of the municipal corporation, and make changes in such plans or maps when it deems it advisable. Such maps or plan shall show the commission's recommendations for the general location, character, and extent of streets, alleys, ways, viaducts, bridges, waterways, waterfronts, subways, boulevards, parkways, parks, playgrounds, aviation fields and other public grounds, ways and open spaces; the general location of public buildings and other public property; the general location and extent of public utilities and terminals, whether publicly or privately owned or operated, for water, light, sanitation, transportation, communication, power, and other purposes; and the removal, relocation, widening, narrowing, vacating, abandonment, change of use or extension of such public ways, grounds, opens spaces, buildings, property, utilities, or terminals. With a view to make the systemic planning of the municipal corporation, the commission may make recommendations to public officials concerning the general location, character, and extent of any such public ways, grounds, open spaces, buildings, property, utilities, or terminals. As the work of making the whole plan progresses, the commission may from time to time adopt and publish any part thereof, and such part shall cover one or more major sections or divisions of the municipal corporation or one or more of the functional matters to be included in the plan." Whenever the commission makes a plan of the municipal corporation, or any portion thereof, no public building or structure, street, boulevard, parkway, park, playground, public ground, canal, river front, harbor, dock, wharf, bridge, viaduct, tunnel, or other public way, ground, works, or utility, whether publicly or privately owned, or a part thereof, shall be constructed or authorized to be constructed in the municipal or planned portion thereof unless the location, character, and extent thereof is approved by the commission."

Note: this language, although more specific than that found in the county and township planning enabling legislation, still is lacking about the elements of a comprehensive plan, and how it should be used.

A 2/3 vote of the legislative authority may override the planning commission.

The Planning Commission shall be the platting commission.

3. ORC 713.10 "The districting or zoning of any municipal corporation or part

thereof may be based upon any combination of two or more of the purposes in described in sections 713.07 to 713.09" (restriction in location of buildings and structures, restrictions on height of structures, restrictions on bulk and location of buildings and structures, percentage of lot occupancy and set back building lines). Note: Despite the cities having more explicit powers and purposes for planning commissions, there is still no state enabling legislation which requires a comprehensive plan as a basis for zoning. However, if there is a plan, and the proposed zoning violates any provisions of it, a 3/4 vote of the legislative authority is required to pass it. (ORC 713.12)

Annotated Cases-

a.) Central Motors Corp. v. City of Pepper Pike (Ohio App. 1979) 63 Ohio App. 2d 34, 409 N.E 2d 258, 13 O.O. 3d 347, 17 O.O. 3d 240) states "because Ohio law does not require a municipality to adopt a comprehensive zoning plan as a condition precedent to the enactment of zoning legislation, a municipality has the discretion as to whether it will adopt a comprehensive zoning plan; failure to have a zoning plan which is separate and distinct from a zoning ordinance does not render a zoning ordinance unconstitutional."

b.) Columbia Oldsmobile Inc v. City of Montgomery (1990, 56 Ohio St. 3d 60)
"R.C. 303.02, regulating rural land use in counties and R.C. 519.02 regulating land use in townships *require* [court emphasis] that zoning regulations promulgated by counties and townships be in accordance with a comprehensive plan. However, there is no statutory requirement that cities such as Montgomery enact a comprehensive community plan pursuant to its power to zone under R.C 713.06 et seq."

B. The Regional Planning Commission Role in the Planning and Zoning Process

1. ORC 713.23-Powers and Duties of a Regional or County Planning Commission

(A) The Regional Planning Commission may make studies, maps, plans recommendations and reports concerning the physical, environmental, social, economic and governmental characteristics functions, services other aspects of the region or county, respectively. The commission may make such maps, plans recommendations and other reports as to areas outside the region or county concerning the physical, environmental, social, economic, and governmental characteristics , functions, services, and other aspects which affect the development and welfare of the region or county respectively, as whole or as more than one

political unit within the region or county.

(B) The duties of the planning commission include, but are not limited to:

- (1) **Preparing the plans, including studies, maps, recommendations and reports on:**
 - a.) Regional goals, objectives, opportunities, and needs and standards, priorities, and policies to reach such goals and objectives.
 - b.) Economic and Social conditions;
 - c.) The general pattern and intensity of land use and open space;
 - d.) The general land, water and air transportation systems, and utility and communication systems;
 - e.) General locations and extent of public and private works, facilities, and services;
 - f.) **General locations and extent of areas for conservation and development of natural resources and the control of the environment;**
 - g.) Long-range programming and financing of capital projects and facilities.
- (2) Promoting understanding of and recommending administrative and regulatory measures to implement the plans of the region;
- (3) Collecting, processing, and analyzing social and economic data, undertaking continuing studies of natural and human resources, coordinating such research with other government agencies, educational institutions, and private organizations;
- (4) Contracting with and providing planning assistance to other units of local government, councils of governments, planning commissions, and joint planning councils; coordinating the planning with neighboring planning areas; cooperating with the state and federal governments in coordinating planning activities and programs in the region;
- (5) **Reviewing, evaluating, and making comments and recommendations on proposed and amended comprehensive land use, open space, transportation, and public facilities plans, projects, and implementing measures of local units of government; and making recommendations to achieve compatibility in the region;**
- (6) Reviewing, evaluating, and making comments and recommendations on the planning, programming, location, financing, and scheduling of public facility projects within the region and affecting the development of the area;

- (7) Undertaking other studies, planning, programming, conducting experimental or demonstration projects found necessary in the developments of plans for the region or county, and coordinating work and exercising all other powers necessary and proper for discharging its duties.

2. Timing of zoning process in Townships and County 303.12, 519.12

- a.) **Submission of an application**, initiated by owners or lessees, by township trustees (or county commissioners) , by township zoning commission resolution (or county zoning commission resolution)
- b.) **Five days to submit to Regional Planning commission. RPC report and return to township/county.** Rural Zoning Commission or Township Zoning Commission hearing to be held not less 20 nor more than 40 days from the date of the application or the resolution. RPC must meet, recommend approval or denial (cannot table) within this time from for local zoning commission to meet.
- c.) Notice of the hearing to be given by publication in one or more newspapers of general circulation in each township affected at least 10 days prior to the hearing.
- d.) If less than 10 parcels are being rezoned, written notice shall be mailed by first class mail at least 10 days before the date of the hearing to all owners of property “within and contiguous to and directly across the street from such area proposed to be rezoned.”
- e.) If more than 10 parcels are being rezoned, no written notice is required, but the publication is required.
- f.) When can the application be tabled?
- g.) Can an application be tabled indefinitely?
- h.) **Zoning Commission hearing. RPC recommendation to be considered. Vote within 30 days of termination of hearing, approval or denial.**
- i.) Trustees or County Commissioners hearing, notice and vote .
- 1.) Within 5 days of zoning commission vote, transmit to Trustees or County commissioners.
 - 2.) Trustees/Commissioners hearing to be set no more than 30 days from date of receipt of zoning commission recommendation.
 - 3.) Notice/publication same as for Zoning Commission.
 - 4.) Within 20 days of the hearing, Trustees or Commissioners to vote to adopt or deny or modify the recommendation of the zoning commission. If Zoning

Commission denied or modified, requires unanimous vote.

j.) Referendum Process

- 1.) Zoning takes effect 30 days after adoption unless a petition is filed with trustees/county commissioners containing the signatures of qualified voters residing in the township equal to at least 8 percent of the total votes cast for the governor in the last preceding general governor's election. Must contain a number and title of the zoning amendment resolution, summary of its contents. SEE LANGUAGE IN ORC 519.12 and 303.12 and 3501.38. Approval of referendum by majority of voters required to take effect.

Within 5 days of the effective date of a zoning, the text and maps of the amendment shall be filed in the office of the county recorder by trustees or county commissioners.

C. Basis for Land Use Control: Policy, Map, or no plan at all?

1. **Policies** -A comprehensive plan must have policies for growth, public facilities, land use, densities (often tied to availability of public facilities), critical resources, and the socio-economic results of such policies. Some states, such as New Hampshire, actually define the components of a comprehensive plan, and require such plan in order to validate or adopt zoning. No plan, no power to zone.
2. **Map**- A map is often seen as the end product of the comprehensive plan. However, in today's increasingly complex and litigious society, the map is weak if it is not underpinned with the vision of the community, the goals and objectives, and the policies for development that created the map.

Example: Orange Township Comprehensive Plan (draft) map, Delaware County Ohio.

- a.) **No plan at all?** This should not be the option communities select as we approach a new millenium. As has been shown in the time line of the history of land use planning, there has been a definite movement towards more complex regulation, all of which needs to be underpinned with reasonable basis in order to prevent being an arbitrary rule which might rise to the level of a taking. nd map?

6.) Suggested elements for a comprehensive plan

- a.) A section outlining the goals and objectives of the plan, incorporating the vision of the community's growth for the ensuing 5-10 year period and a statement of

how the community should look and function when it is completely developed.

- b.) An Issues and Opportunities section outlining the development pressures and circumstances that are at the forefront of the planing process, and how the community can capitalize on these opportunities to shape its future.
- c.) A Citizen Participation section that outlines the significant and ongoing participation of elected and non-elected community members in drafting the comprehensive plan. This section should incorporate the principles, assumptions, and standards upon which the constituent proposals for the physical and socio-economic development of the community are based.
- d.) A Population section with current and projected population statistics for the community.
- e.) A Land Use section that takes into account existing and natural conditions, and the proposed location, extent and intensity of future land usage.
- f.) A Housing section that analyzes existing housing resources and addresses future housing needs.
- g.) A Utilities and Public Service section analyzing the need for and showing the present and anticipated future location of public and private utilities as may be needed for the growth of the community. Such section should address the policy aspects of utility expansion, capacity and density of population and concurrence of needed utilities with growth.
- h.) A Natural Resources, Conservation and Preservation section which identifies such critical natural resources as slopes greater than 20%, 100 year floodplains, wetlands, prime agricultural yielding soils, soil suitability for septic systems, and the location and development of significant mineral resources. A Conservation segment of this section should identify preservation policies.
- i.) A Transportation section defining the location and types of facilities for all

modes of transportation required for the efficient movement of people and goods. Such section should also anticipate a future network of potential transportation improvements as well as the policies that guide them.

- j.) A general **Economic Conditions** section that identifies the basis for the local economy and how the strength or weakness of said economy may affect the achievement of the comprehensive plan.
- k.) A **Community Facilities** section, showing the location, type, and need for educational or cultural facilities, historic sites, libraries, hospitals, fire and police stations and other related facilities, including their relation to the surrounding area.
- l.) A **Recreation section** which shows existing recreation facilities and which addresses future recreation needs.
- m.) A **Comprehensive Land Use Plan Map** at scale which is readable and which graphically depicts all of the recommendations and policies with regard to land use in the entire community.
- n.) An **Implementation section** making recommendations for zoning amendments to conform to the comprehensive plan.
- o.) **Appendices** or separate reports where appropriate that contain the underlying scientific and statistical data for the comprehensive plan and its constituent elements.