A Citizen's GUIDE TO Planning & Zoning in VIRGINIA

A Publication of the Chesapeake Bay Foundation's
BaySavers™ Institute

CHESAPEAKE BAY FOUNDATION
Save the Bay

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Contents

The Chesapeake Bay Foundation (CBF) is the foremost conservation organization dedicated solely to saving the Chesapeake Bay. Its motto, Save the Bay, defines the organization's mission and commitment. With headquarters in Annapolis, Maryland, state offices in Maryland, Virginia and Pennsylvania, and a varied group of educational centers and programs, CBF works throughout the Chesapeake's 64,000-square-mile watershed. Founded in 1967, CBF is a 501(c)(3) not-for-profit organization. CBF is supported by more than 110,000 active members (40,000 in Virginia) and has a staff of 150 full-time employees. Approximately 95 percent of CBF's $19 million annual budget is privately raised.

CBF members are working to ensure a better, healthier Bay watershed for future generations. Won't you join us?

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Join CBF today by logging onto our website at **savethebay.cbf.org** or by calling 1-888-SAVEBAY.

Acknowledgments

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How to Use this Guide

Land use plans and zoning ordinances, and more importantly the laws that govern their application, can sometimes be confusing. The purpose of this guide is to help Virginia citizens participate in land use decisions at the local level by describing how comprehensive plans, zoning ordinances, and subdivision rules work. Reading this guide from start to finish may not be the best way to use the guide. Go over the table of contents to determine where you are likely to find what you are looking for. For instance, you may already know what a zoning ordinance is, but you want to know who has the authority to change it. In that case you would go directly to "Chapter 2: Legal Authority and Limitations," to find your answer.

Chapters 1 through 3 explain land use plans and ordinances. Chapter 4 deals with land use planning as it relates to water quality through the Chesapeake Bay Preservation Act and the Virginia Erosion and Sediment Control Law. Chapter 5 describes opportunities for citizens to get involved in the process. And finally, Chapter 6 suggests tools that can help manage growth as an answer to sprawling development.

The appendices may be the place to start for some readers. "Appendix I: Frequently Asked Questions" includes the types of questions most local land use planners answer on a daily basis. "Appendix II: Governmental Contacts," includes state, regional, and federal office phone numbers, addresses, and websites. "Appendix III: Making the Grade on Growth" is a reprint of a popular Chesapeake Bay Foundation (CBF) publication that provides citizens a useful media tool for grading a locality's response to growth.

As you use this guide, remember that laws concerning land use may change, and government offices may move or consolidate. To suggest changes or report errors, please contact the Virginia Land Planner at:

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Periodic updates to this publication will be done to keep it as relevant and accurate as possible.

Chapter 1

Local Land Use Tools

Plans, Permits, and Ordinances— What are They and What Do They Do?

In Virginia, land use planning and zoning is the responsibility of local governments: a city, county, or town. The **principal local planning tools** are: **the comprehensive plan, zoning ordinance, and subdivision ordinance.** The authority for each is set forth in detail in state law in the Code of Virginia. Plans and ordinances can work together to provide a rational program for growth, development, and conservation. An effective land use planning program depends on the successful interaction of plans and ordinances.

PRINCIPAL PLANNING TOOLS

The **comprehensive plan** is a guide or recommendation for the use of the zoning ordinance and, to a lesser extent, the subdivision ordinance. It suggests, in general terms, proposed uses for land within the locality, as well as the proposed location of utilities and public facilities such as schools, fire stations, and parks. The plan also makes long-term projections of population growth.

The **zoning ordinance** actually establishes the rules governing the use of land. The zoning ordinance divides a locality into different zoning districts and spells out allowable uses for each district such as agriculture, industry, or commercial use. The zoning ordinance is not a mere recommendation as is the comprehensive plan. In the case of a conflict concerning land use between the comprehensive plan and the zoning ordinance, the zoning ordinance controls.

The **subdivision ordinance** governs the process for dividing land from larger parcels into lots. While the subdivision ordinance is entirely separate from the zoning ordinance, the zoning ordinance establishes the minimum lot size for each zoning district.

THE COMPREHENSIVE PLAN

Every locality in Virginia is required to have a comprehensive plan (Va. Code Sections 15.2-2223 to 15.2-2232). The goal of the plan is to guide and coordinate different local planning and land use actions. Most importantly, the plan is to serve as a guide for implementing the zoning ordinance, controlling the location, intensity, and design of residential, commercial, and industrial development. It also serves to guide decisions about the placement of public facilities such as schools, roads, and sewer lines.

Although required by law, the plan is only a guide. **Virginia does not require that land use and zoning decisions be consistent with the plan.** By itself, the plan cannot control the use of a given parcel or the location of public facilities. **Implementation of the plan occurs through zoning decisions and decisions about the location of public**

facilities. When consistently followed, the plan can provide an important legal foundation for land use decisions. When not consistently followed, courts will be unlikely to allow a locality to rely on the plan as a defense for its actions. **Very few localities in Virginia faithfully implement their comprehensive plan.**

The plan is a projection of land use needs and trends projected forward for twenty years. State law requires review, but not necessarily revision, of the plan every five years. The plan typically takes into consideration natural resources (both as assets and limitations), economics, population characteristics, growth trends, development patterns, and community wishes. Comprehensive plans have the general purpose of guiding development to best promote the health, safety and general welfare of the community.

Because the plan is a long-term tool intended to shape land use in a locality over time, it should be left in place for a number of years for it to be effective. **Constant amendment of the plan undermines and limits its effectiveness.**

Some localities constantly amend their plans (one Northern Virginia locality recorded over 75 amendments to its comprehensive plan in one year) to accommodate requested rezonings that would otherwise be inconsistent with the plan. Such frequent amendments mean that the plan, rather than guiding land use, simply follows the fluctuations of the land market and the speculations of individual landowners.

Other localities seem to be constantly in the process of undertaking major overhauls of their plan. In these localities the plan seems never to be settled; here again, the plan fails to establish patterns that provide long-term, reliable guidance for land use.

Contents of the Plan–The plan consists of a **text**, which usually describes the resources of the community and its history, population, and economy. The text typically has a section that describes the designation of areas for various types of public and private development and use. In addition to the text there is usually a **plan map (or maps)** that shows the **generalized boundaries** of the different land use areas within the locality and the location of existing and planned public utilities and facilities. Comprehensive plans may also include the following elements: transportation facilities, historic districts, and a capital improvements program.

Virginia law requires that the local Planning Commission develop the plan and any amendments to it. **The Planning Commission must hold at least one public hearing (after public notice) before taking final action to adopt or amend a plan.** The Planning Commission's action of adoption or amendment constitutes a formal recommendation to the local governing body. Final action to approve the plan or amendments is the responsibility of the local governing body.

The Planning Commission and the local governing body may hold one or more "work sessions" as they review the proposed plan or amendments. Public comment at these work sessions is often sought, but Virginia law does not require that the public be heard at such sessions.

The governing body must hold a public

hearing, after providing public notice, before taking final action on the Planning Commission's formal recommendation regarding the plan.

THE ZONING ORDINANCE

Except for those localities covered by the Chesapeake Bay Preservation Act (see chapter 4), Virginia state law does not mandate that a locality adopt a zoning ordinance. A zoning ordinance divides a locality into different districts or "zones." For each district or "zone," the ordinance designates allowable uses as either "by right" or as "special exceptions."

The zoning ordinance consists of 1) a text, which contains definitions, procedural rules, and regulations pertaining to the uses allowed within each zoning district; and, 2) a map, which shows the boundaries of each district. **Unlike the general boundaries of a comprehensive plan, the boundaries in a zoning ordinance must be specific enough to be located by a land surveyor.**

A landowner may use his land for only those things permitted "by right" or for which a special exception is granted. To engage in other uses, the landowner must seek an amendment to the zoning ordinance, which the locality has the authority to approve or deny. A local government may not deny a landowner's right to use his land for a use classified as "by right" in a zoning ordinance.

A zoning ordinance may identify various districts as "residential," "business," "commercial," "industrial," "agricultural," or "open space." Often there are several levels of intensity of use within each district. For example, a residential district may allow single family, single family attached (townhouses), or multi-family (apartment) use.

"By Right" Use—in an area zoned residential with the designation R1, "by right" uses may include single- family or two-family dwelling units, churches, cemeteries, community parks, home offices, and horticulture. In an area zoned as a rural district, with the designation RU, "by right" uses may include agriculture, single-family and two-family dwelling units, churches, dairies, forestry activities, mobile home parks, and kennels.

Special Exceptions–Local governments grant or deny special exceptions on a case-by-case basis. Decisions take into account the specific characteristics of the site, the surrounding land uses, and other issues. **The locality may grant or deny a permit for a special exception and may subject it to conditions to ensure compatibility with surrounding land uses.**

An example of a special exception might be a small convenience store in a residential neighborhood. The conditions for the special exception might include limited hours of operation, controlled lighting and landscaping on the site, and limits on the size of the store, parking area, etc. Theoretically, these conditions are designed to minimize the impact of the special exception and its potential for conflict with surrounding land characteristics and uses.

Special Exception—special exceptions in a residential district may include day care centers, golf courses, country clubs, convenience stores, or professional offices. A special exception in a rural district may include farmers' markets, restaurants, sand and gravel operations, auto services, or light manufacturing.

Special exceptions are popular with localities because they allow local governments to tailor land use decisions on a case-by-case basis. This type of evaluation increases the comfort level of both the public and elected officials. Some localities have used special exceptions extensively to control residential development in rural zones. The Virginia General Assembly enacted legislation limiting the authority of localities to use special exceptions to control single-family development. State law allows a locality to decide whether the governing body or the Board of Zoning Appeals issues special exceptions.

Rezonings–A landowner may request a local governing body to change the zoning of his land. The local governing body has broad discretion over the approval or denial of the request to "rezone" the land.

The Planning Commission must first review the rezoning request and provide public notice of the request and a public hearing. The Planning Commission has 60 days from its first meeting after the filing of a rezoning request to make a recommendation to the governing body. Failure to take action within this period is deemed a recommendation of approval.

The governing body must make a decision on the rezoning request within one year of the acceptance of the filing of the request. If the local government does not take final action on the request within one year, the landowner may seek an order from the local circuit court directing the local governing body to take action. The court cannot tell the local governing body how to act, only that it must act. **The local governing body's decision to grant or deny the rezoning request is a legislative (not a judicial or administrative) act.** A landowner, or other affected party, has 30 days from the date of the final action of the governing body to appeal to the circuit court the denial of the rezoning request.

Proffers–In general, under Virginia law a locality may not impose conditions on a rezoning. However, if the rezoning applicant "proffers" (offers) conditions in writing, the local governing body may incorporate the conditions into the rezoning. **These conditions are called "proffers" and are a system unique to Virginia.** Proffers are voluntary and to be enforceable the governing body may only accept, not impose, them.

Proffers generally fall into the following categories:

- To restrict the uses in the rezoning category
- To donate real property for public use—land for a park or playground
- To provide for the construction of public improvements—roads, utilities
- A cash offer for any or all of these items

Proffers are conditions designed to help mitigate anticipated negative impacts associated with a rezoning request. For example, proffers may restrict the use of the property once the rezoning is granted. Proffers often consist of a cash payment to help pay for new public facilities necessitated by the rezoning. A landowner may also proffer to donate land to the locality for public use. Local authority to approve proffers differs from locality to locality.

Proffers can provide a significant benefit to the public. However, they have significant drawbacks as well. Proffers can divert localities from focusing on whether the rezoning request is consistent with the comprehensive plan or the needs of the community. On major developments, for example, a developer may offer a large array of proffers that hide the underlying problems of the rezoning. In addition, once a locality accepts a proffer (even though it has not been performed), state law makes it difficult for the locality to rezone the land without landowner consent.

THE SUBDIVISION ORDINANCE

Unlike zoning ordinances, subdivision ordinances are mandatory under Virginia law. "Subdivision," unless otherwise defined by a local ordinance, is the division of land into three or more lots of less than five acres each for the purpose of transfer of ownership or development, or any division of land where a new street is constructed (see Code of Virginia, Section 15.2-2201). A local ordinance may define "subdivision" more broadly: for example, any division of land into two or more lots.

Subdivision ordinances control the dimensions of lots, the extent and nature of required utilities, plat details, sight distance for entrances, and the coordination of streets within and next to the subdivision. **A locality can condition approval of subdivision plats upon compliance with these requirements, including the construction of streets to specific standards, the provision of utilities, etc.** Virginia law limits such conditions to those directly related to offsetting the impact of the new subdivision.

A locality may require a landowner to submit a "preliminary" subdivision plat. Preliminary plats allow the developer and the locality to study the development proposal and to become familiar with the requirements likely to be imposed as part of the final approval. After the locality approves the preliminary plat, the landowner must submit a final plat for approval.

People often think of a subdivision as a residential development. In fact subdivision ordinances apply to divisions of land for any use—residential, commercial or industrial—so long as the division is within the definition of "subdivision."

The Approval Process—Unlike a zoning decision, approval or denial of a subdivision plat is not a legislative action. The local governing body does not have to take final action on a subdivision plat. **Final action is an administrative (not a legislative or judicial) action with most final decisions being made by the local planning staff.** In a few localities, the Planning Commission reviews and acts on subdivision plats. While Virginia law does not require a public hearing before final action, a public hearing may be required by local ordinance.

Virginia law does require that all adjoining landowners receive notice of a proposed subdivision. Localities must act within 90 days to approve or deny a preliminary plat and within 60 days to approve or deny a final plat. Failure to act within these time frames is grounds for the landowner to seek an order for action from the local circuit court.

If a locality denies an application for subdivision, it must provide the landowner with a written statement of the reasons for denial. The landowner may appeal a denial to the Planning Commission; similarly, an adjoining landowner can appeal an approval of a subdivision plat.

Bonding—Virginia law allows localities to condition subdivision approval upon the posting of a bond (a kind of insurance policy). The purpose of the bond is to guarantee that the roads, schools, or other required improvements are completed within a certain time. If the landowner fails to construct the required improvements within the period of time required in the bond, the locality may "call" the bond. When this happens, the bonding company either arranges to complete construction of the improvements, or pays over the amount of the bond to the locality. The locality then arranges to complete the construction.

Family Divisions—State law exempts "family divisions" from the subdivision process. A "family division" is a division of land for the purpose of selling or making a gift to members of the landowner's family. Family members include spouses, children, parents, nieces, nephews, aunts and uncles.

The locality can require that lots created as part of a family division remain in the hands of the family member for a "reasonable" period of time (a year or more) before a transfer out of the family. This is to limit abuse of the exemption where the real intention of the landowner is to use a temporary transfer to a family member to circumvent the requirements of the subdivision ordinance.

Special Protection for Recorded Subdivision Plats—State law provides that a recorded final subdivision plat shall be immune from any changes in local ordinances for a period of five years after it is recorded, regardless of whether the landowner has started any development of the site. This "safe harbor" provision protects developers from changes in the subdivision ordinance as well as the zoning ordinance.

Chapter 2

Land Use Administration

Who Are the Decision Makers and How Does the Process Work?

THE LOCAL GOVERNING BODY

In Virginia the "governing body" of the locality makes zoning and comprehensive plan decisions. For a county, the governing body is the Board of Supervisors; for a city it is the City Council; and for a town it is the Town Council. The governing body is the local legislature. The local governing body has final authority over all legislative decisions such as the comprehensive plan and zoning ordinance. It also controls, through staff appointments, how local land use ordinances are administered. Only the courts can overturn a legislative decision by the governing body.

Towns and cities control the land use (through zoning) within their boundaries. Counties control the use of land outside of town and city boundaries.

Governing bodies are elected to two- to four-year terms. Often the terms are staggered so that the entire governing body is not up for election at the same time. Members of the governing body may be elected "at large" (by all of the voters of the jurisdiction) or by "magisterial districts" (in counties) or "precincts" (in towns and cities). The governing body establishes the boundaries of magisterial districts and precincts. The boundaries are reconsidered every ten years based on census data. This ensures that each district includes approximately the same number of people and meets the requirements of voting rights laws.

The responsibilities of the governing body are very broad. Local government authority in Virginia is much more centralized than in many states. Governing bodies adopt all local ordinances and amendments, including the comprehensive plan and the zoning and subdivision ordinance. Local governing bodies develop and adopt a budget for local operations (including schools), authorize expenditures, and authorize all public borrowing. They set the tax rates and authorize property tax assessments. They hire the chief administrator of the locality (depend-

ing upon the structure authorized by state statute this could be a county executive or administrator, or a city or county manager), who typically hires the planning director and planning staff.

THE PLANNING COMMISSION

In addition to the local governing body, each locality has a Planning Commission. Planning Commission members are appointed by the governing body and serve four-year terms.

The Planning Commission is responsible for the development of the comprehensive plan and proposed plan amendments. Planning Commissions also review zoning ordinance amendments and sometimes review proposed site plans and subdivision plats.

Planning Commissions are not legislative bodies. They **make recommendations to the local governing body on legislative matters** such as the adoption and amendment of the comprehensive plan and zoning ordinance. The review and approval of site plans and subdivision plats is administrative, but Planning Commissions can take final action on those matters when authorized by the governing body.

THE BOARD OF ZONING APPEALS

Virginia law requires that every locality with a zoning ordinance must have a Board of Zoning Appeals, or BZA. The local circuit court judge appoints members of the Board of Zoning Appeals to ensure their independence as an appeal board.

The BZA is responsible for hearing appeals from orders, requirements, decisions, or determinations made by the zoning administrator or other local government staff. The BZA is also responsible for granting "variances" from zoning regulations. In some localities, the BZA is authorized by the governing body to issue special permits or special exceptions under the zoning ordinance.

The BZA does not have the authority to review and approve changes to the comprehensive plan or zoning ordinance or to review and approve subdivision plats or site plans.

THE ZONING ADMINISTRATOR

Virginia law requires that every locality with a zoning ordinance must have a zoning administrator. The local governing body appoints the zoning administrator. The zoning administrator is usually a full time local government staff position. The zoning administrator interprets and enforces the zoning ordinance. The zoning administrator, not the governing body or planning commission, is responsible for interpreting the terms of the zoning ordinance. These decisions may be appealed to the BZA and ultimately to the local circuit court.

THE PLANNING STAFF

The planning staff is responsible for providing advice and technical assistance to the Planning Commission, the local governing body, and the BZA. Planning staff reviews all landowner applications for comprehensive plan or zoning ordinance amendments. The Planning staff also reviews subdivision plats and site plans to ensure that they comply with local regulations.

The planning staff supports the work of the governing body, planning commission and zoning administrator. Planning staff may, however, be delegated considerable authority by these officials, particularly with respect to review and approval of site plans and subdivision plats. **In many localities planning staff make the final decision on site plans and subdivision plats unless their decision is appealed to the circuit court.**

The planning staff has no authority over changes to the comprehensive plan, zoning ordinance or subdivision ordinance. The governing body makes these changes. **Planning staff, however, usually drafts amendments and make recommendations to the local governing body. This work gives the staff a substantial amount of influence over local planning.**

THE COUNTY ATTORNEY

The governing body appoints the county or city attorney. There is no requirement that a locality has an attorney, and the job may be part-time.

Local government attorneys advise the governing body, planning commission and planning staff on legal matters, including violations of local planning regulations.

Although local government attorneys are not elected and have no formal role in the planning process, local government attorneys can have considerable influence on local land use decisions. **The advice of the local government attorney normally carries great weight with the governing body, planning commission, and staff.**

THE COURTS

Violations of local land use regulations are considered "misdemeanors" and are minor criminal infractions. These types of violations are heard by the local district court. The district court is a court "not of record," which means that no official record is made of its proceedings and although there can be no appeal of its decisions, someone who loses in district court can request an entirely new trial before the local circuit court. Because circuit courts are "courts of record," their decisions can be appealed. The Virginia General Assembly appoints district court and circuit court judges for eight-year terms.

Circuit courts hear challenges to the actions of the locality by landowners and others affected by the locality's actions. They include challenges to the legislative actions of the local governing body, appeals of decisions made by the BZA, and the failure to act upon site plans and subdivision plats within the period required by the Virginia Code.

The Virginia Supreme Court may hear appeals from the circuit courts involving local land use decisions. It is the final authority on all matters pertaining to the interpretation and application of state law. **The Virginia Supreme Court's decisions on state law matters cannot be appealed.** However, Virginia Supreme Court decisions involving questions of federal law can be appealed to the U.S. Supreme Court. Questions involving the scope of local planning authority conferred by the Virginia Code are state law issues. Issues relating to the constitutionality of local land use decisions are likely to involve federal law.

Chapter 3

Legal Authority and Limitations

The comprehensive plan, zoning ordinance, and subdivision ordinance comprise the basic tools of local planning. The power to use these tools represents a part of the "police power" of the Commonwealth of Virginia, which delegates some of this power to the locality. This delegation of power occurs through the actions of the General Assembly in passing laws. These laws give authority to local government. The term "enabling authority" describes these laws.

The police power is one of the most essential and basic of governmental powers. The police power is the power by which the community protects itself from the potentially harmful acts of its individual members, including corporations and other entities. **The police power is the power to regulate individual activity for the health, safety and welfare of the public.**

Private property in America is held subject to the police power of the state. A number of legal restrictions, however, limit the police power. These restrictions are found in the United States Constitution, the Constitution of Virginia, and in certain judicial rules.

CONSTITUTIONAL LIMITATIONS

The United States and Virginia Constitutions contain virtually identical provisions that restrict the exercise of the police power. As the courts have interpreted these provisions to mean essentially the same things, this chapter focuses on the U.S. Constitution. There are, however, two constitutions and therefore two separate potential sources of limitations on the police power. It is always possible for the courts to interpret the provisions of these documents differently in the future. If that occurs, landowners will seek protection under the interpretation that offers the most protection.

What is a taking?

THE PROHIBITION AGAINST "TAKINGS"

The Fifth and Fourteenth Amendments of the U.S. Constitution prohibit the taking of private property for public use unless the government pays the property owner "just" compensation. This important provision (known as "the takings clause") has a long and confusing history. For many years it meant that the government could not physically appropriate or occupy private

property without justly compensating the owner.

A taking occurs when governmental action "takes" private property for governmental purposes. This can occur through an actual physical taking (e.g., an exercise of eminent domain) or a constructive taking (e.g., a regulatory action). When a taking occurs, the government must pay the property owner the value of the property it has taken.

In 1887 the U.S. Supreme Court said that a mere *regulation* of the use of property through the police power could never be considered a "taking" within the meaning of this Amendment because the property owner still had his property and could use it for all lawful purposes (i.e. anything not prohibited by the regulation). In 1922, in the famous case of Pennsylvania Coal Company v. Mahon, the Supreme Court reversed its prior ruling. The Court ruled that it was possible for a regulation (as opposed to a physical appropriation or occupation) to result in a taking within the meaning of the Constitution. Under this ruling, whether a regulation amounts to a taking depends upon the extent to which the regulation diminishes the value of the regulated property. It does not matter whether the property owner is still in possession of the property. This ruling still stands.

What is the remedy for a taking?

For years, the sole remedy for a property owner whose property had been "taken" through regulatory action (as opposed to a "physical appropriation") was for the court to declare the regulation invalid. In 1986, the Supreme Court ruled that the Constitution **mandates compensation for any taking regardless of whether it is a regulatory taking or a physical appropriation.** Since that time, **few regulatory actions have been found to be regulatory takings in the United States, and none in Virginia.** Where regulatory takings have been found, the cost to the government agency responsible for the regulation can be very substantial.

When is a regulation likely to be considered a taking?

The courts are vague about when a regulation is considered a taking. The U.S. Supreme Court in one case said that courts need to consider takings challenges individually, based on the specific facts of that case, and that it is not possible to lay down a general rule about what constitutes a taking.

The Supreme Court, in recent years, has ruled that a regulatory taking occurs whenever 1) a regulation denies a landowner all economically viable use of his land or 2) a regulation fails to substantially advance a legitimate public purpose.

In 1994 the Supreme Court ruled that where a land use regulation denied a landowner all economically viable use of his land, compensation was mandatory. In that case the Court allowed two exceptions to the compensation requirement: 1) where the use regulated was found under state "common law" principles either to be a "nuisance," or 2) not considered "real property" (for example, land below the "mean high tide line"). **Few local land use regulations come close to denying landowners all economically viable use of their property.** This decision is likely to have only limited application at the local level.

How do courts measure the economic impact of a regulation to determine if a taking has occurred?

The courts to date have evaluated the economic impact of a regulation by examining the entire property interest regulated, not just the portion of the property affected by the regulation. For example, in southeast Virginia several years ago, a landowner claimed that a wetlands regulation prevented him from using two acres of a forty-acre parcel. The landowner claimed that he was denied all economically viable use of the two acres and was therefore a taking. The Virginia Supreme Court held that the wetland regulation had to be viewed in the context of the entire forty acres, not just the two acres affected by the regulation. The court said the regulation affected only 5 percent (two out of forty acres) of the value of property and did not remove all economically viable use, and so no taking occurred.

In 1997, **the Virginia Supreme Court ruled that if a regulation reduces a private property value below what the owner originally paid, or denies the owner the right to use the property as he had originally intended, it does not necessarily constitute a taking as long as some other economic use remains.** The court also ruled that the loss of anticipated value tied to a speculative use of the property could not constitute a taking.

SUBDIVISION AND SITE PLAN EXACTIONS

Exactions are physical appropriations of property (including money) given in exchange for development approval. In Virginia, exactions are usually part of the site plan or subdivision plat approval process.

Exaction—a locality may require a landowner to provide a right of way for a road widening, pay for an intersection improvement, or provide for a pedestrian path or playground.

While exactions are "takings" (because they are physical appropriations of private property for public use), the approval of the project is the compensation for the exaction.

New federal standards for exactions require that local governments have the authority to grant or deny the requested development. An additional federal standard focuses on the relationship of the exaction and the development approval. **To ensure that the exaction actually offsets the impact of the development, the U.S. Supreme Court requires that an exaction be at least "roughly proportional" to the impact of the development.** This requires an evaluation of impacts so that exactions can be tailored to offset the impact.

These rules apply to most of the conditions normally imposed on site plans and subdivision plats by Virginia localities. They also may be applied to conditions imposed on special exceptions.

DUE PROCESS

In addition to the takings clause, the 5th and 14th Amendments of the U.S. Constitution provide that no one shall be denied their property without "due process of law." There are two types of due process. The first is known as "**procedural due process.**" The other is "**substantive due process.**"

Procedural due process—Procedural due process requires that a person be given notice of a government action that will affect his property before the action takes place. It also requires that the property owner be given an opportunity to be heard by the government before it acts, and that a duly constituted elected body approves the action.

Virginia fulfills its procedural due process requirements through the public notice and hearings procedures contained in planning and zoning law. The Constitution of Virginia further requires **a recorded vote of the governing body**, showing how each member voted, for any legislative action by a local government.

Substantive Due Process—Substantive due process examines the effect of a regulation on the property owner (versus fairness of the process of enacting the regulation). Substantive due process requires, first, that there be a legitimate public purpose behind a regulation and, second, that there be a substantial relationship between the regulation and the purpose. For example, a regulation that prohibits construction on mountaintops to prevent flood damage would probably violate the requirement of substantive due process because it would be hard to establish a substantial relationship between mountaintop construction and flood damage on the mountaintop.

The original remedy for a violation of substantive due process was the invalidation of the regulation. Today, a denial of substantive due process is typically treated as a taking, and compensation is the mandatory remedy.

EQUAL PROTECTION

The 14th Amendment to the U.S. Constitution prohibits states from denying citizens the equal protection of the laws. There is no equivalent to equal protection in the Constitution of Virginia. The Virginia Supreme Court has interpreted the due process clause of the Constitution of Virginia to incorporate the equal protection requirement.

The equal protection clause makes it unconstitutional to discriminate based on race, creed, color, or national origin. **For local planning, the equal protection clause requires that people in similar circumstances be given equal treatment by local zoning and planning laws.** For example, if a landowner obtains a rezoning from an agricultural district to a residential district to allow construction of a new subdivision, another landowner in the agricultural district with similar land should be able to obtain the same kind of rezoning.

Equal protection requires fair treatment. The constitutional requirement of equal protection has undermined many zoning decisions because it has been difficult for local governments to treat applicants in similar circumstances equally. Courts in Virginia usually characterize local government actions that deny equal protection as being "arbitrary and capricious" (see below). **As a practical matter, equal protection means that past decisions set a standard that future decisions must meet.**

ARBITRARY AND CAPRICIOUS

Frequently, when a Virginia court strikes down a local planning decision, it characterizes the decision as "arbitrary and capri-

cious." The phrase "arbitrary and capricious" has become the definition for the denial of substantive due process or the denial of equal protection, or both. An arbitrary and capricious regulation cannot provide substantive due process because an arbitrarily or capriciously applied regulation cannot substantially advance a legitimate public purpose. Similarly, an arbitrary and capricious regulation cannot provide equal protection because an arbitrarily or capriciously applied regulation typically denies equal treatment to similarly situated persons.

THE DILLON RULE

All Virginia localities obtain zoning and planning authority through legislation enacted by the General Assembly (called "enabling legislation") of the Code of Virginia Title 15.2.

The General Assembly enacts enabling legislation for zoning and planning, and the Virginia courts interpret the scope and intent of the legislation. The interpretation of enabling law has been crucial to the extent and effectiveness of local planning in Virginia. Long ago, the Virginia courts adopted a rule it uses to interpret zoning and planning legislation. It is known as the "Dillon rule." The Dillon rule is named after Judge John Forrest Dillon, who wrote a book in 1890 that described a role for the judicial interpretation of municipal authority.

The Dillon rule, as applied in Virginia, provides that all local government authority, including zoning and planning authority, must be expressly granted by the General Assembly. The opposite of the Dillon rule is "home rule." Under home rule, a locality possesses all local powers that the state has not legislatively denied to them. Efforts to eliminate the Dillon rule in Virginia have failed. The use of the Dillon rule denies localities certain important powers, such as, the authority to provide for transferable development rights or "adequate public facilities" ordinances.

VESTED RIGHTS

In 1998, the General Assembly approved legislation that protects the "vested rights" of landowners from zoning changes. Prior to 1998, various court decisions ("common law") protected vested rights. The 1998 legislation expanded the court's pre-existing judicial protections.

Under the new law, where 1) a local government has granted a landowner an "affirmative" approval of a development project, and 2) the landowner relies in "good faith" on the affirmative approval, and 3) the landowner incurs extensive obligations or incurs extensive expenses in diligent pursuit of the project, subsequent changes in local zoning cannot affect his right to use his land consistent with the original "affirmative" approval. His rights are "vested."

Affirmative approvals are defined as: 1) approvals of proffered rezonings; 2) rezonings to a specific use or density; 3) approval of a special permit or special exception with conditions; 4) approvals of zoning variances by boards of zoning appeals; 5) approval of a preliminary site plan or subdivision plat where the landowner diligently pursues the final plat or plan within a reasonable period of time; and 6) approval of a final site plan or subdivision plat.

LEGISLATIVE SAFE HARBORS

The General Assembly has created several "safe harbors" for landowners to protect them from changes in local zoning and planning.

Site Plans and Subdivision Plats

A landowner's right to proceed with development consistent with an approved final site plan or subdivision plat is protected from any change in local regulations for a period of five years from the final approval date or subdivision plat recordation.

Proffered Rezonings

When a rezoning has been approved subject to proffers, and the proffers include either the dedication of real property to the public or a cash payment, the land may be subject to a subsequent rezoning only if the landowner applies for it. The locality may initiate a change in the zoning only if the locality can demonstrate that there has been a substantial change in circumstances affecting the public health, safety and welfare.

Judicial Rules

One of the most important ways that courts affect local planning and zoning authority is through a concept known as the "burden of proof." The burden of proof in a trial is the responsibility for presenting evidence to support your position. The courts shift the burden from one party to the other (from the plaintiff to the defendant) as a trial progresses.

The court establishes how much evidence must be produced in order for a side to "carry" its burden of proof. Carrying the burden of proof is to a trial what hitting the ball over the net is to a tennis match. Adjusting the responsibility for the "weight" of the burden of proof is like raising or lowering the height of the net.

Courts categorize the decisions of local governments regarding land use and development as either legislative or administrative. Legislative decisions are essentially the making of policy. **In Virginia, the adoption and amendment of comprehensive plans, zoning ordinances, rezonings, and special exceptions are all considered to be legislative decisions.** Administrative decisions implement policy. Administrative decisions include, for example, site plan approvals, subdivision plat approvals, issuance of building permits, and certificates of occupancy.

Legislative Burden of Proof

When a landowner challenges the constitutionality of a legislative action (typically a rezoning request denial), the courts presume that the local government's action is valid. This is known as the "**presumption of legislative validity.**" This places the burden of proving invalidity on the landowner challenging the legislative action. The landowner must make a "prima facie" ("on its face") case that the local government's action is invalid. However, once the landowner makes such a case, the burden of proof shifts to the locality. The locality must respond with enough evidence to make the question of validity of its action at least "**fairly debatable**" among "**reasonable men.**" The fairly debatable rule is a very difficult one for a landowner to overcome. It is akin to the burden of proof of a prosecutor in a criminal case who must show that the

accused person is guilty beyond a "reasonable doubt."

Administrative Burden of Proof

The courts presume that an administrative decision is "correct." This puts the burden of proof on the landowner to introduce evidence that the decision is incorrect. Once a prima facie case of incorrectness has been made against the locality, the locality must introduce considerably more evidence of "correctness" to win an administrative case than it must introduce in a legislative case.

The court decides the issue of correctness by a "preponderance of the evidence" standard. The preponderance of evidence is the majority of credible, relevant evidence. The side in the suit that introduces the majority of credible, relevant evidence to support its position will win, according to this standard.

The courts defer less to localities in deciding administrative cases than legislative cases because they feel that there is nothing uniquely legislative about the applications of policy, as opposed to the making of policy.

Downzonings

A downzoning is an amendment to a zoning ordinance that changes the zoning and reduces the development potential of land. **Downzonings are known as either "piecemeal" or "comprehensive."** A "piecemeal" downzoning is one that affects a small number of parcels in a seemingly haphazard manner. A "comprehensive" downzoning affects a large area and considers adjoining land characteristics, circumstances, and plans.

Localities have broad discretion to enact comprehensive downzonings. Piecemeal downzonings are upheld if there is at least "fairly debatable" evidence that there has been a change in circumstances affecting the public health, safety, or welfare in the vicinity of the downzoned property. The change in circumstances must have occurred prior to the downzoning in order to justify it. Piecemeal downzonings are also upheld when there is evidence of fraud in obtaining the original zoning or a clerical mistake in portraying the original zoning.

The Virginia Supreme Court has expressly ruled that the election of a new governing body does not constitute a change in circumstances sufficient to justify a downzoning. Circuit courts have ruled that downzoning amendments to the text of a zoning ordinance are comprehensive downzonings.

Authority to Deny Rezoning Requests

Landowners (and those contracting to buy land) constantly seek changes in existing zoning so that it fits their personal plans for use of the property. Some localities appear to believe that they cannot legally deny a landowner's rezoning application. **This is a myth. The Virginia Supreme Court has ruled that localities possess broad discretion to grant or deny rezoning requests.**

A locality must consider three factors in the decision to deny a rezoning application: 1) whether the requested rezoning is reasonable; 2) whether the existing zoning is unreasonable; and 3) whether denial of the rezoning would deny the landowner equal protection.

When the requested zoning is unreasonable, (e.g., a gas station in a residential area), the locality may deny the application. Even if the application is reasonable, if the existing zoning allows "an economically viable use" the locality may deny the application. If a rezoning applicant can show that the locality has approved a similar rezoning request on similarly situated property, the court may require that the locality grant the rezoning based on principles of equal protection.

Legal Standing and the Appeals Process

When the law allows a person to go to court to challenge a governmental action, it is said that the person has "standing to sue." A very narrow class of persons (including corporations) is allowed to sue to challenge a local government land use decision under Virginia law. Standing is limited to landowners whose land is actually the subject of some subdivision or zoning action. The owners of adjoining land have the right to challenge the action if they can show financial harm or a clear health threat.

Statutory provisions are limited almost exclusively to providing opportunities for a landowner whose land is the subject of a local subdivision or zoning action. **Citizens must rely upon the very limited opportunities for standing provided by court decisions, and there are very few in the area of local planning.** The adoption or amendment of comprehensive plans is not considered to affect landowner rights, so these actions are generally not susceptible to challenge in court.

Chapter 4

Planning for Water Quality

In the past twenty years there has been an increased awareness and recognition of the role that land use activities play in water quality. Originally, zoning and land use planning was designed and implemented primarily for the health, safety and welfare of residents and to make areas more orderly and livable. With increased problems in nonpoint source pollution and the increase in growth and suburbanization, efforts have been made to address the connection between land use and water quality. In Virginia, land use planning as it relates to water quality focuses on erosion and sediment control and the Chesapeake Bay Preservation Act.

THE CHESAPEAKE BAY PRESERVATION ACT

The Virginia General Assembly enacted the Chesapeake Bay Preservation Act in 1988. **The purpose of the Act is to improve the water quality of the Chesapeake Bay and its tributaries through measures addressing nonpoint source pollution and the relationship between local land use planning and water quality protection.** To accomplish this, the Act requires that water quality protection measures be added to local land use plans and ordinances by local governments in "Tidewater Virginia."

Tidewater Virginia—The Chesapeake Bay Preservation Act defines "Tidewater Virginia" as the 46 cities and counties that border on tidal waters of the Bay and its tributaries. The 43 towns that are located in the counties are also included. **All local governments within this area are required to comply with the Act and regulations.**

Tidewater Virginia Localities:

Counties: *Accomack, Arlington, Caroline, Charles City, Chesterfield, Essex, Fairfax, Gloucester, Hanover, Henrico, Isle of Wight, James City, King George, King and Queen, King William, Lancaster, Mathews, Middlesex, New Kent, Northampton, Northumberland, Prince George, Prince William, Richmond, Spotsylvania, Stafford, Surry, Westmoreland, and York.*

Cities: *Alexandria, Chesapeake, Colonial Heights, Fairfax, Falls Church, Fredericksburg, Hampton, Hopewell, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Suffolk, Virginia Beach, and Williamsburg.*

Towns: *Ashland, Belle Haven, Bloxom, Bowling Green, Cape Charles, Cheriton, Claremont, Clifton, Colonial Beach, Dumfries, Eastville, Exmore, Hallwood, Haymarket, Herndon, Irvington, Kilmarnock, Melfa, Montross, Nassawadox, Occoquan, Onancock, Onley, Painter, Parksley, Port Royal, Quantico, Saxis, Smithfield, Surry, Tangier, Tappahannock, Urbanna, Vienna, Warsaw, West Point, White Stone, and Windsor*

The Chesapeake Bay Local Assistance Board

Passage of the Act created a nine-member citizen Board, known as the Chesapeake Bay Local Assistance Board, or CBLAB. Board members are appointed by the governor, serve staggered four-year terms and geographically represent each one of the regional planning districts in Tidewater Virginia. Board members represent many interests and areas of expertise, including agriculture, the building and real estate industries, forestry, environmental management, and local government. **The Board is responsible for the implementation of the Act. It promulgates and manages the regulations that establish the criteria for local implementation of the Act. It also provides technical and financial assistance to local governments in the development, adoption, and implementation of the Act and its regulations.** The Board also has the authority to take administrative and legal actions to ensure local government compliance with the Act and its regulations.

The Chesapeake Bay Local Assistance Department

While the Act is administered by the Board, the day-to-day management and technical assistance aspects are carried out by the Chesapeake Bay Local Assistance Department, also known as CBLAD. Created in 1988, the Department is a state agency. Assistance provided to local governments by CBLAD staff includes interpretation of the regulations, reviews of local comprehensive plans and ordinances for compliance, training for local government staff, and review of land use development plans.

Local Government Programs

All localities affected by the Act must develop local programs consistent with the regulations promulgated by the Board. The Chesapeake Bay Preservation Area Designation and Management Regulations were first adopted by CBLAB in September 1989. The regulations establish the framework for local government programs with flexibility for recognizing unique local conditions and features. Recent amendments to these regulations were adopted in December of 2001.

To comply with the Act and regulations, first the local government must designate and map Chesapeake Bay Preservation Areas, or CBPAs. CBPAs are lands that 1) have the potential to impact water quality most directly, and 2) lands that protect water quality and that without proper management have the potential to degrade water quality. Under the Act, these two land types are known as **Resource Protection Areas (RPAs)** and **Resource Management Areas (RMAs)**, respectively.

RPAs are sensitive lands at or near the shoreline that protect water quality because of their ecological and biological functions. RPA lands filter pollutants before they reach creeks or rivers. RPA lands include: tidal wetlands; tidal shores; nontidal wetlands connected by surface flow and contiguous to tidal wetlands or tributary streams; other lands necessary to protect water quality; and a minimum 100 foot vegetated buffer landward of the other RPA components.

Development within the RPA is restricted to water-dependent uses such as marinas, piers, and dry docks, and the re-development of previously developed areas. A required 100-foot buffer is the most important component of the RPA. Vegetated buffers help to filter pollutants from runoff, as the vegetation slows the rate of the water as it runs off the land, thus allowing it to percolate through the soil. The 100-foot buffer also protects the other sensitive features in the RPA, and provides a transition area between adjacent uses and the RPA.

RMA are land types that if improperly used or developed have the potential for causing water quality impacts or for diminishing the effectiveness of the RPA. RMA lands may include highly erodible or permeable soils, steep slopes, floodplains, and nontidal wetlands not protected through the RPA designation.

Land use and development is not necessarily limited in RMAs. Development may take place as long as it is allowed by local zoning and it occurs using the performance standards established by the Act's regulations. Many jurisdictions throughout the area affected by the Act have designated all lands as preservation areas, either RPA or RMA.

In addition to the RPA or RMA designations, localities may elect to designate portions of RPAs and RMAs as Intensely Developed Areas, or IDAs. The IDA designation was developed to recognize areas where, because of previous commercial, residential, and industrial development, little of the natural environment remains. The designation is not mandatory, but localities may use it in order to encourage redevelopment and infill. In order for a locality to designate an IDA, existing development must be concentrated and must meet at least one of the following: 1) more than 50 percent of the land area must be covered by impervious surface; 2) the area must have public water and sewer; and 3) the area must contain housing densities of 4 or more units per acre.

Performance Criteria

The Chesapeake Bay Act regulations contain performance criteria designed to improve water quality that are to be applied to CBPAs. In the second step of local program design and implementation, local governments must implement the performance criteria within CBPAs. This is done through inclusion of the criteria in local zoning and subdivision ordinances.

Once the CBPAs are established and the performance criteria implemented, local governments must adopt or amend their

Performance Criteria

- Minimize area of impervious cover
- Minimize area of land disturbance
- Preserve existing vegetation
- Pump out septic tank every five years and for all new development, require 100 percent reserve septic tank drainfield
- For land disturbances exceeding 2,500 square feet, require erosion and sediment control measures including single family homes and septic tank and drainfield installations
- No-net increase in stormwater pollutant loadings for new development and a 10 percent reduction in stormwater pollutant loadings for redevelopment
- Plan review for development that exceeds 2,500 square feet
- Conservation plans required for agricultural lands
- Best management practices required for forestry
- Wetland permit evidence prior to any clearing or grading for development
- Regular maintenance for all best management practices

comprehensive plans, zoning ordinances, and subdivision ordinances to reflect water quality protection consistent with the goals of the Act.

Tidewater localities vary in their approach and status of their local Bay Act programs. For specific information about a local program, it is best to contact the local government directly. The Chesapeake Bay Local Assistance Department is also available to answer questions or interpret regulations.

EROSION AND SEDIMENT CONTROL

Erosion and sediment control is another tool used to manage land use and its relationship to water quality. While all land erodes naturally at some rate, major problems occur when land is cleared and prepared for residential, commercial, or industrial development. Sediment loadings in waterways can cause significant damage and, in fact, continue to cause major problems for the Bay and its tributaries. In particular, soil loss from construction sites can deposit large amounts of sediments in receiving waters, causing loss of dissolved oxygen and clarity, and increased turbidity. An average construction site erodes at a rate of more than 100,000 tons per square mile per year. This is 20 times greater than erosion from agricultural cropland and 2000 times greater than erosion from forestland. Erosion and sediment control is designed to mitigate soil losses on construction sites and reduce both on-site and off-site environmental damage.

Erosion and sediment control is addressed through the Virginia Erosion and Sediment Control Law (VESCL), which provides the authority for the state program. The erosion and sediment control program establishes procedures and practices in the effort to control erosion from land-disturbing activities. A level of consistency is provided by state guidelines and regulations, which are contained in the Virginia Erosion and Sediment Control handbook.

The Division of Soil and Water Conservation (DSWC) within the Virginia Department of Conservation and Recreation administers the program. **Counties, cities and towns are authorized to administer a local erosion and sediment control program that is consistent with the state program.** Erosion and sediment control programs are commonly referred to as "E&S" programs. Local E&S programs have jurisdiction over land disturbing-activities except for state projects, which DSWC oversees.

All local programs must be consistent with the VESCL, and the DSWC regularly conducts reviews of local programs. **At the local level, no one may engage in any land-disturbing activity until a soil and erosion control plan has been submitted to the locality and the locality has reviewed and approved the plan.** All construction activity taking place on the land must comply with the approved plan. Regional staff from DSWC and the local E&S inspector conduct periodic site visits to make sure that the plan is followed during construction.

It is the responsibility of the landowner to prepare and submit the erosion and sediment control plan. If violations occur, the locality and the state DSWC have the authority to issue stop work orders and fines to ensure that the plan is carried out properly. For more specific information on a local erosion and sediment control program or development site project, contact your local government or the nearest Soil and Water Conservation District (SWCD) office.

Chapter 5

Opportunities for Involvement in the Planning Process

Public participation in the planning process essentially falls into two categories: shaping decisions before they are made, and challenging decisions after they have been made. Virginia law and the planning process provide extensive opportunities for the public to shape decisions before they are made. The law offers a very limited opportunity to challenge decisions after they have been made.

Public Participation–Planning decisions fall into two general categories: legislative and administrative. The opportunities for public participation are substantially greater for legislative decisions than they are for administrative decisions. Localities have broad discretion in making legislative decisions and very limited discretion in making administrative ones.

LEGISLATIVE DECISIONS

All legislative decisions involving land use planning require public hearings before the Planning Commission and the governing body.

The Comprehensive Plan–The law requires the review and update of a comprehensive plan every five years. The local governing body initiates these reviews.

Legislative decisions include:

- the adoption or amendment of ordinances
- the adoption and amendment of the comprehensive plan
- the issuance of special exceptions

Comprehensive plan review requires a great deal of research and solicitation of public input. The opportunities for public participation in the comprehensive plan review process are generally extensive. Localities usually make an effort to involve the public and may establish neighborhood review committees or citizen work groups to help shape the plan.

A local government may also entertain requests for a comprehensive plan amendment in order to accommodate a specific development proposal. In these types of comprehensive plan reviews, opportunities for public involvement are more limited.

In either case there must be public hearings before both the Planning Commission and the governing body.

The Zoning Ordinance–The governing body can initiate the decision to adopt a zoning ordinance or to amend it as part of a

general policy change or in response to changes in the comprehensive plan. The majority of rezoning requests originate with landowners and developers who wish to use their land in a manner not allowed under existing zoning.

Local governing bodies have broad discretion in the adoption and amendment of zoning ordinances. **In theory, zoning amendments should be consistent with the recommendations of the comprehensive plan; however, there is no legal requirement that the comprehensive plan be followed.** Landowners whose properties are affected by zoning changes must receive prior written notice of the proposed change. Landowners whose property adjoins parcels proposed for rezoning are required to receive written notice as well. **Public hearings are required for amendments to the zoning ordinance.**

Localities may not impose conditions on a rezoning. A locality may approve or deny a rezoning, but it cannot condition the rezoning.

Proffered Rezonings–Proffers provide an opportunity to tailor rezonings to specific projects and parcels. Proffers also increase the opportunities for both the locality and the developer to be responsive to public concerns. (For an in-depth discussion of proffers, see Chapter One.)

Proffers must originate with the rezoning applicant. **Proffers must be made in writing *prior* to the public hearing before the governing body (e.g., the Board of Supervisors). There is no requirement that the rezoning applicant offer proffers prior to the Planning Commission hearing.**

Rezoning applicants often do not make proffers until after the Planning Commission hearing. This hearing gives the applicant an opportunity to gauge the extent of opposition and assess the nature of any concerns. The applicant can then devise a set of proffers to address these issues. **For this reason, it can be important for the public to make a strong showing at the sometimes-overlooked Planning Commission hearing.**

Proffers afford a significant opportunity for proactive citizen involvement. Citizens can suggest proffers they feel would improve a rezoning proposal. Proffers provide an applicant and citizens a means of addressing impacts of concern to the public in a predictable and enforceable way.

How proffers work—A local zoning ordinance may allow both antique stores and fast food restaurants "by right" in a B-1 zone. A landowner wishes to establish an antique store and applies to rezone his parcel to B-1. The public opposes the B-1 rezoning because of the potential for a fast food restaurant. The applicant proffers that the only use provided for in the B-1 zone allowed on his property would be an antique store. Without the proffer, the only way the governing body could ensure that a fast food restaurant would not be built would be to deny the application.

Citizen Initiated Rezonings–Landowners or developers generate most rezoning applications. Citizen groups, however, may initiate zoning amendments and comprehensive

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plan amendments. Citizen-generated zoning amendments can take a great deal of time and effort. Citizens must be prepared for some resistance from the planning staff, which may view itself as the special guardian of the status quo. Staff schedules overwhelmed with developer requests (many of which have statutory deadlines attached) can also make planning staff less than enthusiastic about citizen-generated amendments.

Citizens can increase their leverage immensely by gaining support for the rezoning proposal from one or more members of the governing body. For example, citizens can convince a member to seek a resolution from the governing body to establish a study committee to review the proposed change. Such committees have official status and can be assigned planning staff assistance. It is difficult for a group of elected officials to refuse a well- thought-out request made by a serious group of constituents. In several localities in Virginia, citizens have initiated ambitious zoning amendments, establishing programs such as historic districts, mountain protection zones and purchase of development rights for land conservation.

Special Exceptions–Unlike a regular zoning decision, **a locality can impose conditions on the issuance of a special exception.** The special exception approval process opens opportunities for public participation. Neighboring landowners and neighborhood associations are able to address the probable impacts of a proposed special exception. **Public comments and suggestions can provide a solid basis for the planning commission and governing body to develop the conditions for approval.**

ADMINISTRATIVE DECISIONS

Variances–Variances are the "relief valve" for property owners wishing to be exempted from the terms of the zoning ordinance. State law requires that any locality adopting a zoning ordinance must provide for the issuance of variances by a Board of Zoning Appeals (see Chapter Two). A variance creates a site-specific exception to the provisions of a zoning ordinance in order to avoid imposing "undue hardship" on a landowner.

The applicant for a variance normally files a request with the zoning administrator or directly with the Board of Zoning Appeals. Notice to adjoining landowners is required, and **the public can object to the issuance of variances.**

Site Plans and Subdivision Plats–State law mandates that all Virginia localities have a subdivision ordinance. Subdivision ordinances primarily regulate required improvements when land is divided into lots (see Chapter One). Typical subdivision requirements include, for example, setbacks for building areas from lot boundaries, utility requirements, standards for the construction of internal subdivision roads, and requirements for improvements to the streets that provide access to the subdivision.

At the preliminary stage, the developer must provide basic information about the site and an effort to comply with the relevant ordinance. Some localities provide for both a preliminary and a final review of site plans or subdivision plats.

Preliminary and final reviews increase opportunities for citizen and developer negotiation of final conditions for the site.

Generally, the local planning staff conducts these negotiations. The staff is normally charged with the primary responsibility for administering the site plan and subdivision ordinances.

Other government agencies are often involved in reviewing and commenting upon site plans and subdivision plats. Such agencies include the Virginia Department of Transportation, the local health department, the local service authority if public utilities are going to be required, the planning department, and the local city or county engineer's office (if any). The planning department typically coordinates this review.

All of the reports and recommendations of these and any other agencies involved become part of the public record available for review prior to final action. These reports can be an invaluable resource for citizens concerned about a specific proposal. Although the practice may vary from locality to locality, copies are typically available from the planning staff.

The site plan and subdivision plat approval process is not a legislative decision. **Therefore, the opportunities for public participation are limited.** There is no statutory requirement for notification upon the filing of a site plan or subdivision plat. Some localities do notify adjoining landowners of such filings, but there is no statutory requirement for this. There is no requirement for public hearings on site plans or subdivision plats, although some localities do provide for hearings.

Public participation in the review and approval of site plans and subdivision plats depends upon citizen vigilance. Neighbors must pay attention to what is going on around them. Although the opportunities for formal public participation are extremely limited, **citizens (particularly neighbors and neighborhood associations) should involve themselves in the review of site plans and subdivision plats.** Adjoining property owners often have special knowledge of the site and the kind of impact likely to occur from the proposed project. This type of information can be valuable to staff in reviewing the plan and provide long-term protection to neighbors as well.

SHAPING PLANNING DECISIONS

Individuals, citizen groups, special interest groups, neighborhood or homeowners associations may participate in shaping land use planning decisions. The most important thing to know is when and how to participate effectively.

Citizen Groups–Citizen groups can operate on a local, regional, or statewide basis. Local citizen groups are more likely to participate in the planning process. **Citizen groups can be very effective in shaping decisions and providing input to the Planning Commission and local governing body on land use issues.** While some local government officials sometimes disregard them, citizen groups often provide important information about the impacts of proposals as well as a perspective on proposals that would otherwise be left out of the process.

Neighborhood Associations–Neighborhood associations normally focus on planning decisions that have an impact on land in the vicinity of their neighborhood.

Because of this focus it is often easier for a neighborhood association to mobilize its members (who may view various proposals as a direct "threat" to their homes) than a citizen group with more generalized concerns.

While developers and elected officials may criticize the "**NIMBY**" ("**not in my back yard**") response to proposals, **such responses are frequently quite effective.** People motivated by NIMBY issues can be very persistent and energetic in expressing their views. This kind of participation can be an extremely important influence on elected officials, particularly those representing the affected neighborhoods.

Individuals–Individuals speaking only for themselves and independent of a citizen group or neighborhood association have less influence in a public forum, unless there are a number of like-minded individuals who appear at the same meeting. Individuals who represent a large employer or a substantial financial force or institution in the community have an extra margin of influence. Nevertheless, any individual who is well prepared with relevant facts can influence the outcome of a planning decision, sometimes (in a close case) significantly. **Individuals who are well informed and armed with facts can often be very influential "behind the scenes" by meeting individually with decision makers early in the process.**

Working with the Developer–It is important for citizens to involve themselves in the land use decision-making process as early as possible. The first opportunity for involvement is with the developer, because it is the developer who generates most site-specific proposals. When early information about a project of concern to the public is available, **citizens should consider approaching the prospective developer directly.**

An increasing number of developers actually seek out public input, particularly from neighboring landowners. Developers in many communities recognize that one of the most difficult hurdles a project may face is strenuous public opposition. Favorable public opinion is an important step for the developer in obtaining approval of development plans.

Working with a developer early in the process can be effective simply because the developer may not yet have much invested in the project. Early in a project's life, changes in design, for example, may be relatively inexpensive and easy to undertake. If such changes can win public endorsement of the project, a developer may consider them well worth the price.

A citizen organization can be quite effective at this stage. Project endorsement from a neighborhood association or citizen group can generate good will toward approval of a project. This kind of authority gives neighborhood associations and citizen organizations leverage to demand concessions from a developer. In exchange for the concessions, the organization may have to agree to support the project, or at the very least, not to oppose it. **It is important for citizen organizations to gain enforceable agreements from a developer because once approval has been given to the project, the organization's leverage will be gone.**

Confrontation with a developer rarely helps citizens at the early stage. Confront-

ation makes any subsequent negotiations more difficult and may cause the developer to refuse to share important information with the public.

It may be beneficial for a citizen group to have the advice of an attorney or land use planner. Sophisticated developers know that if a locality grants a rezoning, the locality can still impose a number of requirements through the site plan or subdivision approval process. Some developers may "concede" site plan or subdivision amenities to a citizen organization knowing that the amenities must be provided anyway.

As part of the development review process, a local government can require requested changes made by citizens for buffers, screening, road improvements and other features used to minimize impacts. When the requests are reasonable and address the development proposal, most elected officials will gladly require and approve them.

Working With the Planning Staff–It is important for citizens and citizen groups to develop good working relationships with the local planning staff. The staff is usually the best source of general planning information about a locality, as well as the best source of information about specific planning proposals. The planning staff typically develops proposed planning decisions, such as comprehensive plan or zoning ordinance revisions. Planning staff review site-specific development proposals as well.

Citizens sometimes believe that the planning staff is biased in favor of developers. It is important to remember that planning staffs work each day with developers to review development proposals and answer technical questions. This is an important part of their job. It is in the economic best interests of developers to cultivate good relations with planning staff that review and recommend approval or denial of their projects. **Most planning staff members are professionals and work hard to maintain a neutral stance, doing their job for the benefit of the whole community.**

Citizens who approach the staff with a belligerent attitude and intend to derail a development proposal shouldn't be surprised if the staff seems defensive and uncooperative. Citizens who approach the staff about the nature of a proposal, the decision process, or reasonable concerns should expect a positive response from the staff. Citizens are an important source of information for the planning staff as the staff evaluate the impacts of a given proposal.

It is usually pointless to oppose a project that the locality has no authority to deny, such as a development with "by right" zoning. In such cases, citizens are more effective by pointing out specific impacts on the neighborhood or community, which the approval process can address with conditions.

Working With Officials–An important opportunity for citizens to shape land use planning decisions lies in working with local elected and appointed officials. **Most local officials welcome input from citizens** and will carefully consider that input as they make their decisions.

The Local Governing Body–The most accessible people in the decision-making chain (in theory) are also the final decision

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makers: the elected members of the governing body. They have the final say in legislative decisions. Also, some administrative decisions can be appealed to (and appealed by) the governing body.

As the elected representatives of the community, members of the governing body should always be available to hear citizen concerns from groups and individuals. Regardless of their personal feelings, elected officials should be willing to answer questions, obtain information, and address all reasonable concerns of constituents. **Citizens need to meet with their elected officials to voice their concerns throughout the project approval process.**

The Planning Commission–Citizens also need to become familiar with the appointed officials on their Planning Commission. These officials often work very hard and receive little recognition. They often welcome the opportunity to meet with citizens.

The Planning Commission takes the first official "bite at the apple" in the decision making process. **Its recommendations can give weight to citizen concerns.** The Planning Commission does not make the final decision, however, and the governing body can ignore its recommendations. Still it is important that citizens address their concerns to the Planning Commission, as it is an important component in the land use decision process.

The Virginia General Assembly–Members of the Virginia House of Delegates and Senate have no official role in local planning decisions. However, as members of the General Assembly, delegates and senators are in the position to change land use law, because the General Assembly writes the rules for local government.

It is important for citizens to pay attention to the work of the General Assembly. Land use policy decisions made during a General Assembly session affect local land use planning authority. Members of the General Assembly are generally very willing to meet with constituents, both during and after the General Assembly session. Failure of citizens to work regularly with members of the General Assembly concedes to those whose interests may be very different from those of the general public.

How to Participate Effectively–Citizens sometimes don't get involved in local planning decisions until they are truly outraged. This can lead to confrontational meetings, which are rarely effective. Anger hardens positions, shuts down the flow of information, and may even make a proposal worse.

- **A low-key, factually based, and focused approach works best.** Everyone in the decision-making process needs specific suggestions addressed to specific features of a proposal.
- **There is strength in numbers.** It is important that as many supporters of a position attend the public hearings as possible. The greater the number of people expressing the same or at least similar opinions, the more likely those opinions will carry the day. Having supporters stand briefly at the end of their spokesman's remarks can effectively demonstrate the strength of an audience.
- **Be brief, clear, and concise.** Presentations at public hearings are most effective when they are short and factual. Prior to a public hearing, a citizen organization should make its position clear to the staff, Planning Commission, and governing body. If this has been properly done, it is sufficient at the public hearing simply to remind the officials of the key points of concern and the recommended remedies.

Seeking Elected or Appointive Office–There is no better way to shape planning decisions than to serve as a member of a local governing body or Planning Commission. In addition, there are often a number of committees and subcommittees created to deal with specific planning matters whose members are appointed from the general public.

The quality of local planning is a direct result of the quality of the local officials who make the planning decisions. Under Virginia law, local officials must be 18 years of age and residents of the community where they plan to serve.

Those not interested in running for office but who are concerned about their community should work for the election of someone they think will do a better job. Ultimately, in a democracy, the public has no one to blame for bad governmental decisions but itself.

THE FREEDOM OF INFORMATION ACT

Access to accurate information about land use and development proposals is key to success in shaping good planning decisions. Normally, obtaining this information requires no more than a visit to the local planning office. Planning staff can provide development applications, zoning information, the comprehensive plan, and other relevant ordinances, all of which are public records. Considerable data about the development site, including utilities, school capacities, topography, soil quality, the adequacy of roads, etc., is also available through the planning office.

The availability of public records and accessibility of meetings of public bodies such as the Planning Commission and governing body are controlled by the Virginia Freedom of Information Act (Virginia Code Sections 2.2-3700 to 2.2-3714).

What Records Are Available?–The general rule is that all public records are available to the public. Under Virginia law, "public record" means all writings and recordings that consist of letters, words or numbers, or their equivalent, set down by handwriting, typewriting, printing, Photostatting, photography, magnetic impulse, optical or magneto-optical form, mechanical or electronic recording or other form of data compilation, however stored, and regardless of physical form or characteristics, prepared or owned by, or in the possession of a public body or its officers, employees or agents in the transaction of public business.

There following are "exclusions" to this rule:

- Personnel employment records
- Working papers and correspondence of the mayor or chief executive officer of the locality
- Written advice of the local government attorney and any other records protected by attorney-client privilege
- Papers produced specifically for use in litigation or an administrative investigation involving the locality
- Records regarding the siting of hazardous waste facilities if disclosure

would detrimentally affect the negotiating position of the locality

- Appraisals and cost estimates of real property subject to a proposed purchase or sale by the locality

If a locality refuses to make a record public, it must identify the exclusion that applies.

Requesting Public Records–The Virginia Freedom of Information Act does not require that the request be in writing but does require that the request for public records identify the desired records "with reasonable specificity." Verbal requests should produce the records sought. **When there is resistance to a request, it is advisable to put the request in writing to establish the exact nature and time of the request.**

The locality has five working days to respond to a request. Normally, it will produce the records promptly. If the locality believes the record is covered by an exclusion, it must give written notice of denial of access.

Occasionally a locality will be unable to locate the record or determine it is impractical to provide the record. The locality must then respond in writing explaining why it cannot produce the record.

If the locality fails to respond within five days, it is considered a violation of the Act. The person who made the request may petition the local circuit court for a "writ of mandamus" directing the locality to produce the requested documents or to explain what provision of the Act excuses the disclosure.

The locality may impose reasonable charges for "actual costs" incurred in producing the requested records.

Meetings of Public Bodies–All meetings of public bodies must be **open** to the public. **Public notice of the time, date, and location of all such meetings must be provided at least three working days prior to each meeting. Notices of meetings must be posted in a prominent location where such notices are typically found. Citizens may annually file a written request with each public body for personal notification of all public meetings.**

At least one copy of all agenda packets for the meeting and all materials furnished to the public body must be made available to the public. Minutes of meetings must be taken, except for committees or subcommittees of the governing body (unless a majority of members of the governing body are members of the committee or subcommittee; if that is the case, minutes must be taken).

"Public body" includes any authority, board, bureau, commission, or agency of the Commonwealth or of any political subdivision of the Commonwealth, including cities, towns and counties; municipal councils, governing bodies of counties, school boards and planning commissions. It also includes any committee or subcommittee of the public body created to perform delegated functions of the public body or to advise the public even if such committee or subcommittee has private sector or citizen members.

There are exceptions to the "open meeting" rule. The exceptions most relevant to

local planning matters include the following:

- interviews with candidates for employment or appointment, including discussions relating to such candidates.
- discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of public property.
- protecting the privacy of individuals in personal matters not related to public business.
- discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.
- consultation with legal counsel, staff or consultants pertaining to actual or probable litigation where open discussion might jeopardize the position of the locality.
- consultation with legal counsel employed or retained by the public body (however, this does not permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter).
- discussion of strategy (including all meetings with an applicant) regarding the siting of a hazardous waste facility or to consider terms and conditions for the location of such a facility if the governing body finds that an open meeting would have an adverse effect on the position of the locality.

If a locality fails to comply with the Act with respect to public meetings, a citizen may seek an order called a writ of mandamus from the local circuit court.

Developer Response to Citizen Participation: "SLAPP" Suits–In recent years, some developers and landowners have responded to citizen participation by challenging the citizens in court. **The suits are sometimes referred to as "SLAPP" suits—"strategic litigation against public participation."** The principal objective is to intimidate citizens and discourage them from opposing development proposals. Legal challenges to citizens have been in the form of 1) counter-claims to those citizens who have filed in court and 2) suits against citizens who simply speak against a proposal at a public hearing.

"SLAPP" suits are uncommon and rarely successful. However, they can cost citizens a considerable amount of money for legal fees incurred in defending the suit. The General Assembly has discussed ways to prevent this type of abuse of the legal system but to date has taken no action.

"SLAPP" suits are costly to pursue and are unlikely to result in damage awards. Despite the unlikely success of "SLAPP" suits, citizens need to be sure of their facts and avoid statements and actions that are intended to harass a developer. **Planning law may seem to be weighted toward developer interests, but citizens must remember that the fundamental concept underlying the planning decision process is citizen participation and citizen involvement.**

Chapter 6

Halting Sprawl Development through Growth Management

When the consumption of land occurs at a rate faster than population growth, the result is sprawl development. Congested highways, overcrowded schools, poor water quality and loss of important farmlands, forest, and natural habitats characterize sprawl development. "Growth management" refers to the control of the location, timing, pattern, and amount of growth so as to curb the negative effects of sprawl.

As the Virginia Supreme Court has recognized, Virginia localities possess the authority to manage growth. Generally, the problems associated with growth management stem not from a lack of local authority but from a lack of political will at the local level to exercise existing authority.

As noted in Chapter One, the principal tools for land use are comprehensive plans, zoning ordinances, and subdivision ordinances. Every locality is required to adopt a comprehensive plan as a guide for public facilities and land use. Local governing bodies decide on the content of the plan and ultimately on the land use policies as implemented through all applicable ordinances. Growth management occurs when these documents combine to (1) direct growth within specified boundaries, (2) promote efficient use of land and public facilities, and (3) protect open space. Citizen involvement begins with an evaluation of the comprehensive plan.

EVALUATE THE COMPREHENSIVE PLAN

The first step is to contact your local planning department to determine the status of the comprehensive plan. State law requires periodic reviews (every five years), and your locality may be in the process of reviewing or updating the plan. Comprehensive plans under review present opportunities to influence how your locality will manage growth. Obtain a copy of the current comprehensive plan and any draft plans currently under review. Copies are typically for sale at your locality's planning department or treasurer's office and should

also be available at your local library. At this time request to be placed on the Planning Commission schedule mailing list. This will keep you informed of upcoming meetings and work sessions along with their topics and agendas for discussion. While examining the plan ask yourself the following:

1. Does the plan direct growth to specific locations designated as growth areas?

2. Does the plan contain a land use map that designates desired land uses and residential densities on a parcel specific basis?

3. Does the plan identify prime agricultural land, environmentally sensitive lands, and open space with goals and directives for preservation?

Utilize Appendix III (Making the Grade on Growth) to create a report card that assesses your locality's effectiveness on controlling growth. A certain amount of research is involved that will require contacting local planning department officials. It is important to convey to the planning staff your support and appreciation for the work they do. If you establish a positive relationship, you are more likely to receive thorough and responsive information. The completed report card may be utilized in a number of ways to encourage your locality to curb sprawl: It can be used as an educational tool about growth for citizens and public officials, a media tool for drawing attention to growth issues, a basis for holding local officials accountable, and as a tool for creating pressure to change growth policies. After an evaluation is completed, the next step is to mobilize support for growth management.

Mobilize Support for Growth Management–Search for active community groups that may already exist. Citizen groups within your locality may already be tackling the issue of sprawl. They typically incorporate the issue into their organization's name (e.g., Voters to Stop Sprawl or Citizens for Responsible Growth). Such groups frequently publish a newsletter or bulletin that may be available at your local library or coffee shop, or you may know a longtime resident who can tell you about the group.

If you cannot find an established group, form your own using contacts in your community. You may be surprised to learn how many people share your interests and concerns about sprawl. In forming your own group, observe democratic principles, elect officers and committee chairmen, and set priorities as a group (not on an individual basis). You may want to divide the group into sub-groups to work on different issues such as land use, transportation, and open space.

Whether you have joined an existing organization or helped to form a new one, share the report card on growth with the group. If you have not completed the report card, enlist group members in helping you to do so. Once completed, have the group decide on how they want to utilize the report card (see **Using The Results**–p.2 of Appendix III). This is an ideal starting point for launching a campaign to curb sprawl.

IDENTIFY STRATEGIES TO CURB SPRAWL

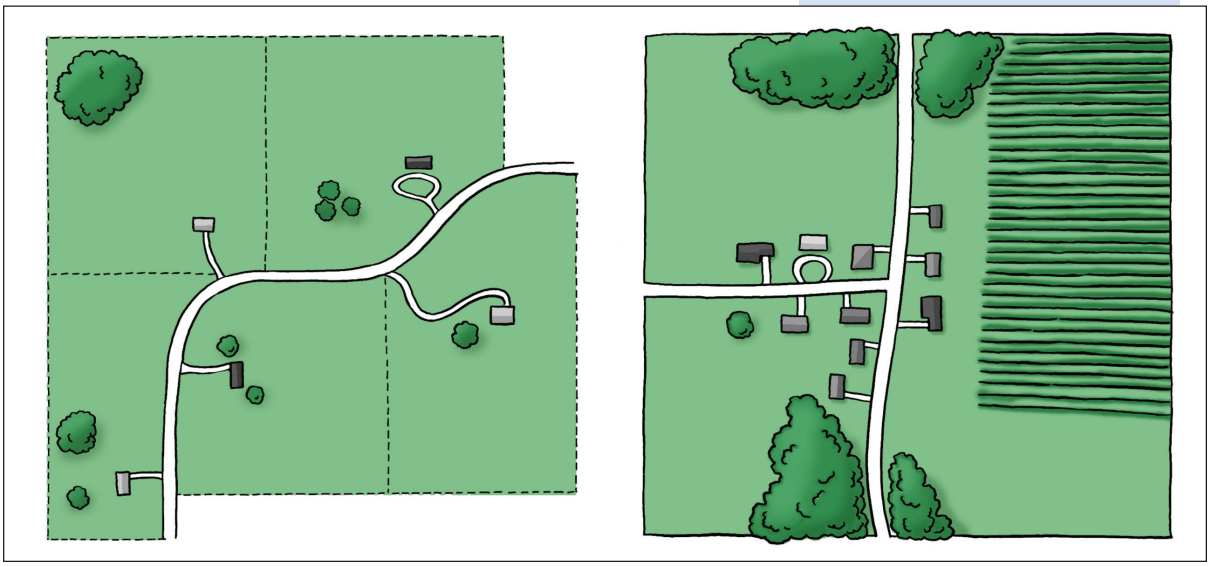
Critical awareness of existing policies and practices that lead to sprawl development will exert political pressure on local elected

officials to act. Elected leaders need to know what policies they can enact with the support of their constituents. Your organization can help local officials by identifying the following measures that Virginia localities can utilize to manage growth and curb sprawl:

Urban Growth Boundaries–One of the most effective ways to control the location of growth within a locality is through the use of "urban growth boundaries." Many people mistakenly believe that urban growth boundaries are an extreme form of growth management used only in Oregon. **In fact, Virginia law allows localities to establish their own urban growth boundaries, and a number of localities already have the elements of urban growth boundaries in place.**

Urban growth boundaries in Virginia are based upon a combination of zoning and public facilities policies. In Virginia, a zoning ordinance can limit land uses such as office space, higher density residential, and retail, to certain designated areas known as "growth areas," "communities," or "service districts." The areas located outside of these "growth areas" can be zoned exclusively for agricultural and forestry use along with varying degrees of low-density residential development. These types of low-intensity land uses do not require public sewer and water or other infrastructure (with the exception of roads). The combination of low-density zoning and the service area boundaries designated for public sewer and water effectively establish the urban growth boundary. The process for establishing an urban growth boundary begins with a **future land use map** that is incorporated into the Comprehensive Plan. This map will show desired land uses, overlay districts, and service areas. Once the plan is adopted, changes to zoning, subdivision and all other applicable ordinances will be directed to conform to the future land use map.

The key to the effectiveness of urban growth boundaries is to ensure that public infrastructure, most importantly public sewer and water, is limited to areas designated in the comprehensive plan for growth. Because the locations of sewer and water lines are often determined by an independent "service authority," it is crucial that local governing bodies and the local service authority coordinate.



Virginia law allows the comprehensive plan to control the location of all public facilities. This provision (Virginia Code Section 15.2-2232) puts the design and enforcement of the plan in the hands of the governing body. **If the local governing body is serious about establishing and maintaining an urban growth boundary, it has the sufficient legal authority to do so.**

Rural Zoning–Rural zoning (low-density zoning intended to protect natural resources and/or agriculture and forestry while allowing a minimum of residential development) can play an important role in the location of growth. Most counties have some form of rural zoning, often covering the majority of the jurisdiction. In Virginia, a wide range of approaches are used, including: 1) unlimited residential development on two-acre lots; 2) development that allows no more than four units per parcel over a four year period; and 3) 25 acre minimum lot sizes. Localities can, and some do, mandate the clustering of rural residential units to avoid developing sensitive land.

Traditionally, rural zoning simply allowed agricultural and forestry activities along with low-density residential development on relatively large lots. In most cases, the resultant predominant use in the zones has remained agriculture or forestry because the zones include much open land (not because the limitations on residential use are particularly effective).

When residential lots are larger than necessary to site a house with a private well and septic field (which typically requires no more than 1.5 to 2 acres) but too small to support a viable agricultural unit (generally less than 50 acres), large lot rural zoning can exaggerate sprawl and increase the conversion of farmland and open space.

In recent years, a number of improvements have been made in agricultural zoning. Some of these approaches are currently being used in Virginia and are described below.

Sliding Scale Zoning–Sliding scale zoning reduces the allowable number of new dwelling units as land parcels get bigger. For example, a parcel containing between 40 and 80 acres is allowed three dwelling units, while a parcel containing 1,030 acres or more is only allowed 15 dwelling units. Sliding scale zoning works on the principle that the larger the parcel of land, the greater the agricultural resource it represents, and therefore the potential for development should be more limited.

Clustering and Open Space Design–Cluster development, also known as open space design, can be used to manage growth and conserve important natural resources. Open space development provisions reduce minimum lot size and combine uses in order to preserve areas of open space. Open space development allows for the utilization of the best sites for development while preserving sensitive lands and resources. Cluster development provisions can be used in combination with sliding scale zoning.

Open space development may be a zoning requirement or offered as an option. Many localities have developed incentives to encourage developers to use open space design and clustering of residential units. A typical incentive is to allow additional density on a site that utilizes clustering. Many

developers realize **a significant reduction in development costs in clustered developments** because infrastructure can be confined to a relatively small area of the whole parcel.

Clustering can be a very effective tool for protecting open space. In order to be effective, **the undeveloped open space should be protected by a conservation easement.** This ensures that the open space will remain undeveloped in the future.

Controlling the Amount of Growth–In addition to controlling the location of growth, it is also possible (though more difficult) in Virginia to control the amount of population growth through planning regulations. Population growth occurs two ways: 1) natural increase (the excess of births over deaths), and 2) in-migration (more people moving into a locality than moving out). Planning regulations cannot manage natural increase. However, much of the growth being experienced in Virginia is due to in-migration, and to a certain extent, this kind of growth can be managed by planning regulations.

State law allows localities to determine population growth through the comprehensive planning process. There are a number of ways to project in-migration, but none of them are very accurate. The state government develops population projections, which are passed on to localities. Localities can accept these projections at face value or modify them as they see fit.

A comprehensive plan is a budget for a locality in many ways. It is a budget that deals with land, population and infrastructure rather than public finance. A comprehensive plan can target a future population level and recommend annual rates of population growth or decline.

Although a "growth budget" can be established by a comprehensive plan, it must be implemented by the zoning ordinance. The zoning ordinance indicates where various land uses may occur, and it controls the density or amount of development allowed in each zoning district. In effect, the zoning ordinance establishes a growth budget for a locality through its residential zoning provisions. **Simply put, the total amount of new residential development allowed by the ordinance is a de facto growth budget.** The total number of new residents in the locality cannot exceed the capacity provided by the total number of permitted dwelling units in the locality.

Estimating the local growth budget can be accomplished by using a "build out" analysis. A build out analysis examines the capacity for new residential development based upon existing zoning. The analysis simply adds up the total undeveloped acreage in each residential zoning district and multiples the total by the number of dwelling units allowed per acre in each district. The result is the total number of new dwelling units if the residential zoning is "built out" The build out figure can easily be converted to future population by multiplying the total potential units determined by the build out analysis by the average number of persons per dwelling unit based upon local experience.

For example, if there are 20,000 developable acres in a zoning district that permits a residential density of one dwelling unit per two acres, then 10,000 units may be

built. If 2.5 persons per unit are the average for the locality, then the estimated growth budget for this district would be 25,000 persons.

These estimates do not mean that all 10,000 units allowed in the district would be built, or that 25,000 persons would occupy them. These are functions of the development and land market, as well as the preferences of landowners and homebuyers. In spite of these limitations, the estimate provides a relatively accurate picture. It is the "envelope" created by zoning within which private market forces operate. Because rezonings can shrink or expand this envelope, the growth budget allowed by local zoning is a moving target.

Virginia law does not allow localities to annually restrict the number of building permits issued or control the number of site plan or subdivision plat approvals. Growth management in Virginia can only be implemented through the comprehensive plan and zoning ordinance.

Use Value Taxation–Virginia law allows localities to assess land in various rural uses at lower rates. These "use value" rates are designed to reflect the value of the land as it is being used (i.e. agriculture, forestry) rather than its fair market value for development. The purpose of the use value program is to keep land in rural uses by reducing the real estate tax on the land so that it is more affordable for landowners. Use value can dramatically reduce real estate taxes and keep landowners from being forced to sell because of high property taxes.

There are four categories of use value that a locality may adopt. The categories each have different valuations developed by the State Land Evaluation Advisory Commission (SLEAC). The categories are agricultural, forestal, horticultural (orchards), and open space. Use value can be a component of a local government's program to conserve rural areas.

Conservation Easements–The most effective tool for conserving land is the conservation easement. A conservation easement is a voluntary agreement between a landowner and the "holder" of the easement (a public agency or private non-profit land conservation organization) that limits or restricts development of a parcel of land. Conservation easements can be used to protect a variety of land uses, including farming, forestry, wildlife habitat, and open space. Conservation easements can also be tailored to allow limited residential development as well.

Because conservation easements are private contracts rather than government regulations, they can be more flexible and provide greater protection than local government ordinances.

Conservation easements that meet requirements established by the Internal Revenue Code generate federal and state income and estate tax benefits for the landowner ("easement donor"). The donation of a conservation easement does not open the land up to public use, and the landowner still retains ownership and use of the land. Conservation easements can be an effective tool to target important open space and natural areas for permanent protection in a locality. Some Virginia localities have created programs to purchase conservation easements from willing landowners.

Once you have identified strategies to curb sprawl the next step is to work with your locality in creating a Comprehensive Plan that will be a blueprint for growth management.

REVISE THE COMPREHENSIVE PLAN: CAMPAIGN TO CURB SPRAWL

While completing the report card on growth you will have determined when the current Comprehensive Plan was adopted and when the next Comprehensive Plan review is scheduled to take place. As mentioned previously, localities are required to review Comprehensive Plans every five years. Through the review process a locality may decide to revise the Comprehensive Plan so that it is applicable to current demands on public facilities and land use. The opportunity to shape the plan occurs in the revision process through public hearings, comment periods, work sessions, focus groups, and citizen advisory committees.

Localities can (and do) revise Comprehensive Plans at any time as a response to growth pressures. Many locally elected officials will run on a platform of curbing sprawl development. Once elected, these officials may start the process of reviewing Comprehensive Plans in order to effect growth controls through a revision of current zoning and subdivision ordinances. If local officials are unwilling to tackle the issue of sprawl development, consider a grassroots campaign to elect qualified individuals responsive to the call for growth management.

Once a locality decides to revise a Comprehensive Plan, a timetable for completing the process will be established. From start to finish a revised plan typically takes anywhere from six months to two years to complete. At a minimum the locality must hold public hearings before both the Planning Commission and the locally elected Board of Supervisors or Council before adopting a plan. Many localities will form advisory committees with representatives from various stakeholders such as commerce, industry, and neighborhood associations to review the plan and provide input. Offer representation from your group to serve on any committee or task force associated with Comprehensive Plan review or revision. Check with your locality's administration office for any vacancies on standing commissions and review boards. Typically localities will publish notices in local newspapers for applications from citizens to serve on the Planning Commission, Wetlands Board, Architectural Review Board or Parks and Recreation Committee. Representation from qualified members will increase your group's involvement in shaping public policy.

Utilizing the report card on growth and the strategies outlined above, help guide your locality in drafting a Comprehensive Plan that strives to achieve the three following objectives:

1. A designated urban growth boundary consistent with local service districts.

2. A comprehensive land use map that identifies where new growth and redevelopment will occur and specific areas where existing land uses are to be protected from development.

3. Clearly defined strategies for implementation of the growth management objectives that identify modifications to zoning, subdivision, and all other applicable ordinances.

Many details will have to be worked out. Transportation, sewer and water, stormwater management, and Chesapeake Bay Preservation Act requirements are just some of the issues that must incorporate growth management strategies. Utilize the talents of group members to tackle these issues through subcommittee or individual assignment. Also, rely on local planning and engineering staff to gather information and provide professional recommendations.

Once adopted a locality's Comprehensive Plan will serve as a blueprint for growth management. Ordinance amendments will follow. Be sure to follow this process as it unfolds to ensure that local officials adhere to the goals and objectives outlined in the Comprehensive Plan. Attend public hearings and provide written comments and testimony as appropriate.

Appendix I

Frequently Asked Questions

Q. **Can a locality deny a rezoning request?**

A. Yes. Local governments have broad discretion to approve or deny rezoning requests. However, in cases where the existing zoning is unreasonable and the rezoning request is reasonable, the locality must approve the rezoning request.

Q. **Can a locality deny a subdivision or site plan?**

A. Yes. However, the authority to deny subdivision plats and site plans is much more limited than the authority to deny rezonings. Subdivision plats and site plans may only be denied if they do not meet the requirements of the subdivision ordinance, or if they pose a clear threat to the public health or safety. The basis for a denial must be explained in writing by the locality.

Q. **Does the local governing body have to follow the recommendations of the Planning Commission?**

A. No. The recommendations of the Planning Commission are advisory only.

Q. **Is a public hearing required for all land use decisions?**

A. No. The law only requires that a public hearing be held before a decision to adopt or amend a zoning ordinance, before the issuance of a special exception, and before the decision to amend or adopt a comprehensive plan.

Q. **Does the comprehensive plan mandate what can be done with a person's property?**

A. No. The Comprehensive Plan is only a guide for local government decisions about land use.

Q. **Can localities deny rezoning requests based on aesthetics?**

A. No. In Virginia, rezonings cannot be denied based solely on aesthetics.

Q. **Does a landowner have the right to use his property without interference from government?**

A. No. The Constitution of the United States and the Commonwealth of Virginia allow broad discretion to localities to restrict the use of private property for the "public health, safety and welfare," provided that the regulations allow some economically viable use of the property. If a restriction fails to achieve a valid public purpose, is applied in an inconsistent manner, or

denies the landowner all economically viable use, it is considered unconstitutional.

Q. Does the state have to comply with local land use regulations?

A. No. When constructing state projects such as roads or prisons, the State is exempt from local land use regulations.

Q. Can a local governing body overrule the decisions of a Board of Zoning Appeals (BZA)?

A. No. However, the local governing body may appeal a BZA decision to the local Circuit Court. The BZA is completely independent of the local governing body and its decisions are not subject to review by the local governing body. Members of the BZA are appointed by the local Circuit Court judge and are not subject to removal by the governing body.

Q. Who has the right to go to Court to challenge a local land use decision?

A. A landowner directly affected by the decision has the right to go to court ("standing to sue"). Landowners whose property is the subject of any zoning action have standing. Typically, the applicant for a rezoning or for approval of a site plan or subdivision plat also has standing to sue. The law generally requires that anyone challenging a land use decision in court must be able to allege some type of financial harm resulting directly from the decision.

Q. Can a local government do what it wants as long as it does not violate the Constitution?

A. No. Local governments in Virginia must adhere to the limits of authority given to them by the General Assembly. They have no authority beyond that expressly granted by the General Assembly, or implied by express grants of authority.

Q. Can localities impose moratoriums on development?

A. No. Localities have very limited authority to deny site plans, subdivision plats, or the issuance of building permits, once all of the regulatory requirements have been met.

Q. Can a locality "stop" growth?

A. Virginia law does not allow a locality to actually stop growth, or impose a moratorium on development approvals. A locality may, through its comprehensive plan, dictate the amount of land available for various types of uses and the location of those uses. By carefully limiting the amount of land for development in the plan and then following the plan in its zoning and infrastructure decisions, localities can effectively "manage" growth.

Q. Can Virginia localities have "urban growth boundaries" that are allowed in other states?

A. Yes. The law allows Virginia localities to define areas in a comprehensive plan for development and areas for open space and agriculture. By restricting the location of utilities and limiting zoning

for development to those areas, Virginia localities can effectively create urban growth boundaries.

Q. Can a locality deny development approvals because public facilities, such as schools, serving them are crowded?

A. No. If current zoning allows the development, the locality can not deny a site plan or subdivision plat because of overcrowded or overused public facilities. A locality may deny a rezoning on the basis of overcrowded public facilities, but the locality must have a consistent policy to do so.

Q. Does Virginia allow "transferable development rights" (TDRs)?

A. No. Virginia enabling legislation for local zoning does not authorize TDRs.

Q. Can localities impose conditions on rezonings?

A. No. Except for proffers (where conditions are voluntarily offered by the applicant) localities must either approve or disapprove a rezoning without conditions.

Q. Can a locality impose "impact fees"to offset the cost of development?

A. Recent changes to state law do enable some localities to collect impact fees.

Q. What is a buffer?

A. A buffer is an area that separates and protects one type of land use from the adverse effects of an adjacent land use. Vegetated buffers can be used to protect a natural system, such as a stream, from the undesirable effects of development. A buffer can also be used to separate a residential community from a commercial or industrial area.

Q. What is the building code?

A. Building codes are regulations that set minimum standards for the construction of structures. The Uniform Statewide Building Code is administered and enforced by local building officials.

Q. What is meant by the land use term "density"?

A. Density refers to the number of persons or housing units contained on a parcel of land. Density is often expressed as the number of dwelling units per acre.

Q. What is a conservation easement?

A. A conservation easement is a voluntary agreement between a landowner and the "holder" of the easement, a public agency or a private non-profit land conservation organization. An easement is a legal document in which the landowner agrees to forego specified property rights, such as the right to develop the property, while retaining full ownership of the property. An easement is signed and recorded and is a covenant that runs with the title to the land, i.e., it binds future owners of the property. Conservation easements that meet the requirements of section 170(h) of the IRS Code generate federal, state, and estate tax benefits for the landowner donors and their families.

Q. What is infrastructure?

A. Infrastructure refers to the public services and facilities provided by a government that support the population of a locality. Infrastructure includes facilities such as roads, schools, and utility lines and services such as police and fire protection and waste management.

Q. What is an overlay zone?

A. An overlay zone is a specially mapped district that is subject to supplementary regulations or requirements for development; these restrictions "overlay" the existing zoning restrictions. An example of an overlay zone is an historic district, which is designed to protect historic structures from being torn down or substantially modified and from the construction of incompatible new development.

Q. What are "performance standards"?

A. "Performance standards" are standards that regulate development activity by setting accepted limits on pollutants from the impacts and effects of the development activities.

Q. What is a Planned Unit Development?

A. A Planned Unit Development, or PUD, is a form of development that includes a variety of uses, densities, and building types and that is developed under a comprehensive site plan.

Appendix II

Governmental Contacts For Land Use and Natural Resource Information

LOCAL/REGIONAL:

For planning information specific to your locality:

Contact your city, town, or county government

For information regarding your local Soil and Water Conservation District:

Division of Soil and Water Conservation
Department of Conservation and Recreation
203 Governor Street, Suite 213
Richmond, VA 23219-2094
804-786-2064
www.dcr.state.va.us/sw

For Regional information:

Virginia Association of Planning District Commissions
918 Emmet St. N., Suite 217
PO Box 4897
Charlottesville, VA 22905
804-982-5538
www.institute.virginia.edu/vapdc

Virginia Association of Soil & Water Conservation Districts
7293 Hanover Green Drive, Suite B-101
Mechanicsville, VA 23111
804-559-0324
www.vaswcd.org

STATE

For State Information:

(Questions about the Chesapeake Bay Preservation Act)
Chesapeake Bay Local Assistance Department
James Monroe Building
101 North 14th Street, 17th Floor
Richmond, VA 23219
804-371-7500
www.cblad.state.va.us

(All Environmental Issues & Concerns including Water Quality & Wetlands)
Department of Environmental Quality
29 East Main Street, Richmond, VA 23219
P.O. Box 10009, Richmond, VA 23240
(804) 698-4000 or toll-free in Virginia, 1-800-592-5482
www.deq.state.va.us

Department of Forestry
900 Natural Resources Drive, Suite 800
PO Box 3758
Charlottesville, VA 22902
804-977-6555
www.state.vipnet.org/dof

Department of Game and Inland Fisheries
4010 West Broad Street, 1st Floor
Richmond, VA 23230
804-367-1000
www.dgif.state.va.us

(Septic Rank Regulations)
Department of Health
Office of Environmental Health Services
Main Street Station
1500 East Main Street, Room 117
Richmond, VA 23219
804-786-1750
www.vdh.state.va.us

(Erosion and Sediment Control and Wetlands Mapping)
Division of Soil and Water Conservation
Department of Conservation and Recreation
203 Governor Street, Suite 206
Richmond, VA 23219-2094
804-786-786-2064
www.dcr.state.va.us/sw

Virginia Institute of Marine Science
Center for Coastal Resource Management
Rt. 1208, Great Road
PO Box 1346
Gloucester Point, VA 23062-1346
804-684-7000
www.vims.edu

Virginia Marine Resources Commission
Environmental Division
2600 Washington Avenue
PO Box 756
Newport News, VA 23607
757-247-2200
www.state.va.us/mrc

FEDERAL

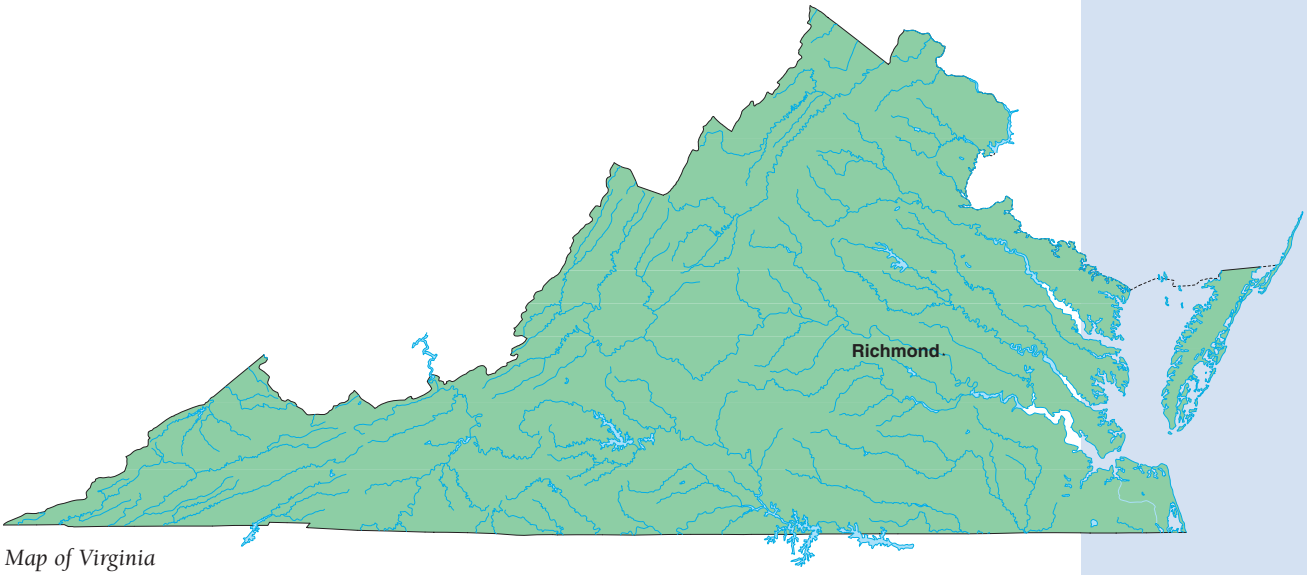
Federal Emergency Management Administration
Map Service Center
P.O. Box 1038
Jessup, MD 20794-1038
Tel: 1-800-358-9616
Fax: 1-800-358-9620
www.fema.gov/msc

National Oceanic and Atmospheric Administration
Office of Ocean and Coastal Resource Management
1305 East West Highway
Silver Spring, MD 20910
301-713-3155
www.ocrm.nos.noaa.gov

U.S. Army Corps of Engineers
Norfolk District Office
803 Front Street
Norfolk, VA 23510-1096
757-441-7539
www.nao.usace.army.mil

U.S. Geological Survey
National Mapping Information
U.S. Geological Survey
508 National Center
Reston, VA 20192
1-888-ASK-USGS
www.usgs.gov

U.S. Department of Agriculture
Natural Resources Conservation Service
Virginia State Office
1606 Santa Rosa Road, Suite 209
Richmond, VA 23229-5014
804-287-1500
www.va.nrcs.usda.gov



Map of Virginia

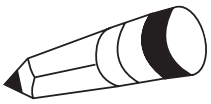
U.S. Environmental Protection Agency
Region III Office
1650 Arch Street
Philadelphia, PA 19103-2029
1-800-352-1973
www.epa.gov

U.S. Fish and Wildlife Service
National Wetlands Inventory
Arlington Square
4401 North Fairfax Dr., Room 400
Arlington, VA 22203-1610
703-358-2161
www.fws.gov
For National Wetlands Inventory Maps:
1-800-USA-MAPS

Appendix III

Making the Grade on Growth

INTRODUCTION



Today's Americans demand efficient and effective government, and have made that clear at the voting booth. We expect government at all levels to provide quality services yet be frugal in spending our tax dollars. We apply those expectations to the full range of government programs and the delivery of essential services.

These expectations apply no less to local government's handling of growth or land development than to other essential government functions. The guiding of a county's or municipality's own growth is among the most important functions carried out by government at any level. Decisions about the development of land often have profound and lasting consequences for present and future residents, for the environment, and for lands beyond the boundaries of a local jurisdiction.

Regrettably, evidence of poor local government performance on growth abounds, as the prevalence of sprawl attests. Sprawl is a product of local planning and zoning regulations, which function like a genetic code for development. Sprawl is an inefficient pattern of development. It wastefully consumes open land by spreading development thinly across the landscape. It wastefully consumes tax dollars by necessitating the costly extension of roads and utilities to serve far-flung homes and businesses. And it produces massive quantities of polluted runoff, which threaten to erase all the hard-won gains achieved in cleaning up the Chesapeake Bay.

Yet models of efficient development do exist. They include the traditional communities found throughout the Chesapeake Bay watershed, such as: Annapolis, Maryland; Alexandria, Virginia; and Lititz, Pennsylvania. Such communities use land wisely not wastefully. Although the housing densities of traditional communities are higher than those typical of sprawl, traditional communities are attractive and pleasant places in which to live and work.

COMPLETING THE QUESTIONNAIRE

Determining whether or not a community's growth management plans are effective is not always easy. Because of the number and variety of individual decisions that local governments must make regarding growth, the cumulative effects of all these decisions can be obscured. This, combined with how slowly sprawl can devour a community, can make it difficult to monitor the effectiveness of local growth management plans. This questionnaire enables activists to audit their local government on growth and reveal its effectiveness without waiting for growth to take shape.

The questionnaire contains 27 questions based on key indicators of performance and is divided into five categories for a well rounded appraisal. Multiple choice or yes/no answers simplify completion and avoid subjectivity. The questionnaire is designed for counties and municipalities experiencing growth in land development. It does not apply to jurisdictions that are built out or suffer from a lack of growth or revitalization.

It will take a modest effort to acquire and review the information you will need for completing the questionnaire, but the process has its own reward as a learning experience. You'll gain a greater familiarity with the people, documents, and policy tools your government uses to guide growth. A group of people can easily divide the workload for completing the report card according to question categories. Sources for answers include planning department staff and major local government documents, such as the comprehensive plan, capital improvements program, and development regulations, which include: the zoning ordinance, the subdivision ordinance, and public facilities standards. The questions indicate where to look for answers.

When it is not possible to answer a question because local documents do not contain the answer, or local officials don't know the answer, give that question a score of "F". Lack of an answer indicates that local officials are not "minding the store." Answer questions that do not apply to a particular local government with a notation of N/A for "not applicable." Keep records of the sources and specific information you use to answer the questionnaire. The records may prove useful for responding to questions about your information gathering and for future updates of your report card on growth.

USING THE RESULTS

You can use the results of the "Making The Grade On Growth" questionnaire for a variety of purposes: as an educational tool about growth for citizens and public officials, as a media tool for drawing attention to growth issues, as a basis for holding local officials accountable, and as a tool for creating political pressure to change growth policies. Here are some ideas for putting the results to work:

- Print a mock report card containing the results and distribute at public meetings and places.
- Stage a press event using a larger than life mock report card to report the results and gain media attention. Issue a press release. Write follow-up letters to the editor.
- Develop and promote an action agenda for improvement.
- Formally submit the report card in larger than life form directly to local officials.
- Develop complementary maps, charts, and graphs for visually depicting certain answers.
- Use the report card as part of testimony on a development project, proposed policy, or updated comprehensive plan.
- Obtain commitment from local officials and candidates for elected office on an action agenda for improving grades.

- Provide special recognition awards for avoiding responsibility or failure to make a real commitment to adopted policies such as window dressing, lip service, and ostrich awards. Give extra credit awards for positive decisions and new policies. Highlight areas that particularly need improvement.

- Complete the questionnaire biennially (rather than annually to allow time for changes in policy to occur).

We can help you make the most of "Making the Grade..." as an advocacy tool. For assistance call the CBF grassroots coordinator in your state: Maryland - 410/268-8833; Pennsylvania - 717/234-5550; and Virginia - 804/780-1392. Also, please share your community's report card with us and your experience in using the "Making the Grade On Growth" questionnaire. Contact the author, George Maurer, at: 410/268-8833; gmaurer@savethebay.org; Chesapeake Bay Foundation, Philip Merrill Environmental Center, 6 Herndon Ave., Annapolis, MD 21403.

Audit

How does your County or Municipality Grow?

DIRECTING THE RIGHT GROWTH TO THE RIGHT PLACES

1. Does the comprehensive plan direct growth to specific locations designated as growth areas? Grade_____

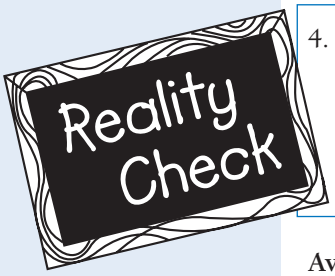
   A–yes; F–no.
   If no, skip the remainder of this section and assign a grade of F for the entire section.

2. Based upon current growth projections in the comprehensive plan or from planning staff, how many years will it take for your municipality's or county's primary growth area to be built out (fully developed) under existing zoning? Grade_____

   A–20 years; B–20 years +/- 5 years; C–20 years +/- 10 years;
   D–20 years +/- 15 years; F–40 or more years

3. According to the comprehensive plan, what is the overall average residential density planned for the primary urban growth area at build out? Grade_____

   A–7 or more dwellings/acre; B–from 5 up to 7 dwellings/acre;
   C–from 3 up to 5 dwellings/acre; D–between 2 and 3 dwellings/acre;
   F–2 or fewer dwellings/acre.



4. Is most growth actually going into designated growth areas? According to planning staff, what percentage of all the building permits approved for a recent year or period of years were for construction in growth areas? Grade_____

   A–over 85%; B–75-85%; C–65-74%; D–55-64%; F–less than 55%.

Average grade for section: Directing the Right Growth to the Right Places .....

CONSERVING THE COUNTRYSIDE

(This section may not apply to municipalities)

5. Does the comprehensive plan direct growth in rural areas to the expansion of existing hamlets, villages, and towns? Grade _____

   A–yes; F–no.

6. According to planning staff, what is the average residential density actually achieved in practice in the primary zoning district designated for agricultural or rural conservation? [Note: exceptions and density bonuses can result in actual densities being higher than the base density stated for a zoning district.] Grade _____

   A–20 acres or more per dwelling; B–from 15 up to 20 acres per dwelling; C–from 10 up to 15 acres per dwelling; D–from 5 up to 10 acres per dwelling; F–less than five acres per dwelling.

7. Do development regulations promote clustering in rural areas? Grade _____

   A–clustering is mandatory with a required set aside of 80% or more of a site's workable farmland and forested land; B–mandatory clustering with a required set aside of 60-79%; C–mandatory clustering with a required set aside of 50-59%; D–clustering is optional; F–clustering is not permitted under present development regulations.

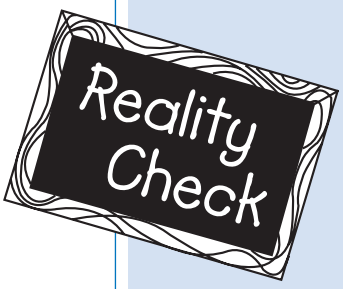
8. Is there an agricultural preservation plan used by the local agricultural preservation program to target for preservation the most productive farmland threatened by development? Grade _____

   A–yes; F–no, or there is no agricultural preservation program.

9. Do development regulations prohibit or significantly restrict residential and commercial strip development along roads in rural areas? Grade _____

   A–yes; F–no.

10. How much rural land, or land outside of designated growth areas, does growth actually consume? Grade _____



   According to planning staff, for a recent year or period of years what percentage of the total land area developed in the county or municipality (total of the land areas for all parcels where a building permit was issued for a new home or commercial building) is represented by land developed in rural or non-growth areas? (Total land area subdivided and related percentages may be used in place of land area developed based upon building permits.)

   A–15% or less; B–16-25%; C–26-35%; D–36-45%; F–more than 45%.

Average grade for section: Conserving the Countryside.....

PROMOTING EFFICIENT USE OF LAND AND PUBLIC FACILITIES

11. Do comprehensive plan policies and development regulations for growth areas give rise to compact development with shallow front and side yard setbacks and narrow streets as in a traditional town? Grade _____

    A–as a stated policy, traditional neighborhood development is the preferred form of development and is required by development regulations; B - as stated policy, traditional neighborhood development is the preferred form of development and is a widely available option under development regulations; C - development regulations allow traditional neighborhood development as an option under limited circumstances; D - development regulations do not permit traditional neighborhood development, but related variances receive consideration; F - development regulations prohibit traditional neighborhood development and related variances are difficult to obtain.

12. Does your jurisdiction limit capital improvements in rural or non-growth areas as reflected by the policies and spending contained in the comprehensive plan, water and sewer plan, and capital improvements plan (essential improvements necessary for protecting public safety, health, and the environment excepted)? Grade _____

    A–restrictions on: 1) new or widened roads, 2) sewer lines and plants, 3) public water systems, and 4) new school construction; B–3 of 4; C–2 of 4; D–1 of 4, F–no restrictions.

13. Is transit oriented development encouraged within one-half mile of transit stations through the use of special transit zoning districts, overlay zones, or planned unit development zoning? Grade _____

    A–yes; F–no.

14. Based upon data from planning staff, will planned growth balance jobs and housing in your county or municipality? Grade _____

    In terms of ratio of jobs/households: A–1.3 to 1.6; B–1.15 to 1.29; C–0.90 to 1.14; D–0.75 to 0.89; F–less than 0.75.

15. Does the transportation element of the comprehensive plan contain specific numerical goals (mode shares, reductions in vehicle miles traveled, or reductions in vehicle trips) for increasing the share of travel by transit, walking, bicycling, and car pools? Grade _____

    A–yes; F–no.

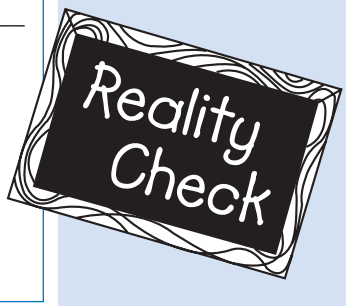
16. Does the zoning ordinance help create full service communities, where residents can enjoy convenient access to jobs, goods, and services, by allowing housing of various types and commercial and office uses to locate immediately next to one another or even within the same building? Grade _____

    A–zoning ordinance permits mixed uses in: 1) regional, 2) community, and 3) neighborhood commercial centers, and 4) within buildings; B–3 of 4; C–2 of 4; D–1 of 4; F–none.

17. What does transportation spending indicate about your local government's real transportation priorities? Grade _____

    In the budget or capital improvements program document, what percentage of the total funds available for the construction of new transportation facilities (exclude costs for operation and maintenance) is spent on transit, pedestrian, and bicycle transportation projects?

    A–more than 33%; B–25-33%; C–15-24%; D–10-14%; F–less than 10%.



Average grade for section: Promoting Efficient Use of Land and Public Facilities .....

PROTECTING ENVIRONMENTAL, CULTURAL, AND OPEN SPACE RESOURCES

18. Does the comprehensive plan designate for protection: 1) wetlands, 2) stream buffers, 3) sensitive species habitats, and 4) sites containing cultural/historic resources? Grade _____

    A–4 of 4; B–3 of 4; C–2 of 4; D–1 of 4; F–none.

19. Does your locality have an open space preservation plan and the means for implementing it? Grade _____

    A–1) plan, 2) staff, 3) land acquisition funds, and 4) open space dedication requirements in the zoning ordinance; B–3 of 4; C–2 of 4; D–1 of 4; F–none.

20. Do development regulations specifically protect: 1) wetlands, 2) stream buffers, 3) sensitive species habitats, and 4) sites containing cultural/historic resources? Grade _____

    A–4 of 4; B–3 of 4; C–2 of 4; D–1 of 4; F–none.

21. Do stormwater management regulations require improving the water quality of stormwater runoff (as opposed to only controlling the quantity of runoff)? Grade _____

A–yes; F–no.

22. Is your local government able to adequately enforce its regulations? Grade _____

Is the number of staff assigned to enforce environmental regulations (excluding environmental health) clearly adequate for the job, given the land area to be covered, average number of enforcement reviews conducted, and other staff responsibilities?

A–yes; F–no. Hint: For cited violations, lack of corrective actions or lengthy time periods for completion of corrective actions indicate overburdened staff or intentionally lax enforcement.

Average grade for section: Protecting Environmental, Cultural, and Open Space Resources .....

INVOLVING THE PUBLIC AND ASSURING ACCOUNTABILITY

23. How long has it been since the comprehensive plan was updated and the zoning comprehensively revised to conform with the plan? Grade _____

As based upon the year the comprehensive plan was last updated: A–6 years or less; F–more than 6 years, or zoning does not conform with the comprehensive plan.

24. Does the comprehensive plan consistently contain: 1) measurable goals, 2) benchmarks to indicate progress in reaching goals, 3) actions for accomplishing goals, and 4) timelines for carrying out actions? Grade _____

A–4 of 4; B–3 of 4; C–2 of 4; D–1 of 4; F–plan goal statements are consistently general or vague.

25. As part of the process to adopt a comprehensive plan, did your locality conduct a visioning process that enabled citizens to visualize and choose among alternative future development patterns for your municipality or county? Grade _____

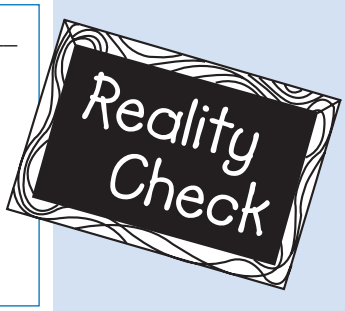
A–yes; F–no.

26. As part of the process to adopt a comprehensive plan, did your local government conduct a fiscal impact analysis of the alternative land use plans considered for adoption? Grade _____

A–yes; F–no.

27. Did your local government actively encourage public participation and inclusion of the social groups making up the community by methods such as the following: 1) public opinion surveys, 2) a newsletter or newspaper supplements, 3) focus groups, 4) public forums or town meetings, and 5) public access TV programs? Grade _____

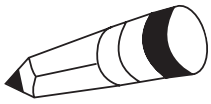
A–4 or 5 of 5; B–3 of 5; C–2 of 5; D–1 of 5; F–steps taken to encourage public participation limited to planning committees, legal notices, and hearings.



Average grade for section: Involving the Public and Assuring Accountability..... ❑

Notes on Audit:

Report Card



How does your County or Municipality Grow?

GRADE REPORT FOR _____

_____

GRADE AVERAGE ☐

SUBJECT	**GRADE**
Directing the Right Growth to the Right Places	☐
Conserving the Countryside	☐
Promoting Efficient Use of Land and Public Facilities	☐
Protecting Environmental, Cultural, and Open Space Resources	☐
Involving the Public and Assuring Accountability	☐

COMMENTS

Accomplishments	Needs Improvement
_____	_____
_____	_____
_____	_____

SIGNED _____ **DATE** _____

_____ _____