

Changing Landscapes

Land use planning curriculum for natural resource professionals

- P** rinciples, people, and policies
- L** and planning and pressures
- A** pproaches
- N** atural resource planning tools

L3: How Planning is Put into Practice

Overview

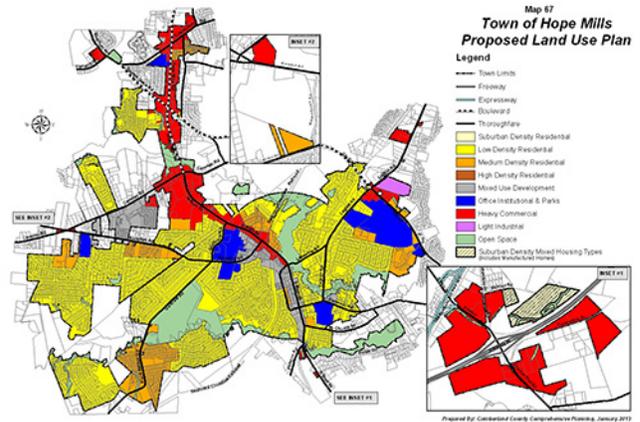
There are established mechanisms that put planning into practice at the State, regional, and local level. Examples include enabling legislation, comprehensive plans, zoning, and subdivision land development ordinances. The nomenclature and regulatory authority associated with these mechanisms may vary, but they all provide a common ground for planning. This factsheet describes how planning responsibilities are organized and how these mechanisms are carried out at State, multijurisdictional, and local levels.

Enabling Legislation

State-enabling legislation is used to grant local planning authority. State-enabling legislation is the legal framework that directs how and where land use occurs in each State. It identifies the authority, organizational structure, and set of procedures to carry out and enforce the law.

This includes the adoption of comprehensive plans, development of zoning ordinances, approval of site plans, issuance of special permits, and other actions related to development. Enabling legislation may also provide authority for States and local governments to regulate development as it pertains to wetlands, roads (county and State), protection of natural resources, and development of public water and wastewater systems.

Each State has enabling legislation that is unique. For example, some States give municipalities little or no authority to plan. Planning issues and activities are addressed through State agencies only. In other States, planning is highly structured, and local governments are required to take certain actions consistent with state-enabling legislation (e.g. planning for natural resources).



Comprehensive land use plans are one way that planning is put into practice. (Map: <http://www.co.cumberland.nc.us>)

The basic foundation for planning and zoning in the United States was established in the 1920s by two enabling acts, commonly known as the Standard Acts. The first, “A Standard State Zoning Enabling Act,” was initially printed in 1924 and included provisions specific to zoning regulations. The second, “A Standard City Planning Enabling Act,” was first printed in 1927 and dealt with comprehensive plans and subdivision regulations. These Acts were prepared to establish a nationwide framework that was consistent and constitutional.



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Sometimes the boundary is not clearly defined, or there may be a question about whether a particular action is enabled by statute. In such instances, either the Home Rule or Dillon Rule is used to determine the bounds of legal municipal authority. Because each State governs and carries out regulatory policy and land use controls differently, regulatory procedures and authorities can influence how planning works differently among States.

The **Home Rule** states that municipalities are free to pass laws and ordinances as they see fit, as long as they obey State statute or constitution. The **Dillon Rule** states that municipalities only have the authority expressly granted to them by State-enabling legislation.

Comprehensive Plans

A comprehensive plan (also known as a master plan, town plan, development plan, or general plan) is a document that provides the framework for how a community would like to grow and develop. It is a guide that helps citizens and regulators make informed decisions about a broad range of land use and development issues. In most States a comprehensive plan is not considered law. It is typically carried out through municipal regulations like zoning and subdivision. For communities without zoning, the comprehensive plan serves as a guide in planning for infrastructure or other community investments.

Municipalities are authorized to adopt comprehensive plans through State-enabling legislation. Not all states require the adoption of a comprehensive plan, but municipalities may do so if they want to develop any land use laws, such as zoning, or to participate in certain State programs. If a municipality develops a comprehensive plan, most State statutes identify the primary elements and actions a plan must include. Some communities are also required to continually review and update their comprehensive plans.

Basic elements usually included in a comprehensive plan:

1. Vision and Goals
2. Official Map
3. Land Use
4. Transportation
5. Infrastructure
6. Community Facilities
7. Housing
8. Economic Development
9. Environment

Zoning Regulations

Zoning is a commonly used regulatory tool to carry out a comprehensive plan. While some States require that a comprehensive plan be adopted if a municipality would like to enact zoning, many do not. Zoning is the most significant power given to the States for managing land use and development. Zoning evolved out of urban reform movements of the early twentieth century to address overcrowding and blight and to protect existing residential and commercial neighborhoods from encroaching development. Today, zoning helps protect public and private interests, preserve critical areas, promote orderly growth, and encourage development to occur at a rate and manner that a community desires.

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Each State's enabling legislation provides the basic requirements or limitations of zoning. The details of how individual communities incorporate zoning into their regulatory framework vary, but the intention is always similar. Typically zoning regulations control the location, type, and density of development within a community by delineating one or more zones, or zoning districts, as depicted on a zoning map. Each district defines uses that are permitted by right (only require administrative approval by a zoning officer) and uses that are conditional (also known as special use or special exception), which require detailed review and approval by an appointed (or elected) municipal panel (board of adjustment, development review board, zoning hearing board, etc.) to ensure there are no detrimental effects on the community. This type of zoning is called Euclidean zoning and is the most commonly used approach in the United States.

The State statute typically provides a basic set of provisions for zoning regulations, but their implementation varies greatly from one community to the next. There are other more flexible approaches to zoning, which include performance zoning, incentive zoning, or form-based zoning. Municipalities often combine aspects from the different approaches to develop zoning regulations that best reflect the desires of the community.

Euclidean zoning codes are the most commonly used in the United States and are characterized by the division of land into one or more designated zones or zoning districts, each with specified dimensional standards (e.g. lot size, building height) and allowed uses (e.g. residential, commercial).

Performance zoning provides a more flexible approach to conventional zoning by evaluating each individual development on its impact rather than by its use. Review parameters are based on goal-oriented criteria for different types of development.

Incentive zoning is a reward-based system that encourages desired development through incentives. While each new development must meet basic district requirements, incentives such as increased building heights, fee waivers, and reduced parking are available in exchange for other measures like installation of sidewalks or affordable housing units.

Form-based zoning focuses on the form or design of spaces, buildings, and streets rather than their use or function, and use graphics as well as text to illustrate what should be done. For an example, see Arlington, VA's, Columbia Pike Form-Based Code: <http://www.arlingtonva.us/departments/CPHD/forums/columbia/current/CPHDForumsColumbiaCurrentCurrentStatus.aspx00>.

Regardless of approach, most zoning has a procedure for granting variances (exceptions) to the zoning regulations (e.g. when the existing or proposed use cannot conform to regulations standards currently in place). Variances differ considerably but are usually triggered by an unnecessary hardship caused by the special conditions existing on a lot. Some communities view variances as a routine matter, while others see variances as highly uncommon exceptions.

Subdivision Regulations

Subdivision regulations provide the procedures and standards for dividing a parcel of land into smaller parcels for sale, development, or lease. Most State statutes identify the primary provisions a subdivision must include. As with zoning, subdivision regulation is a land use control commonly used to guide residential development as envisioned in a community's plan. Subdivision regulations can exist without comprehensive plans or zoning, but are most effective when tied to related dimensional and density requirements typically found in zoning regulations.



Subdivision regulations provide the procedures and standards for dividing a parcel of land into smaller parcels for sale, development, or lease.

The regulations governing the division of land are different from zoning regulations. While zoning regulations address the type and density of development allowed within a community, subdivision regulations address the quality of development. They address how land is divided up to accommodate different land uses, the availability of public services, and the layout of the site. The way in which lands are divided plays a key role in the orderly development of a community. Once land is divided into lots and streets are laid out, development patterns are set.

Zoning regulations address the type and density of development. Subdivision regulations address the quality of development.

Properly administered subdivision regulations can often be more effective in achieving planning goals than zoning ordinances. Failure to plan for the subdivision of land can result in increased tax burdens, unnecessary extension of utilities, traffic congestion, overburdened schools, health hazards caused by inadequate waste water treatment facilities, and a loss of community character.

Organization, Implementation, and Enforcement

Each State's enabling legislation provides the authority, organizational structure, and procedures to implement and enforce laws. This can vary from State to State, but in general each municipality is governed by an elected board of officials. They are fully empowered to act on most issues and are generally referred to as the municipality's "legislative body." There are other elected or appointed municipal officers whose duties are specified in law; these may include manager/supervisor, clerk, listers/assessors, zoning administrator, treasurer, constables, and others.

While it is typically the responsibility of the local legislative body to approve comprehensive plans and other municipal planning documents in each municipality, it is the role of an appointed (or elected, in some cases) planning commission or board to prepare, maintain, and amend such documents. Planning commissions are typically made up of a small group of volunteer citizens that provide recommendations to the legislative body. They are charged with controlling growth, promoting economic health, and improving the overall quality of life for all citizens. The exact organization and duties of a planning commission vary, depending on where it is, but generally the commission meets on a regular basis to consider issues of interest, and, in some cases, permit applications.

A zoning hearing board is the municipal body that is authorized and delegated to uphold and interpret the zoning and subdivision regulations developed by the planning commission. The board reviews complete applications for proposed projects at public hearings. Such reviews may be for site plans, conditional uses (special exceptions), variance requests, and/or subdivisions. The board is also authorized to hear appeals of decisions by the zoning administrator.

It is the responsibility of a zoning administrator, code enforcement officer, or similar administrative officer employed by the municipality to interpret, administer, and enforce the local bylaws and regulations prepared by the planning commission and adopted by the legislative body. No land development may commence until all required permits are issued by the administrative officer. The following chart provides a general overview of the roles and responsibilities of individuals and groups involved in the planning process. The names and responsibilities can vary by State and by municipality.

Planning Responsibilities

Legislative Body¹ (Selectboard, Supervisors, Councilpersons, Trustees, etc.)

- Appoint and remove commission/board members
- Hire staff
- Adopt/amend any ordinance
- Approve comprehensive plan and ordinances
- Adjudicate subdivision applications of importance
- Approve capital budget and other expenditures
- Adjudicate conditional use applications

Commissions/Boards²

- Planning Commission
 - Draft zoning and subdivision ordinances, including amendments
 - Advise on subdivision applications
 - Prepare comprehensive plan and subsequent updates
 - Prepare other studies and capital budgets
- Zoning Hearing Board (Development Review Board, Board of Zoning Appeals, etc.)
 - Review conditional uses (special exceptions) and variances
 - Review subdivision applications
 - Review appeals for zoning permit or notice of violation
 - Advise on ordinances, comprehensive plan
- Other Boards/Commissions (Environmental Advisory Council, Design Review Board, Historic Resources Commission, Park and Recreation Board, Conservation Commission, Economic Advisory Board, Shade Tree Commission, etc.)
 - Advise on ordinances, comprehensive plan
 - Advise on subdivision applications
 - Prepare and administer specific plans and programs

Staff³ (Code Enforcement Officer, Zoning Administrator, Zoning Inspector, etc.)

- Conduct enforcement
- Advise elected officials
- Staff commissions/boards
- Issue zoning permits
- Issue letters of violation
- Interface with the public

¹ Decisions of legislative body usually appealed to State appeals court

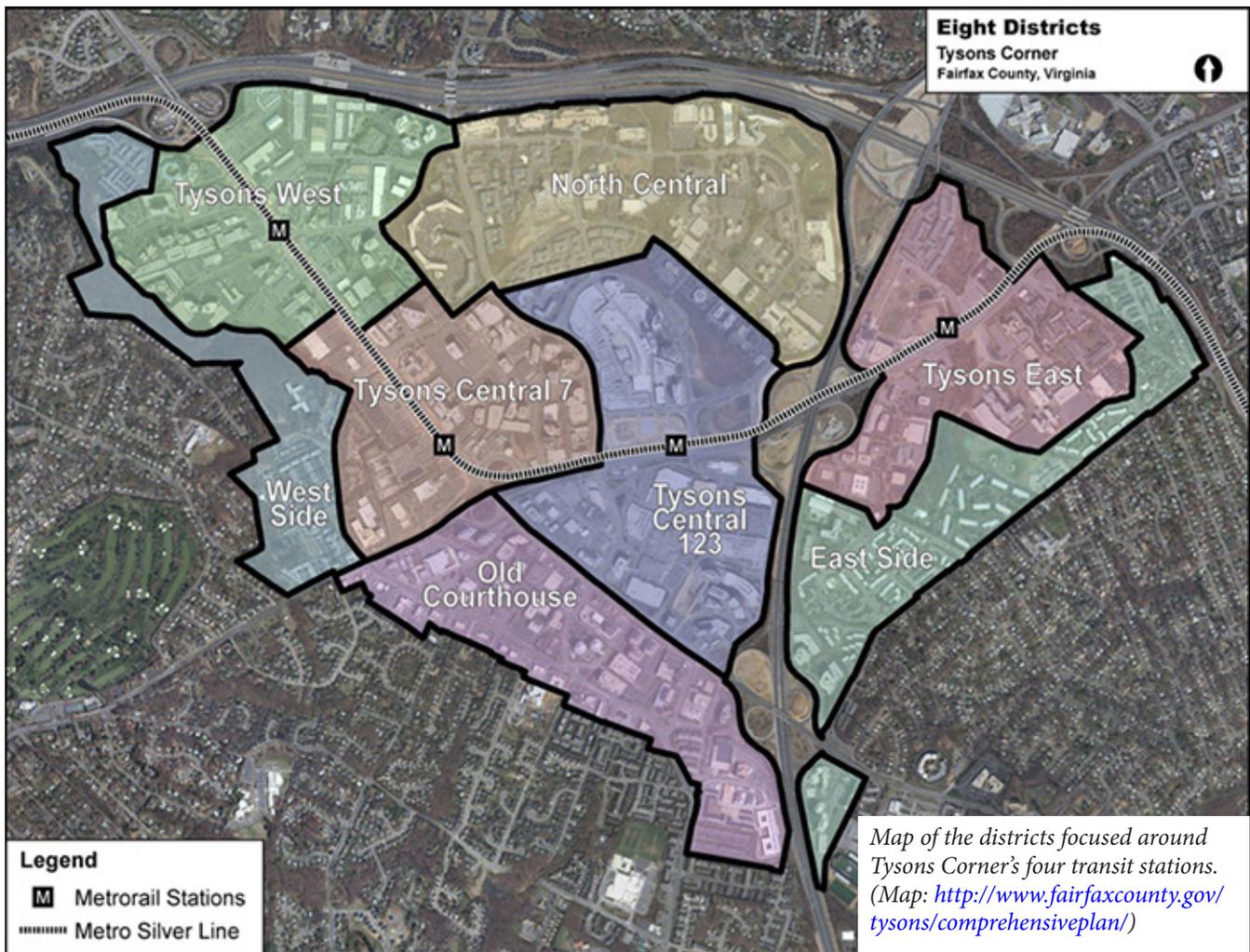
² Decisions of commissions/boards usually appealed to State appeals court

³ Decisions of staff usually appealed to zoning hearing board

Case Study — Transforming Tysons: Tysons Corner Urban Center Comprehensive Plan, Fairfax County, Virginia June 22, 2010

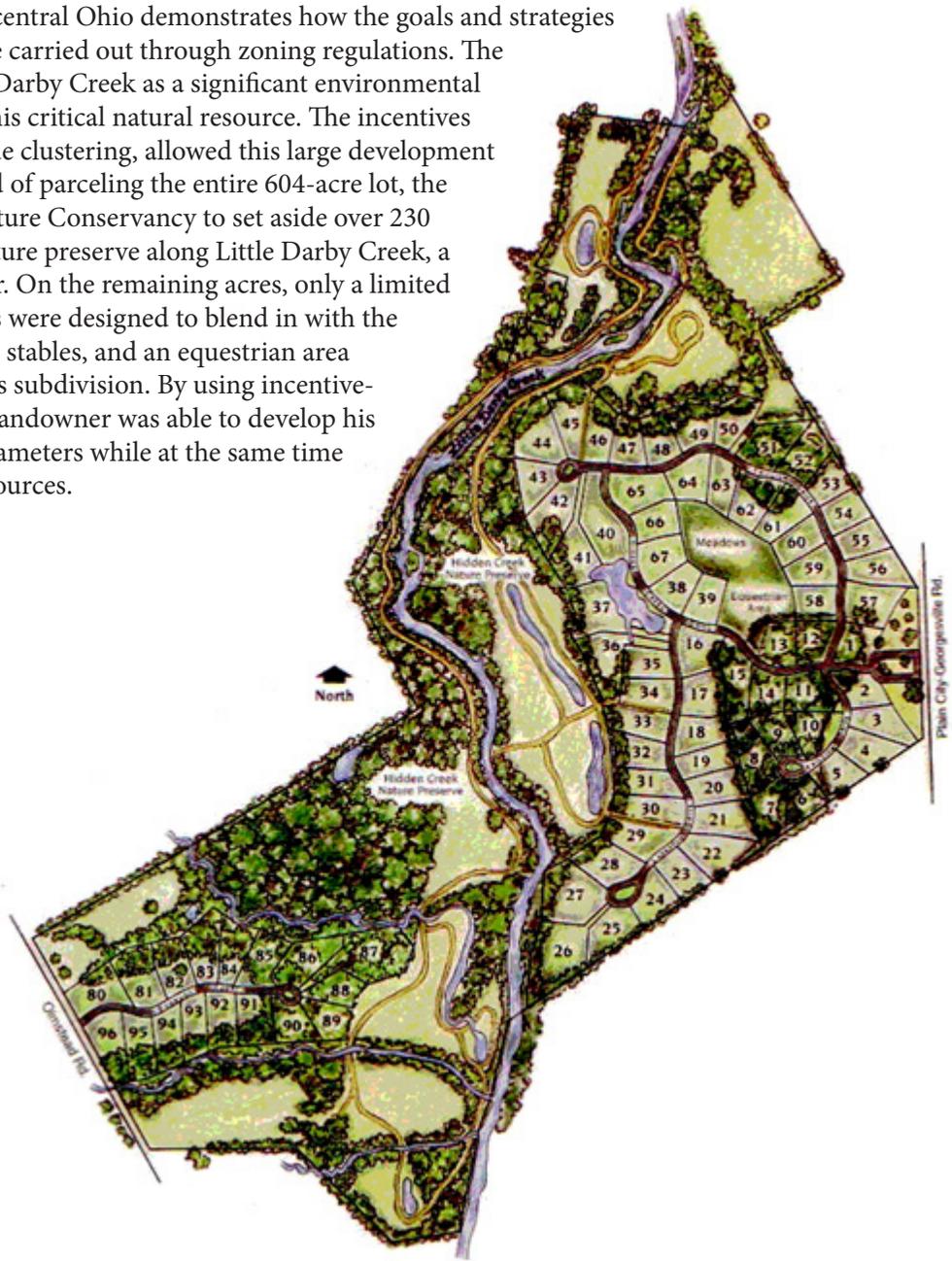
Transforming Tysons is an award-winning example of how a municipality can prepare a comprehensive plan to evoke change in their development patterns. In 1960, Tysons Corner was a rural crossroad. Today, it is the 12th largest employment center in the Nation with 17,000 residents and 100,000 jobs. With the projection of 100,000 residents and 200,000 jobs by the year 2050, there was a need to create a new comprehensive plan that transformed the sprawling office/commercial center into a sustainable downtown. This was an unprecedented change for this quintessential edge city—a growth area outside of a traditional urban center where development of businesses, shopping centers, and entertainment has sprung up due to its location near a major highway interchange or freeway exit.

Transforming Tysons envisions a series of livable urban districts focused around four new transit stations, 20 percent of new development reserved for moderate-income housing, a tiered approach to density, an urban grid of streets, innovative stormwater management facilities, and a comprehensive network of parks and open space. As development occurs, these districts will be linked by greenways that will create an accessible system for casual recreation, allow residents the option to walk or bike to their destinations, and develop critical open space. The plan was developed over several years through an inclusive planning process. More than 2,000 people participated in over 50 public meetings, workshops, and events. The resulting comprehensive plan provides a blueprint for sound planning and future development within the city.



Case Study — Hidden Creek at the Darby

Hidden Creek at the Darby in central Ohio demonstrates how the goals and strategies of a comprehensive plan can be carried out through zoning regulations. The comprehensive plan identifies Darby Creek as a significant environmental feature and seeks to preserve this critical natural resource. The incentives offered in zoning, which include clustering, allowed this large development to accomplish this goal. Instead of parceling the entire 604-acre lot, the developer worked with The Nature Conservancy to set aside over 230 acres as a protected, private nature preserve along Little Darby Creek, a National Wild and Scenic River. On the remaining acres, only a limited number of clustered home sites were designed to blend in with the natural settings. Walking trails, stables, and an equestrian area were also incorporated into this subdivision. By using incentive-based zoning (clustering), the landowner was able to develop his property within regulatory parameters while at the same time preserve important natural resources.



Site map of Hidden Creek at the Darby, a residential community located just west of Columbus, OH. (Map: Hidden Creek at the Darby)

Case Study — Bucks County Performance Zoning Model Ordinance

This performance zoning model ordinance, passed in Bucks County (Pennsylvania) in 1996, has the primary purpose of protecting the environment and the secondary purpose of encouraging flexibility in subdivision design. The primary objective is achieved by limiting the amount of development intrusion on certain natural resources. The subdivision ordinance also contains three main performance criteria that a project must meet: minimum open space, maximum density, and maximum impervious surface. The intensity of subdivision development is determined by on-site evaluation and by the degree of compliance with the three performance criteria. Flexibility in the design of residential developments is also accomplished by permitting a full range of dwelling unit types.



Bucks County, Pennsylvania, courthouse.

Bucks County, Pennsylvania, Performance Zoning Model Ordinance:
<http://www.smartcommunities.ncat.org/codes/bucks.shtml>

Relevant Factsheets

P1 – *An American History of Planning* – Provides an overview of the formative years of planning and discusses these influences on the practice of modern planning.

L1 – *Principles of Planning* – Provides an overview of why we plan, the elements of planning, and the importance of public support during the process.

L2 – *Scales of Planning: From Landscapes to Ecosystems* – Helps us understand the levels and complexities of planning.

N3 – *Regulatory Approaches to Protecting Natural Resources* – Demonstrates how planning approaches are used to protect natural resources.

N7 – *Minimizing Parcelization, Fragmentation, and Sprawl* – Defines these three terms and provides mechanisms of planning that can be used to manage undesirable development.

Resources

Cullingworth, J. Barry; Caves, Roger. 2014. *Planning in the USA: policies, issues, and processes*. 4th ed. New York: Routledge. 522 p.

New Hampshire Department of Environmental Services; New Hampshire Association of Regional Planning Commissions; New Hampshire Office of Energy and Planning; New Hampshire Local Government Center, comps. 2008. *Innovative land use planning techniques: a handbook for sustainable development*. Concord, NH. 411 p. http://des.nh.gov/organization/divisions/water/wmb/repp/innovative_land_use.htm. (17 September 2014).

Pedestrian and Bicycle Information Center. <http://www.pedbikeinfo.org/>. (17 September 2014).

Transforming Tysons: Tysons Corner Urban Center Comprehensive Plan. Department of Planning and Zoning, Fairfax County, Virginia. <http://www.fairfaxcounty.gov/tysons/comprehensiveplan/>. (17 September 2014).

Acknowledgements

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