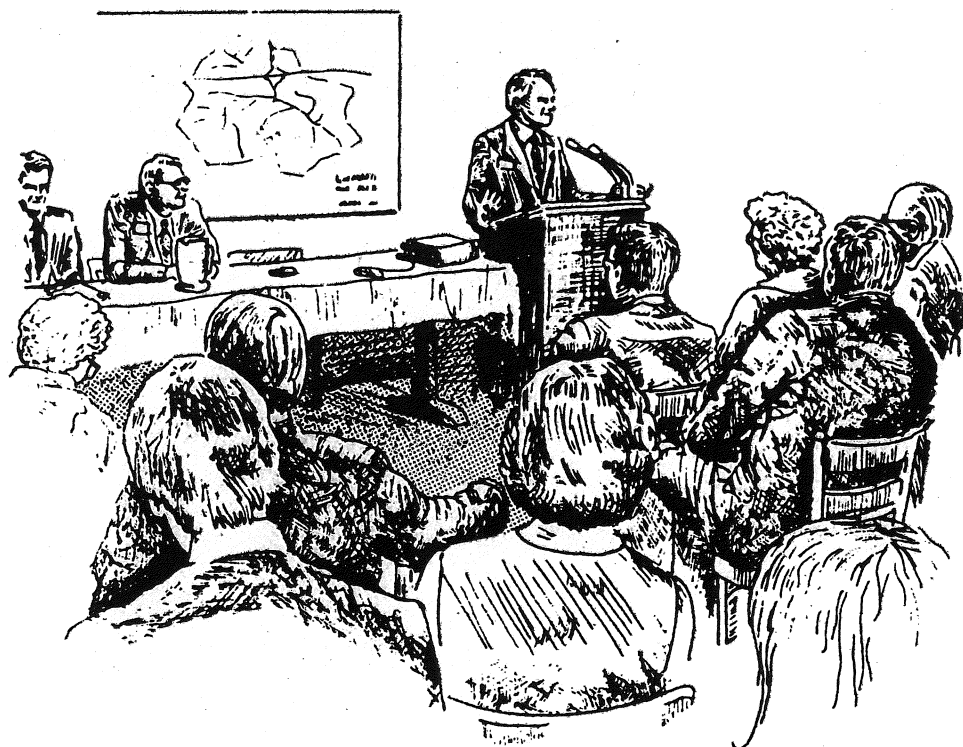


# Planning Commissioners Handbook



**The Virginia Citizens Planning Association, Inc.**

Report No. 5, Volume 1, First Edition, January 2002

# Abstract

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## About the Cover:

The cover uses the art and design is an adaptation of the cover of the Second Edition of *The Local Planning Commission, Volume II*, July 1985, of the Community Planning Series of five handbooks published between 1979 and 1985 by VCPA and the Virginia Department of Housing and Community Development.

# Dedication and acknowledgments

This *Handbook* has been prepared by the Virginia Citizens Planning Association as a public service and is dedicated to the cause and furtherance of planning in Virginia. The first *VCPA Planning Commissioners Handbook* was compiled and written by a committee of the Association over thirty five years ago. This Edition has been revised and brought up to date by the Publications Committee and reflects changes in the practice of community planning as well as the planning enabling acts of Virginia. During the course of its work the Committee noted the great progress that has been made in the realm of Community Planning since publication of the original *Handbook*, yet some of the same problems are still being discussed.

This *Handbook* has been made possible through the efforts of many qualified VCPA citizen and

professional planners. Their dedication and work are gratefully acknowledged. VCPA gratefully acknowledges permission of the Virginia Chapter of the American Planning Association (VAPA) for permission to use extracts from its June 1999 report: *Virginia's Growth Management Tools*.

This numbered Volume is the first of several envisioned in this series. Revisions and additions to this and other Volumes will be published and distributed from time to time. Revisions of the numbered Volumes will appear as numbered Editions of the respective Volumes. The editors welcome suggestions and comments.

Information about the Association is included and your membership is encouraged. An application blank can be found on Page 6 of Chapter 1.

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# Chapter 1

## Introduction to VCPA

### I. The organization and its activities

**T**he Virginia Citizens Planning Association (VCPA) is an independent, tax-exempt, non-political association of Virginians interested in Planning as a means of making our communities better places in which to live and do business. VCPA is the only state-wide organization of citizen planners in Virginia and one of only a few such state-wide organizations in the United States. VCPA has been continuously active and involved in pursuit of its mission and goals since its founding over a half-century ago. VCPA principles are found in its *Mission Statement* and *Goals* that are reviewed each year by the Board of Directors at its Annual Winter Meeting and Working Retreat.

#### Mission statement

"We, the Virginia Citizens Planning Association, are a volunteer organization dedicated to furthering throughout the Commonwealth the public's understanding and awareness of the need for community planning. We pursue this mission through advocacy and by sponsorship of educational programs and training initiatives for local planning commissions, boards of zoning appeals, governing bodies, and interested citizens to strengthen their capacity for skillful, knowledgeable and responsible community planning."

#### Goals

Since its founding, VCPA has steadfastly and continuously pursued the principal goals of its founders that are currently stated:

- ▲ To promote the importance of planning at the local, regional, and state level.
- ▲ To sponsor high-quality training and educational programs that will advance the practice of planning throughout the Commonwealth.
- ▲ To broaden our membership base and strengthen our internal capacity to be an effective organization.
- ▲ To be recognized as Virginia's Premier planning organization by citizens and state officials.

# VCPA accomplishments

**Beginning with its first conference** at Natural Bridge in 1950, VCPA has held annual conferences at various sites throughout Virginia. Nationally prominent speakers, panel discussions, workshops, inspection tours, and social affairs have highlighted these conferences.

**VCPA helped to establish the** academic programs leading to degrees in planning at the University of Virginia and Virginia Polytechnic Institute and State University — the first such programs offered in Virginia — and later encouraged the creation of a similar program at Virginia Commonwealth University.

**VCPA has initiated permanent** scholarship funds for planning students at each of the three planning schools.

**In 1976, VCPA helped initiate the** Virginia Institute for Planning Commissioners; in 1985, the nationally recognized Virginia Certified Planning Commissioners Program; and in 1988, the Virginia Certified Boards of Zoning Appeals Program. VCPA has held an annual training Institute for Planning Commissioners since 1976. These programs are open to everyone with an interest in community planning. For information concerning the dates, locations, and costs of these

programs contact VCPA by mail, fax, phone, email or via its web site as listed in the Abstract in the inside front cover of this document.

**VCPA has stimulated the initiation** of planning programs in several communities and encouraged strengthening of existing programs in others. It has helped to coordinate planning efforts at different levels throughout the state. Members of VCPA have given of their time as members of or advisors to various state commissions. The various working committees of VCPA function throughout the year on their respective assignments.

## Organizational structure

**VCPA is governed** by a Board of Directors consisting of its President, First Vice President, Second Vice President, Treasurer, the immediate Past President, twenty-one District Directors, and as many as six At-Large Directors. The Board appoints an Executive Secretary and Treasurer.

**The Board of Directors meets** at least three times yearly to conduct the business of the VCPA and to decide on matters of policy that cannot await or must be prepared for action by the entire membership at the Annual Meeting held in early October.

**The VCPA Constitution and ByLaws** provide that officers and directors shall represent, insofar as possible, all geographic areas of the state and that the Board of Directors shall be composed of a majority of citizen planners. Both rural and urban points of view are represented.

**Since 1975, the ByLaws** have provided for a district director to be elected to represent each of the twenty one Virginia planning districts.

## Membership

**Every Virginia citizen** having an interest in achieving an orderly, efficient, attractive, and prosperous community through planned, coordinated development, is invited to join VCPA. Everyone joins as an individual and speaks only for himself.

**Members include** those who serve on local or district planning commissions, boards of zoning appeals and elected public officials; professional planners, local administrative staff members; educators, businessmen and interested citizens. Classes of membership are: Annual; Contributing [10-pay subscription Life]; Life; Student, and Complimentary.

**VCPA membership** is for a full year from receipt of dues. Dues for members of groups from 2 to 11 or more persons are discounted based on the number of persons in the group. In addition, free one-year, one-time introductory Complimentary memberships are given to participants attending the certified training programs and the annual Fall Institute for Planning Commissioners if they are not presently or have never been a VCPA member.



## II. Planning in Virginia: A brief history

**T**he Works Progress Administration (WPA), a federal agency established by President Roosevelt in 1933 to combat the depression by providing jobs, allocated \$6 million to Virginia.

Largely through the effort of General James A. Anderson, then Commissioner of Highways, who was responsible for distribution of the money, the Virginia State Planning Board was established to oversee and guide the disbursement of the WPA funds. Prior to the outbreak of World War II in 1941, the Division of Planning in the Department of Conservation was created to replace the Virginia State Planning Board.

The first Director of the Division of Planning was Raymond V. Long, who firmly believed that plans for

localities should originate at the local level.

To encourage planning — few jurisdictions had a planning commission and even fewer had a planning staff — Mr. Long set up a series of meetings in Richmond for municipal and county officials. When World War II gasoline rationing made travel impractical, he substituted regional meetings.

General Anderson spoke at some of those meetings, chiefly about zoning. He supported zoning and requiring building setbacks along the highways as a means to save his Department the cost of moving houses from new rights of way. During his tenure as Commissioner of Highways, he added a Planning Component to the Annual Highway Conference, bringing planning in

Virginia far wider recognition than it had previously enjoyed.

Following World War II, the Division of Planning was renamed the Division of State Planning and Community Affairs (DSPCA).

Another planning pioneer in Virginia, T. Edward Temple, helped foster and guide the new agency during its formative years. DSPCA, one of the first statewide planning agencies of its kind, quietly and efficiently championed the cause of planning across the Commonwealth.

DSPCA operated for approximately 30 years. The agency was phased out following the release of the Hopkins Commission report that guided the reorganization of state government in the late nineteen seventies and early eighties.

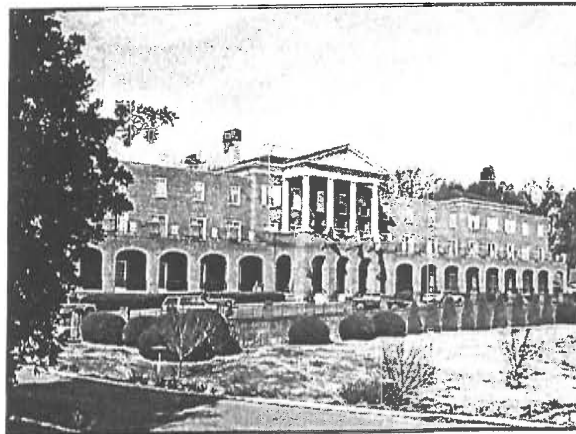
## VCPA formally organized

**VCPA was organized by a group of 28 citizen and professional planners** at a May 1950 meeting at Natural Bridge.

**Its first VCPA officers** were Donald R. Locke of the Norfolk Planning staff, President; Mrs. Robert S. (Vinton) Pickens of the Loudoun County Planning Commission, Vice President; and Garland Wood of the Richmond Planning staff, Treasurer.

**To help launch** the penniless organization, Mr. Raymond Long, Director of the Division of Planning, allowed his assistant for local planning, James Barnes, II, to act as secretary and provided stationery and postage at State expense. The arrangement continued for several years.

**As membership increased** from the original hundred who met at the 1950 conference at Natural Bridge, VCPA gradually became self-



The Natural Bridge Hotel  
January 2002 photo by A. Webb

supporting and an independent organization as its founders had wished. Membership currently exceeds 1,100 persons

**The impact of VCPA** on Virginia communities was shown as early as 1957 by the consideration given its views by the Virginia Council on Higher Education. The Council was pondering the question of adding planning courses to the curricula of the University of Virginia and Virginia Polytechnic Institute and turned to VCPA for help.

**Later, the Legislature** requested help from VCPA to assemble under one title in the Code of Virginia the many scattered items concerning planning.

**VCPA continues** to play a vital role in the life of the Commonwealth with the training and education programs it offers through its own efforts and in conjunction with Virginia Tech.

### III. Making a VCPA difference: Primary working committees

#### Awards and recognition

**This committee** annually presents Awards to individuals or groups contributing notably and constructively to the *"orderly and harmonious development"* of their community, or the Commonwealth. The contributions must have a long-range objective worthy of statewide

interest, provide a sensible answer to a real need and bring about better living in general rather than purely economic results. Citations are sometimes given for accomplishments of comparable merit but narrower in scope. A Youth Award may also be given if appropriate.

#### Legislative

**This committee** keeps the Board and membership informed of proposed legislation of interest to VCPA and advises the Board as to whether it should support or oppose such legislation.

On occasion the committee suggests needed legislation.

#### Education committee and funds

**The Education Committee** existed before any institutions in Virginia offered courses in planning. It raised money to start the James E. Pate Memorial Scholarship Fund at the University of Virginia and the VCPA Planning Scholarships at Virginia Polytechnic Institute and State University. The two funds initially received grants of \$10,000 each from the Old Dominion Foundation. Later, in 1975, a committee led by then president John "Jack" Reardon, raised contributions of an equal amount to fund the VCPA planning

scholarship at VCU. Only the earnings from these funds is used for scholarships. Donations, which can be made directly to one's university of choice, are encouraged at any time.

**In partnership with Virginia Tech,** the Education Committee assists in the design and delivery of the annual Virginia Institute for Planning Commissioners, as well as the respective Certified Planning Commissioners and Certified Boards of Zoning Appeals Program.

## Publications

The VCPA publishes and distributes a periodic newsletter for its members. It contains articles of interest as well as useful information needed by members in the performance of their duties.

The Virginia Citizens Planning Association has prepared this *Handbook* to assist local and regional planning commissioners and other government officials.

This *Handbook* is intended to serve as a guide to citizen planners

and their staff members, particularly those who may not have the advantage of specific training in the increasingly complex field of planning.

The *Handbook* is designed to be a brief introduction and aid. It is not a substitute for either the workshops and Institute sponsored by VCPA or the more essential in-depth training provided by the two certified programs VCPA and Virginia Tech cosponsor several times each year in different Virginia locations.

Information about the programs can be obtained by contacting VCPA by mail, telephone, fax, email or its web site.

VCPA Workshops can be scheduled throughout the year at convenient times and at suitable locations within the host community. The Certified Planning Commissioners course is held three or four times each year and the Certified Boards of Zoning Appeals course is held annually.



## Membership application

To become a member of VCPA, simply copy and complete the application below and mail it together with your check for the type of membership desired. A separate application or the appropriate information must be submitted for each member of a group.

### Application for Membership in the Virginia Citizens Planning Association, Inc.

#### Individual Membership

Annual	\$ 20.00
Contributing (ten equal payments*)	40.00
Life (one time payment)	400.00
Student (proof of status required)	10.00

*\*After 10 continuous years, a Contributing Member becomes a paid-up Life Member.*

#### Group Memberships Per Person\*

Groups of 2 to 4 persons	\$ 19.00
Groups of 5 to 10 persons	17.50
Groups of 11 or more persons	16.00

*\*Group dues must be paid by a single check.*

Please Make Your Check Payable to VCPA and Mail it to PO Box 34, Richmond, VA 23218-0034

Name: \_\_\_\_\_ Agency or Group Affiliation: \_\_\_\_\_

Address: \_\_\_\_\_ Email: \_\_\_\_\_

City, State, Zip+4: \_\_\_\_\_ Phone (H): \_\_\_\_\_ Phone (W): \_\_\_\_\_

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## Chapter 2

# What is this business ... called planning?

**B**eing a planning commissioner requires time and energy. In this regard it is not unlike a job. *If a commissioner adopts the view that time spent on commission activities is similar to a job — something that requires an unqualified commitment of time and energy in order to get the job done correctly — few serious problems will be encountered!*

Some planning commissioners will need to commit minimal amounts of time — perhaps as little as an hour or two a week — while for others the job will require a much greater commitment. For some, their time on commission work will be measured in days rather than hours. The commitment will vary depending on the community, its planning program and each commissioner's philosophy and dedication.

In order to familiarize and assist citizen planners in their decision making, this *Handbook* seeks to identify, highlight, and summarize pertinent and applicable Virginia Statutes. The journey begins with an overview of planning and the planning process. It is an introduction to further study.

## I. Planning — its goals and benefits

**Planning has many definitions.** One dictionary definition is “to form a scheme or method for the doing of something: to draw plans or designs for ...” As applied to cities, towns, counties, or geographic regions, it means the formulation of plans to accommodate changes that time will bring — age, obsolescence and wear and tear of facilities; growth and sensible improvement of a defined geographic area; as well as the necessary provisions for achieving the desired objectives.

See *Planning* on page 2

**Planning**, continued from Page 1

**Planning is a rational means** of managing change. In fact, a long-time VCPA planner has defined planning as the intelligent way to prepare for the inevitable. It has as its goal the protection and gradual improvement of the communities in which we live, work and play. Planning has many objectives, a few of which a few important ones are:

- ▲ *Conservation of natural assets,*
- ▲ *Preservation of existing values,*
- ▲ *Prevention of community decay,*
- ▲ *Economy in the cost of public improvements,*
- ▲ *Efficiency in public services and infrastructure,*
- ▲ *Economic development,*
- ▲ *Promotion of the best possible types of development, and;*
- ▲ *Various other objectives of concern to citizens and taxpayers.*

**Community planning** makes it possible to combat or better control such matters and concerns as:

- ▲ *Scenic and natural resources,*
- ▲ *The movement of goods, services and people,*
- ▲ *income producing industries and businesses,*
- ▲ *Blighted and run-down areas, and;*
- ▲ *Problems and opportunities associated with human settlement patterns.*

**Practical planning** not only recognizes legitimate needs and trends, but steers growth and the inevitable changes time brings toward what the community feels is most desirable. It will result in the creation and adoption of written plans and documents, including such things as statements of goals, objectives and policies; ordinances and regulations, and financial plans.

**All such actions** lie under the blanket of the *police power* — the inherent right given the locality by the state to intervene in private activity in order to advance the *public health, safety, and welfare of its citizens.*

---

**Accomplishing planning goals; however, requires sincere, dedicated public decision makers who are courageous and willing to keep long-term community goals in the forefront and consistently make forward looking decisions, often in the face of criticism and derision, in lieu of easy, “politically expedient or popular” short-term decisions.**

---

**Planning is an interactive process** concerned with the trends of growth, the character and quality of existing development, the local economic situation, and the desires and preferences of community residents. The primary goal of most planning processes is the articulation of a preferred future vision for

the community and the identification of specific steps and actions the community can take to achieve and experience its preferred future. Planning is making tough choices!

**Goals, objectives and policies** constitute the core of most plans and are designed to address the most constructive and appropriate uses of land, adequate provisions for transportation, adequate facilities for community services such as schools, playgrounds, water supply, sanitation, and the like.

**Adoption of the community plan** (also known as the comprehensive plan) is but one step in the overall planning process.

**Planners must continuously** monitor community growth and change. They must consistently apply the basic planning process to specific situations through careful subdivision control, zoning, and other means, including community budgeting.

**If this continuous and dynamic process** is followed and kept current, those Virginia’s localities that do their work well will position themselves to be able to effectively, efficiently, and confidently experience a far better future with greater resources and fewer problems.



## II. The ABCs of planning — basic terms

**O**ne of the key responsibilities of the new planning commissioner is to quickly develop the ability to recognize and understand the language of planning. The distinction between the terms *planning* and *zoning*, for example, is critical. This *Handbook* uses the following definitions defined and discussed below:

**Planning** is the study and analysis of the conditions and opportunities in a community in order to anticipate its future needs and trends, and to guide its growth and changes toward planned objectives. It is a continuous, cyclical process.

**Zoning** is one of the primary tools used to give practical effect to features contained in a plan. Zoning establishes and controls the use, the development, and the character of each parcel of the land in the community. Zoning, in partnership with subdivision controls, is the primary tool used by a community to achieve the goals and objectives in its adopted comprehensive plan.

**Subdivision** is the process of dividing and defining land into smaller parcels for the purpose of building on or otherwise utilizing them as allowed by zoning. The process is guided by the Subdivision Ordinance that, along with zoning, establishes the size, character, and improvements necessary to serve and accommodate the desired use of the parcel being created.

### Planning

The new planning commissioner must quickly and clearly learn to distinguish between the plan itself and the many legislative and administrative controls that implement it, of which zoning and subdivision controls are usually the most conspicuous. It is also important to recognize that the presence of some of these controls in a community does not necessarily mean they were preceded by a substantive planning process.

Neither a collection of regulations nor an office full of plan maps will help if the regulations and the plan maps are out of date or if their preparation was not based on thorough analyses of the community and a well thought out, intelligent program for development. Moreover, the plan must be economically sound — it must provide the platform on which the business community can build and prosper — thus creating wealth that

is vital to the economic health of the community. Planning must be pro-business and create profits if it is to successfully guide development as designed. If not, it will fail.

*While the right of personal ownership and use of land is fundamental in the American system, these rights have always been conditional.* Conditions of various types and to various degrees have been and are being imposed on individual property owners for their protection as well as the benefit of adjacent owners and the community as a whole. *Planning seeks to aid that balance.*

As a community grows and matures, its character changes. Planning for and to accommodate the changes time inevitably brings is becoming increasingly important to and for all citizens who live and work in a community as well as every business and institution

located within it. Local Government operations and services are also subject to the effects of the same changes wrought by time. Thus, planning *must* be practiced, reviewed and refined on a *continuing* basis. Because a healthy, robust community grows and changes continuously, so must its planning.

A recommended first step toward creating a plan is development of a statement of objectives — at least for the use and care of land and buildings, for the safe and adequate circulation of traffic, and for public facilities needed to support the community. These are the basic Plan framework items — its skeleton — upon which all else is attached.

Some call development of this fundamental statement of purpose a *visioning* process.

See ABCs on Page 4

## Zoning

**Zoning** is essentially a means of insuring that the land uses of a community are properly situated in relation to one another, and adequate space is provided for each type of development that is needed/allowed.

**It allows control** of the use and development density of land so that streets, schools, utility systems and other public facilities such as libraries and parks can be designed to adequately service individual properties. It directs new growth into appropriate areas and protects existing property by requiring that developments provide adequate light, air and privacy for persons living and working in them.

**Zoning is a primary land use regulatory tool** based on the police power granted by the state. It is the single most commonly used legal device available for implementing the comprehensive plan for the community. Zoning divides the locality into districts and within each district sets uniform regulations for such things as:

- ▲ *The height and bulk of buildings and other structures,*
- ▲ *The area of a lot that may be used or developed/built upon,*
- ▲ *The size of required open spaces such as setback areas and buffers,*
- ▲ *The density of population through regulation of housing densities, and;*
- ▲ *The use of buildings and land for residence, trade, industry, or other purposes.*

**Of major importance to the individual citizen** is the part that zoning plays in stabilizing and preserving property values and its

affects on the taxation of property as an element of value considered in assessments. Most Virginia localities have enacted zoning laws (some as a means of preventing an undesired use from being developed within the jurisdiction); some have not and a few have “partially zoned” themselves. Rare is a “zoning hearing” not fraught with concern and public participation in the legislative process.

**VA Code, Section 15.2-2280** allows a locality to classify territory under its jurisdiction into districts of such number, shape and size it deems best suited for the general purpose of promoting the health, safety or general welfare of its citizens. The Code also directs localities to apply reasonable consideration regarding the existing use and character of property, the comprehensiveness plan, the suitability of property for various uses, the trends of growth or change and the current and future requirements of the community.

- ▲ *All cities use zoning as a tool to regulate land use and most towns in the state have a zoning ordinance. At least nine counties, primarily located in the southwest portion of the state, do not regulate land use in all or a portion of the land within their boundaries.*
- ▲ *Property owners contemplating a use for their property that is not allowed by the existing zoning district can petition the local government for a “rezoning” to change the district and thereby allow the proposed use. Local governments typically refer to the comprehensive plan, as well as other plans and studies, to determine if the rezoning*

*request is appropriate and consistent with local goals and policies.*

- ▲ *Local government rezoning actions must be founded upon a credible planning rationale or risk being held invalid by the courts if challenged. Because of the “presumption of validity” doctrine, in a court of law, the party challenging the decision of a local governing body bears the difficult burden of proving that the decision should be invalidated. The most typical government initiated rezoning is a downzoning of residential property where the rezoning results in a lower residential density. Downzoning is one of the most effective, but controversial and politically difficult actions a locality can take to bring proposed land uses in line with current goals, policies and conditions.*
- ▲ *Zoning is one of the few tools discussed in this Handbook that is applied at the time of development.*
- ▲ *Zoning ordinances regulate only those land use elements specifically authorized by statute. Primarily included are regulation of land use, the size, height, bulk and removal of structures, dimensions of land, water and air space to be occupied by buildings, structures, and uses, and the excavation or mining of soil and other natural resources.*

**Most localities operate** under zoning ordinances originally adopted a score or more years ago (and reflect their heritage of the early “model ordinances”). Many of them have been amended in a fragmentary manner from time to time for specific purposes in response to specific needs. Owing

See ABCs on Page 5



**ABCs**, continued from Page 4  
largely to their complexity as well as the difficulty of handling public concerns, little or no effort has been made in most localities to undertake a complete redrafting of their aging ordinances. Out of date ordinances can seriously hinder normal growth.

**Consequently, most** such ordinances need various amounts of work to bring them up to date and into line with new plans, policies, and conditions, as well as to reflect new

business operations and techniques and ever-changing legal and other requirements, not the least of which are changes in the Code of Virginia.

**Once a community decides** to undertake a comprehensive rewrite of its zoning ordinance, it needs the services of a competent, professional staff or consultant planner experienced in the process. A consultant can provide a valuable service by bringing the experiences of many communities to the table.

**While special purpose local committees** can make many contributions to the project and assist greatly in the public participation phases of the work, the overall guidance and needed technical writing expertise are not well matched to the skills and experience found among the membership of an average planning commission. Moreover, the project will be scheduled and proceed at a much more satisfactory pace if guided by an experienced professional planner.

## Subdivision regulations (ordinance)

**A subdivision ordinance** regulates the division of land into building lots for the purpose of sale, development, or lease. The subdivision ordinance is a planning tool that is closely linked with and affected by zoning. While it can accomplish some of the functions of a zoning ordinance, such as establishment of minimum lot size and dimensions, a subdivision ordinance is by no means a reasonable or acceptable substitute for a zoning ordinance.

**The ordinance specifies** procedures that are to be followed when land is divided and built upon. Standards governing the platting of building lots and planned improvements, such as roads and utilities, are common to most subdivision ordinances. When used in conjunction with the zoning ordinance and the comprehensive plan, the

subdivision ordinance assures that the land development process is accomplished in an appropriate and consistent manner.

***Because the platting of land is considered to be a permanent change, the entire procedure requires great accuracy and consistency. Therefore, the multiple-step process is somewhat time-consuming and meticulous.***

**Unlike zoning**, the final plats are recorded in the local courthouse and state archives. The plats become part of the permanent record of land ownership and controls that may be placed on it by its owners. Of particular importance is the geographic location data recorded on plats. For this reason, as the ability to more easily and accurately locate points on the surface of the earth by

the use of satellites and sophisticated electronic instruments has increased, we have witnessed increased need and demand for such data. Its use is becoming the norm.

**A secondary**, but very valuable, benefit of this process is the creation of a simple, uniform and consistent method to adequately identify, describe and locate individual properties as well as maintain a history of factors, such as ownership, that affect them. This has always been a part of the American system of land ownership, but is most readily recognized by the average citizen when viewing the "checkerboard" pattern of land ownership and use west of the Appalachian mountains that began with the Ordinance of 1789 when the "Northwest Territories" were opened for settlement.

### III. The planning process

**T**he need for planning and better stewardship of our natural and human resources has become paramount. Increasing concern about environmental degradation, physical decay in our communities, and social problems and economic inequities affecting our citizens should make good planning one of the highest priorities in every community.

**To improve conditions**, people must become involved with the issues and develop plans to resolve them through rational decision-making processes that have complex and long-range effects. The necessity of making such decisions is evident. In terms of community planning, it means objective in-depth studies of community needs and desires and the application of foresight before action is taken that has the potential to enhance the general welfare of the community. A clearer understanding of problems and issues will result in better decisions if they are based on adequate, high-quality information and access to technical and professional analyses and advice.

**Planning is both a strategy and a continuing process** for managing change. In both theory and practice, planning is a conscious, rational process. It consists of identifying problems, developing alternative courses of action, deciding on the best alternative or combination of alternatives and then taking appropriate actions to manage the processes of change created by those actions. Simply stated, planning consists of five basic steps: (1) problem identification, (2) data collection and analysis, (3) development of goals and objectives, (4) plan formulation and evaluation, and (5) plan implementation. The continuous process then repeats itself — a diagram of the planning process will resemble the well-known recycling symbol! Each step is briefly discussed below.

#### Step 1 Problem identification

**Community needs and problems must be identified** — a task that can be accomplished in several ways. Often planning action is started not because it is recognized for its own worth, but because of immediate and pressing problems faced by the community. Citizens complain about low water pressure; teachers instruct in over-crowded classrooms, disgruntled downtown merchants complain of a lack of parking facilities, or local leaders take note of deteriorating areas that should be rehabilitated or redeveloped. Identification of needs and problems is the first step in the planning process. It requires a

comprehensive review of physical, social, economic, political, and environmental characteristics of the community. These data will permit a community planner to evaluate the need for further evaluation and action. The need for good, accurate, clean data cannot be overemphasized. It is absolutely necessary.

**This step of the planning process is the ideal time to initiate community-wide citizen participation** in the planning program. There is no better source of knowledge of problems, needs, resources and definitions of goals than the citizens themselves. Granted, it will take time to build a

good foundation and develop rapport and citizen-generated lists of problems, needs, goals and visions of the future. But, the time to develop them by working closely with the citizens is at this step. Articulating the results of public participation will be time well spent as it will facilitate faster, easier agreement and action in the steps to follow. Planners with long experience will confirm that the collective intelligence and common sense of the general public is often underestimated and/or overlooked. Let not your planning program fail to recognize and use this invaluable community resource.

## Step 2

### Data collection and analysis

**After determining a need for planning and action**, the next step is collecting information to clearly identify the type, nature, and extent of problems as well as provide the basis for logical decision making later in the planning process. Government agencies, professional planners, consultants, as well as citizen committees and lay citizens can assist in collection and evaluation of information after having been adequately trained.

**Basic information** such as maps and population and employment

statistics are important to identify trends and make projections.

**Other information** related to particular needs in the community or to problems such as housing quality and the location of public utility service areas should be collected.

**Community meetings** involving civic groups, public agencies and local leaders can and should be used to obtain points of view and information on community concerns. When properly used, this technique will also develop needed community

rapport and support in the plan formulation and implementation stages that follow this step.

***This is the time to clearly indicate to the citizens of the community that the time to affect public policy is when it is being made. When clearly defined and set at this time, the Plan can properly reflect public policy and build upon its strengths.***

**Decisions made** during meetings at this step in the planning process are exceedingly important to the citizens and decision makers alike.

## Step 3

### Development of goals and objectives

**Goals are statements of desired conditions or positions** the planning process hopes to achieve; or activities expected to be undertaken in the future.

**Objectives on the other hand, are specific actions or improvements** that must be accomplished in order to reach the established goals.

**Determining goals and objectives** is a major function and responsibility

of planning commissions, government leaders and others.

**Defining goals and objectives**, their desired impact on the people and the community as well as the capability to achieve them, all require careful consideration. Individually and collectively, they must be carefully evaluated to assure that each is realistic and ***reflects the best interests of the community as a whole.***

**Because the citizens** of the community must finance and live with the results of plans and programs for the future, they too should also have a voice in the discussion and determination of goals and objectives. Good, imaginative use of citizen committees, task forces, radio, television, newspapers, hearings and other informational presentations will aid the development of listings of concerns of the people most affected.

## Step 4 Plan formulation

A **completed plan** brings together the different aspects of community problems and presents a sequential process of tasks, programs, and recommendations that should be undertaken. Plan development should determine those work activities that must be done and the sequence they should be undertaken to achieve the agreed

upon objectives. The complexity of the planning problem and the resources available for implementation will, to a great extent, determine the time needed to accomplish development of the agreed upon goals and objectives.

**The Plan** should, and a good plan *will* provide both the framework for

a continuing program and recommend the tools needed to implement the plan on a continuing basis once it has been adopted by the governing body. It must be remembered, however, that adoption of the completed plan is not the end of the process — rather, it is simply one of the steps in an on-going program.

## Step 5 Plan implementation

**After the type and sequence of needed and planned actions** has been established and the Plan adopted, its implementation is initiated. *Many mistakenly ignore the implementation process or believe adoption is the final step and the job is done. Not true.* If you (the planning commission, the elected body, and the board of zoning appeals) are unable or unwilling to enforce it by consistently facing and making decisions on tough, sensitive matters and following the recommendations of your adopted plan, then do not adopt it!

**The early years** after adoption of the plan will be the hardest as your resolve to follow it and your willingness to compromise will be tested by those whose goals conflict with the plan. Be resolute and follow the plan. In time, if experience suggests the plan may need revision, an analysis of the events and challenges during the early years of implementation will provide invaluable information and guidance.

**The implementation process** may involve one or several actions or

programs. Typical actions include such matters as development of new or revised codes, improved enforcement of existing codes and ordinances, bond referendums, grant search and applications, capital expenditures, and/or initiation of various work programs.

**Periodic progress reports** and program reviews will provide good indications of overall effectiveness and progress toward attainment of goals as well as continual evaluation of the plan and its implementation strategies. This entire process will be continuous. It will provide information and necessary evaluations that will eventually result in plan reviews, revisions, and updates.

**It must always be remembered** that planning is a circular process — plan implementation is both the end of one process as well as the beginning of the next one that builds upon the foundation of past progress. In a well managed planning program and operation, the two will seamlessly merge and proceed simultaneously. **Plan implementation is perhaps the most difficult** of the five steps to achieve.

**Yet, it is the time** during which the “access to technical and professional advice” mentioned earlier, is frequently missing thereby handicapping plan implementation by denying it good guidance.

**Planning commissioners, governing body members, and board of zoning appeals members** all must cling to a clear, conceptual hold on what their community believes to be in its own best interest (not unlike well-trained emergency workers who fall back on their training to make decisions during a crisis).

**Equally important**, the community or comprehensive plan must validate the decisions of these important decision makers. Those who make decisions in the implementation part of the planning process will achieve superior results only after the larger interests of the community have first been determined and clearly articulated. If planning is going to make a community difference, it must be constantly implemented.

***The key to successful plan implementation is staying the course to reach the agreed upon goals!***

# Chapter 3



## The job of the planner

### I. Legal foundation for and duties of local planning commissions

**A**lthough planning commission members are chosen because of their ability to use common sense when dealing with problems and searching for their solutions, they need to be provided with specialized, planning-oriented training. Such training will enable them do their job well in this ever increasingly complex and demanding area of government — and to stay out of legal trouble while doing it.

**Local planning commissions** are directly involved in studying and recommending changes to their governing bodies. Because of this role, they have a major influence on public policy and development. The importance of this role, in and of itself, justifies training in this field. Planning commissions have an equally important responsibility to accomplish their planning tasks in accordance with specific legal procedures. Here are the primary tools everyone involved in planning should know and keep in mind.

#### Legal foundation

**Local planning commissions in Virginia** have been empowered to plan since the passage of state

enabling legislation in 1929. Since that time, review of the legislation has been continuous and in response to ever changing circumstances. It has been amended and refined to

broaden the scope, powers, and responsibilities of planning commissions. The current legislation, particularly Virginia Code Sections 15.2-2200 through 15.2-2221, clearly defines the organization, functions and responsibility of the local planning commission. Indeed, Virginia law [Section 15.2-2210] mandates that every locality *must* have a planning commission. *It is not optional — it is jurisdictional.*

**A local planning commission is appointed** by the governing body which may require each member to take an oath of office. The governing body may also specify additional requirements such as attendance of training and certification courses and training offered by VCPA. A planning commission must be comprised of at least five, but no more than fifteen members. All members must be residents of the

See **Legal** on page 2

**Legal**, continued from Page 1  
county or municipality, and at least one half of the commission members must own real property. One member of the commission may be a member of the governing body, and one may be a member of the administrative branch of government. Each commission member must be qualified by knowledge, experience, and ability to make decisions concerning community growth and development. There are additional requirements for special circumstances, but the basics have been stated.

**The local commission must set a schedule** to hold regular meetings. It must meet at least once every two months unless the population of the locality does not exceed 7, 500 persons, in which case its commis-

sion must meet at least once yearly. Special meetings may be called in addition to the scheduled meetings and there are established requirements for notification of members.

**A quorum consists** of a majority of the members and *no action of the commission is valid unless authorized by a majority vote of those present and voting* [Section 15.2-2215]. Thus, a local commission may not dodge a controversial issue by sending it forward to its governing body with a tie vote on a motion. It is important to remember that abstentions, as well as absences, can easily create unacceptable tie votes.

**Members of governing bodies** sitting on local planning commissions are expected to vote when matters before the commission are

subsequently considered by the governing body. Governing body members who sit on planning commissions may wish to emphasize their liaison role by abstaining from voting at commission meetings and hearings. In the event of a tie vote, however, a governing body member may serve a valuable role as a tie-breaker. When breaking a tie, the [governing body] member may wish to announce that the vote will be “cast with the motion [an affirmative vote] to assure a valid commission action on the matter so it may be sent to the [council or board] without delay for consideration and final action.” A qualified vote of this nature is nearly always considered “neutral” by the general public — but the record must clearly show the rationale behind the vote.



## Duties of local planning commissions

**Virginia statute [Section 15.2-2221] provides** that a local planning commission must:

- ▲ *Exercise general supervision and regulate the administration of its affairs;*
- ▲ *Adopt a set of rules and regulations pertaining to its investigations and hearings;*
- ▲ *If authorized by the governing body, supervise its fiscal affairs and responsibilities, under rules and regulations prescribed by the governing body;*
- ▲ *Keep and safeguard a complete set of minutes and papers pertaining to its work;*
- ▲ *Make recommendations and an annual report to the governing body concerning the operation of the commission and the status of planning within its jurisdiction;*
- ▲ *Prepare, publish and distribute*

*reports, ordinances and other material relating to its activities;*

- ▲ *If required by the governing body, prepare and submit an annual budget in the manner prescribed by the governing body; and*
- ▲ *If/when deemed advisable, establish an advisory committee or committees.*

**The local commission must prepare and recommend a comprehensive plan** for the physical development of the territory under its jurisdiction [Section 15.2-2223]. The statute further states that the governing body must *adopt* a comprehensive plan. It is obligatory.

**In addition** to adopting the plan, at least once every five years the adopted plan must be reviewed by

the commission to determine whether it is advisable to amend it. While the Code does not specify the content or type of periodic review required of a locality, it certainly follows that it must be at least as thorough and as broad as necessary to make the required determination in light of the spirit and intent of the Code mandate to adopt the plan.

**Incremental plan updates** are not only acceptable, but are generally more easily accomplished than major plan updates. Just as community planning is a continuous process rather than an end in itself, so should the process of keeping the adopted community plan up to date be continuous. *A planning commission and/or its leadership that allows its comprehensive plan to gather dust on the shelf is not meeting the full scope of its responsibilities.*

## II. Planners — who are they and what do they do?

**P**lanners, at least for the purposes of this Handbook, are persons who, by virtue of their training and/or experience are qualified to provide professional planning services or are concerned citizens who contribute to the community by serving on a municipal, county, or regional planning commission, board of zoning appeals, or other planning-related body in their spare time and often without pay.

### The citizen planner as a planning commission member

**Citizen planners**, as members of a planning commission, are appointed by the governing body because they have demonstrated interest in the future of their community, a record of ability to exercise good common sense, special aptitudes or training, and have a vision in regard to community activities and civic problems.

**Members of planning commissions** should be selected so the body represents a cross-section of community interests. Planning commissioners are liaison officers on planning related matters between the public and the governing body, being advisory to the latter. They can also relieve the governing body of much detail work, time constraints and pressure. The planning

commission, by benefit of Code citation, is the directing and policy-making agent in the planning process.

**A planning commission** should be apolitical. Its purpose is to bridge the planning gap between the citizenry of the community and its often narrow, specific concerns and interests on one hand and on the

other the elected governing body that must focus its attention and energy broadly on the overall welfare of the community as a whole. A planning commissioner's role is difficult at best, but with appropriate training is one that will bring great satisfaction to those who are willing and able to dedicate their time and effort to the betterment of their community.

### The citizen planner as a board of zoning appeals member

**Members of boards of zoning appeals**, because they have a part in the administration, though not usually in the framing of zoning ordinances, can also be considered non-professional citizen planners. Members of the board of zoning appeals are usually appointed by the

circuit court of the county or city. Just as planning commissioners, the members of boards of zoning appeals should be chosen on the basis of community interest, good common sense, ability to reason through often complex problems, high ethical standards and a high

sense of fairness. The Board of Zoning Appeals has specific powers and duties that will be reviewed in a future volume of this *VCPA Handbook* series. The Code [Section 15.2-2308], authorizes one member of the planning commission to serve on the Board of Zoning Appeals.

# The professional planner

**Virginia cities, a majority of counties, and many towns employ full-time planners** to serve the community and provide special assistance to the governing body, planning commission, board of zoning appeals, and their administration.

Most cities, urban counties and larger towns maintain planning staffs. Unfortunately, many communities can afford to employ only one full-time person, and far too many localities can not afford to hire even one person to be assigned to planning functions. In such localities, the town or county manager or an assistant may perform some or all of the duties of a planner. The duties of a planner are many but may be summarized:

- ▲ *To make necessary investigations, technical studies, reports, and recommendations to the commission on planning matters.*
- ▲ *To attend to all required legal notices and procedural requirements that must be met prior to commission actions.*
- ▲ *To assist the public by supplying information, helping with individual applications or other procedural matters, attending meetings of civic groups, and the like.*
- ▲ *To keep the correspondence and records of the planning commission, transmit and explain its recommendations to the governing body, prepare the budget [if requested], attend to correspondence with the general public, and otherwise run the office.*
- ▲ *To perform these or similar*

*services for the governing body, the board of zoning appeals, and to some extent for the city, town or county executive.*

- ▲ *To perform the duties of a zoning and subdivision administrator.*

**The technical aspects of planning require professional training** just as for engineering, architecture, landscape architecture, and public administration. The professional planner is one whose full-time occupation is in the field of community planning, as a public servant, a consultant in private practice or employed by a private business as a staff planner. Professional planners are qualified either through professional training and/or experience in public or private planning practice. In addition to general understanding of municipal

engineering, architecture, landscape architecture, sociology, economics, law and political science, a planner must have imagination and vision. The supply of broadly-trained, experienced, and otherwise qualified planners is rather limited as their training is utilized in a broad array of private and public activities.

**When an under-trained or inexperienced planner is employed**, it is especially important that person be given as much guidance and training as the community can afford.

**Planning consultants** may be employed by communities to assist and augment or train planning staff, to assist a commission that has no staff, to undertake special projects, to perform an intermittent or continuing advisory service, or for such other purposes the local commission may deem necessary.



### III. Ethics, conflict of interest and the planning commissioner

**T**he Planning Commissioner, as an appointed official, shares with elected officials and professional planners the awesome responsibility for guiding the future of our communities. A planning commissioner is given authority and must accept responsibilities that require service in the public interest and treatment of the office as a public trust.

**At the close of the nineteenth century,** the civic reform movement occurred because of distrust of political processes. The “independent” planning commission was created to help remove politics from the decision-making process with the goal that the best use of the limited land resource of a community, whether on a short or long term basis, should be planned. While this noble goal has not always been as achievable as its creators envisioned or hoped, we are much closer to meeting the goal today than we have ever been.

**To serve the public interest** with integrity and honor, public decision-making must be accomplished both individually and collectively by appointed planning commission members through the application of ethical standards. The following list of standards illustrates the breadth of topics that both individual planning commissioners and the Planning Commission as a body need to aspire to meet when considering any matter:

- ▲ *Have an open mind and listen [as differentiated from simply hearing] to the details of the matter and concerns of all parties,*
- ▲ *Ask for and assure that full, clear and accurate information*

*needed to make a decision is supplied and that such information is equally available on a timely basis to all concerned parties,*

- ▲ *Evaluate the strengths and weaknesses of the proposal as well as those of other proposals or viewpoints that may be presented for consideration,*
- ▲ *Be fair to all participants in the planning process — applicants, property owners, citizens, interest groups, staff and media representatives, and others,*
- ▲ *Assist in the clarification of the process for all participants so your ethical standards are clear and understood by all,*
- ▲ *Do not use or disclose confidential information in any manner,*
- ▲ *Disclose any “conflict of interest” you may have or feel you may have,*
- ▲ *Do not misrepresent or disclose only a portion of the facts in a way that may mislead,*
- ▲ *Abstain from participation if you have a financial interest in the outcome of the matter,*
- ▲ *Exercise independent judgment so that you, as a Commissioner, avoid even the “appearance of impropriety,”*
- ▲ *Avoid any behavior that may create doubt by the public of*

*your fitness for the office,*

- ▲ *Accept no money, gifts or favors from anyone who has or may have any interest that may be substantially affected by a decision of the Commission,*
- ▲ *Accept no business or professional opportunity if there is a reasonable likelihood that the opportunity or potential opportunity exists to influence your performance as a Commissioner,*
- ▲ *Adopt and abide by Commission by-laws and rules of procedure that include ethical statements focusing on due process, fairness and equity for all participants.*
- ▲ *Maintain your focus on the question: “Do I have a ‘conflict of interest or appear in any way to have a conflict of interest?’”*
- ▲ *Attend meetings prepared to participate in a knowledgeable way and make well-informed decisions.*

**As an active, responsible member** of the community, from time to time as a planning commissioner you will have personal and financial interests that “may” be affected by a proposal, plan or other matter that comes before your commission for official action. Sometimes that “conflict of interest” can be clearly

See **Ethics** on Page 6

**Ethics**, continued from Page 5  
recognized because of a direct financial or family relationship to the applicant, the owner, the developer, or in some other manner.

**The identification of a conflict of interest** is but the first step. If you feel you have a conflict of interest or the potential for appearance of a conflict of interest, you need to seek assistance. Your Commission legal counsel and/or the planning director for your community can assist you in making the judgment.

**If you have** a “conflict,” you must immediately declare it to the Commission and public and recuse yourself from participation in the matter. Do not participate in any way on the agenda item. You should physically leave the room while it is being considered. Simply being silent or “abstaining” is not adequate as your presence will influence both the Commission and others present. Your continued presence will send the message that you are not really sincere in your desire to “distance” yourself from the matter.

**Many situations fail to rise** to the level of a conflict of interest as defined by law. Nonetheless, they create the appearance of a conflict of

interest. Such situations are difficult to deal with and much of the time a commissioner’s conscience will be his only guide. In this situation, the question you need to ask yourself *and truthfully* answer is — “Can I make an unbiased decision because of these interests or this appearance?” If you are one of a large group of people that will be affected, such as a farmer or teacher and

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## ***Attend meetings prepared to participate in a knowledgeable way and make well- informed decisions.***

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would not personally receive an individual benefit, then voting on the matter is acceptable.

**Many localities have developed** rules or policies for handling situations when an appearance of conflict is present. Know and follow them. However, if your locality has not yet adopted rules or guides for use in these situations, then promote their creation or volunteer to lead a team to research, study, and prepare them

for review and adoption by your commission.

**If you are uncomfortable** with the situation and your commission has not yet developed rules or policies for guidance, you may wish to announce that you have discussed the matter with your counsel and although you do not have a legally defined conflict of interest, you feel it is appropriate that you refrain from participating in the matter and will recuse yourself.

**Your credibility** and that of your commission would be best served by physically removing yourself from the commission table. Leaving the hearing room will emphasize your sincerity.

**The subjects of ethics and conflicts** of interest are complex and difficult. They are usually so tied to specific circum-

stances that they are best considered in the context of a group meeting. In such a venue, it is far easier to explore and discuss the often subtle differences and applications of principles as well as understand their nuances. It is suggested that commission members or planning commissions interested in a meeting to explore and discuss these subjects, begin by discussing them with local staff or legal counsel if staff is not available or unqualified.

## IV. Training for planning commissioners, boards of zoning appeals members, other citizen planners and staff

**B**ecause training is so important to a successful community planning program, VCPA encourages the governing body of every jurisdiction to mandate that members of its planning commission and board of zoning appeals attend training programs, preferably certified programs. Further, VCPA encourages every jurisdiction to require that its administrative employees receive as much training as possible. Of course, it goes without saying that planning training for members of the governing body is equally desirable. It is important to remember that attendance of any meeting by three or more members of any of these bodies is precluded without proper public announcement in advance.

### The VCPA workshop program

An on-site one-day “planning workshop” program for individual localities was inaugurated by VCPA in the fall of 2001. This inexpensive program was designed to provide basic planning guidelines to assist the making of good, defensible decisions. The training is conducted during an afternoon or evening session and will provide assistance for those who are not able or desire to attend a longer, more technical and comprehensive program such as the VCPA-VA Tech Virginia Certified courses.

VCPA encourages localities to include members from the governing body, planning commission, board of zoning appeals, and administration to attend as a group in order to maximize the value of the time spent together.

This workshop is presented by VCPA volunteers at a location in the jurisdiction chosen by the host. Only a modest fee that offsets some of the direct VCPA costs need be borne by the host community.

### The VCPA-Virginia Tech certified programs

The VA Tech Certified Planning Commissioner and Boards of Zoning Appeals courses consist of three modules.

**Module 1** is a two-day classroom phase. It includes lectures and presentations regarding legal matters, planning and zoning principles and practices, powers and duties of the Planning Commission and Board of Zoning Appeals, and how to do the job to which one has been appointed.

**A 10-week home study module** follows. In Module 2, the student reads and studies selected texts and completes open book exams from the readings. The student must attend the meeting of another planning commis-

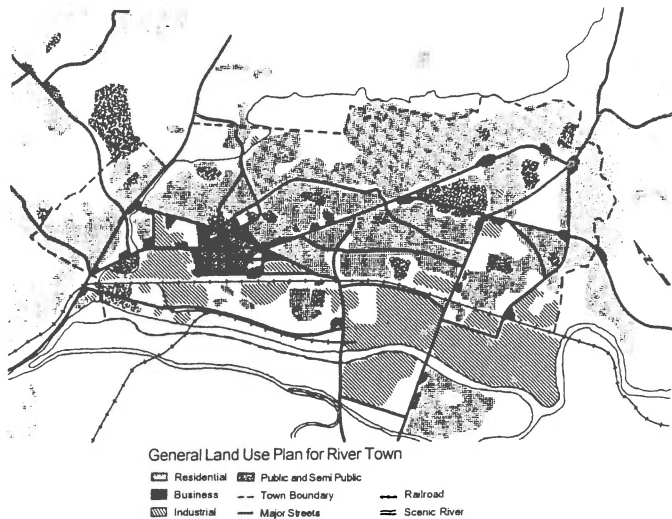
sion or board of zoning appeals and prepare a critical analysis of its strengths and weaknesses.

**The final part**, Module 3, is a two-day session that includes discussions focused on decision making, group dynamics, how meetings can be best handled and how to deal with difficult subjects. Throughout the program ample attention is given to both technical and community aspects of planning.

VCPA strongly encourages all localities to take advantage of these invaluable training resources and support their volunteer citizen planners.



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# Chapter 4

## The tools of planning

### I. Comprehensive plan

**A** comprehensive plan (or general plan or community plan as it is sometimes called) may be defined as a published official public report to the people adopted by the local governing body. It sets forth its major policies concerning desirable future physical development. The plan, if consistently used in the decision making process, will further the orderly development and/or redevelopment of the community. The plan should have great educational value as it can promote public understanding of the community.

**Virginia Code, Section 15.2-2223** sets forth the legal status of the plan. This section of the Code states that after it has been recommended by the commission and adopted, the plan shall control the general location, and the character and extent of each feature shown on the plan. Further, no street, public park, school, etc., shall be constructed or established until its location has been approved by the local planning commission as being substantially in accord with the plan.

**Every governing body is required to adopt a comprehensive plan for the territory under its jurisdiction. Once adopted, the plan must be reviewed at least once every five years by the local**

**planning commission to determine whether it is advisable to amend the plan. Such reviews must be of adequate scope and depth to satisfy the spirit and intent of the mandate requiring the plan.**

**While the planning commission and governing body use the plan on a regular basis as a guide for making decisions on land-use matters/issues; other local officials, public agencies, community developers, businesses, financial institutions and the general citizenry consult the plan for guidance in a variety of personal, business, and investment matters.**

**The plan has no direct regulatory effect** although it may well be referenced in litigation. The plan is implemented through the adoption and subsequent use of such local ordinances as zoning and subdivision regulations, and a capital improvements program. An official map is provided for by the Code; and in many communities, a mineral resource map may be adopted. The comprehensive plan may include such diverse components as those addressing economic development, growth areas, housing programs, schools and other public facilities, recreation facilities, and conservation areas. Only community preference and desire limit the number and type of component plans that may be included in the comprehensive plan.

**The protections and stability** created by a high-quality, well-maintained comprehensive plan and proactive planning program will be recognized and embraced by the community. Citizens will realize that the enhancement of the quality of life in the community will far exceed the costs of maintaining the plan.

## II. Zoning ordinance

**Z**oning is a legislative process by which the local governing body (under power delegated to it by the state zoning enabling law — VA Code, Section 15.2-2280 which provides that any locality may classify any of the territory under its jurisdiction into districts of such number, shape and size it deems best suited for the general purpose of promoting the health, safety or general welfare of the public) divides the municipality into districts or zones, and adopts regulations concerning the use of land and the placement, spacing, and size of buildings. Primary goals of zoning are to avoid or minimize disruptive land use patterns involving incompatible land uses and to maintain property values.

**Zoning depends** on planning and planning depends on zoning. Neither can exist without the other. The comprehensive plan can be thought of as a roadmap that captures in pictures and words what a community wishes for itself. Although the plan will talk about land use, *it does not regulate land use*. This is the role of the zoning ordinance. In short, the comprehensive plan provides the public policy basis for drawing and applying the zoning districts that, in turn, control what happens on the land.

**It is important** to bear in mind that local zoning authority is derived from the state. Zoning enabling statutes set out — in quite general terms — what local governments can seek to accomplish through zoning. The Code lists the following purposes for zoning.

- *Provide for adequate light, air, convenience of access, and safety from fire, flood, earthquakes, crime, and other dangers;*
- *Reduce or prevent congestion in the public streets;*
- *Facilitate the creation of a convenient, attractive, and harmonious community;*

- *Facilitate the provision of adequate police and fire protection, transportation, water, sewerage, schools, parks, playgrounds, recreational facilities, and other public requirements;*
- *Protect against the overcrowding of land and the undue density of population in relation to existing or available community facilities;*
- *Encourage economic development activities that provide desirable employment and enlarge the tax base;*
- *Provide for the preservation of agricultural, forested lands, and other lands significant to maintaining the natural environment;*
- *Promote the creation and preservation of affordable housing;*
- *Protect approach slopes and other safety areas of airports; and*
- *Encourage the most appropriate use of land within the locality.*

**In planning, certain words** — especially those relating to zoning and subdivision regulation — have special meanings not necessarily identical with their common

dictionary definitions or every day usage. The new planning commissioner will gradually learn the planning language.

**In the beginning** it is only necessary to know and understand use of the terms of the local ordinances — a seemingly overwhelming task for the newcomer. But, most will be common terms accepted everywhere; however, a few may have been created to suit unusual or specific local needs. In a good ordinance, each such term having a special or limited meaning will be defined in a definitions section. Moreover, the definition *should not* include elements of regulation. It is very important to define all special terms identifying uses, especially those uses *not allowed by right* [uses allowed only with some type of legislative approval or procedure such as a special exception, which is often referred to as a “use permit”].

**The simple term use** sometimes bewilders beginners. In the planner’s language, it means the purpose for which a parcel of land or a building is *utilized*. A dwelling, a retail shop, and a grain crop are examples of *uses* of land that would in most ordinances be respectively called — residential, commercial or business, and agricultural production uses.

**Technical terms** are reasonably well standardized, but each ordinance may establish its own land use classifications and terms. Consequently, a use allowed in a specific classification in one jurisdiction may be listed quite differently in the zoning ordinance of a neighboring jurisdiction because the needs, goals and

See **Zoning** on Page 3

**Zoning**, continued from Page 3  
objectives of each jurisdiction are unique. This authority is an invaluable provision of the Virginia enabling statute.

**Even the most experienced** professional or citizen planner must study an unfamiliar ordinance very carefully to understand it. New commissioners will quickly learn the lists of uses allowed in the districts included in their local zoning ordinance.

**However, new commissioners** are seldom provided information enabling them to identify the subtle characteristics of the uses that result in them being grouped as they are or the reason for the standards used. An example of differing characteristics and standards that must be considered relates to "parking spaces" at automobile dealers. Dealers require places to park vehicles for several purposes: 1) To accommodate customers while shopping for vehicles or while buying parts; 2) To temporarily store vehicles awaiting service and after being serviced until picked up by their owners; 3) For employees during working hours; 4) For service and delivery vehicles; 5) To store an inventory of unsold vehicles; and 6) To display new and used vehicles for sale. Each of these types of parking spaces functions differently and may be constructed to different standards. A good ordinance will reflect both the variations and standards, but the rationale behind the "numbers" may not be evident to the casual reader or one not acquainted with the ordinance and unfamiliar with the subject.

**The reasons governing the grouping** must be understood. Requests for zoning changes frequently come before planning commissions and a commissioner must be able to analyze and understand the nature of the existing and proposed uses in the districts as well as the new use and the potential impacts of the new use being proposed. Once the reason for certain groupings is understood, it is much easier to determine if a request for a change would be

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Since land use patterns vary from community to community, the classification system adopted by a planning commission should correspond to the types of land use existing and emerging in the area. In most communities the basic classifications will already have been set by the comprehensive plan and/or zoning ordinance. Additions and adjustments may be needed.

There is no prescribed system suitable for all communities, even those with similar population size or stage of development. Each community needs to "build" its own classification system best for its purposes. In every community, though, it is necessary to be cognizant of the uses in adjoining localities so as to properly guide or anticipate the type of growth best suited for the boundaries of the community.

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reasonable. It will be easier to determine if the proposed change will be likely to result in adverse effects on adjacent and nearby properties, on the pattern of zoning and development in the area, on the roadways and the transportation network, or on the plan and development goals.

**Although each ordinance is unique** in its grouping of uses into the various zoning classifications, the following broad descriptions may be found in zoning ordinances. These general classifications are often further broken into more specific

sub-classifications, some of which are briefly discussed in this text:

**Residential:** *Areas where people live. Other uses, such as houses of worship and primary schools, and others commonly associated with or which generally enhance the area as a residential community and do not adversely affect the desirability or tranquillity of the area as a place in which to live may be permitted. Most*

*communities will divide this broad classification into sub-classifications of dwelling types having different characteristics and location requirements. Single or one-family and multi-family or apartment residence classifications are common.*

**Commercial or Business:** *Areas where shops and other establishments exchanging goods and services for money predominate and the convenience of merchants and customers is the prime consideration. Some uses, such as lodges and fraternal*

*organizations, and even hotels/motels may be included because their operational characteristics more closely resemble commercial businesses than uses permitted in other districts.*

**Industrial:** *Where raw materials are made into finished products, or where parts are assembled into completed products and made ready for distribution into the marketplace. Most ordinances include in their industrial*

*See Zoning on page 3*

### **Zoning**, continued from Page 3

*district uses that may dangerous and/or disagreeable in or close to other districts by reason of their normal operational characteristics such as noise, fumes, odors, vibration or other characteristics such as heavy vehicle traffic. Some uses may also be included for these reasons even though they may not, by strict standards, be industrial uses. A truck service terminal and freight transfer terminal are examples of such uses. Larger communities usually have both light (restricted) and heavy (unrestricted), and even specialized industrial districts. Standards are designed to control the adverse impacts of the various uses permitted in the various sub-classifications within the industrial category to assure the allowed uses do not adversely affect uses in surrounding areas.*

**Public and Semi-Public:** *Uses, many of which have a low-impact, and which provide services or amenities to the community. Examples are public buildings such as Courthouses and all sorts of governmental office and service buildings, parks, recreation and open space areas, schools and libraries. Houses of worship are often classified as semi-public uses as may be certain fraternal organizations and similar uses, including community recreation facilities.*

**Terms such as agricultural, rural, rural residential, and conservation** all depend for definition on specific conditions unique to the community. The uses allowed in such districts usually are those determined to be existing when it is created.

**While the above** four types of use classifications are generalized, many communities further divide them into more narrowly defined subclassifications for regulatory purposes. For example, residential classifications are usually divided into single family and multiple family functional uses. The latter is often again divided into density ranges such as low, medium, and high. Often these subclassifications are further divided into types in order to regulate their development characteristics. For example, low-density townhouse apartment communities and residential townhouse for sale communities may at look much alike to someone driving through them. However, townhouses for sale may consist of individually owned row-houses, each house being situated on its own fee simple lot. Individual lots, and indeed, entire blocks will often not abut a public street. Exclusive of the individually owned lots, the real property and the street-like access drives, parking, and amenities such as recreation areas and facilities that may be present are owned in entirety by the townhouse association (a legal entity), of which each townhouse lot owner is a member by virtue of ownership. Each member pays fees to assure proper maintenance and operation of the community facilities; thus protecting the interests of individual homeowners. This type of development can be a modified type of cooperative or condominium. When dealing with developments of this nature, it is important for the staff or legal counsel to the commission to fully explain the legal considerations and their nature to the commission as it needs to keep them in mind when considering its options and making its decisions.

**A condominium**, on the other hand, is different in that the structure and property on which it sits are usually owned as *undivided* real property. Each owner owns a share of the building and grounds as well as the space within his personal living unit. Like townhouse owners, each condominium owner is a member of an condominium association and pays fees. The association is responsible to provide for operation and maintenance of the building, its grounds and amenities. Unlike a townhouse for sale association, however, the condominium association does not own real property — it is simply the governing and management body for the individual owners. Again, it is important that the commission understand the legal considerations regarding the type of development being considered as ownership characteristics are important in regard to the decision to be made.

**Legal considerations** of this nature are also important in regard to matters such as public notices that must be met relative to rezoning of the subject or an adjacent property before it may be considered by the planning commission. To meet the minimum requirement of the code, a single notice to the homeowners association would suffice [the association may in turn notify individual owners] if the Governing Body provides for this option [Section 15.2-2204]. In this situation, the local commission should take additional effort and notify the closest if not all of the owners of the impending action.

**Business and industrial** classifications are often divided into various sub-classifications to differentiate them from one another and to provide appropriate use, location, and regulations such as distance separation or buffering of them from

See **Zoning** on Page 5



**Zoning**, continued from Page 4  
adjacent uses. Classifying uses in specific sub-classifications varies greatly among communities although certain principles are followed. Uses are generally classified into various sub-classifications by the nature and type of their activity and the characteristics of their impacts on abutting and adjacent property.

Thus, beauty shops and convenience stores may be classified as “light commercial” whereas automotive service and repair uses may be classified “heavy commercial” uses. By the same reasoning, small warehouses, small assembly operations and operations such as packaging may be classified as “light industrial” uses. On the other hand, forging, steel fabrication and

major assembly operations, and activities with considerable “nuisance factors” such as dust, odors, or vibration inherent to their normal operations may be classified as “heavy industrial” uses.

Some uses may be classified as “heavier” industrial uses simply to assure greater separation of them from residential activities.

## A few thoughts about nonconforming uses ...

**Ordinances will provide** that uses *legally* existing at time of adoption may continue, even if they are no longer listed among those being allowed in the same manner, location, or district.

**Such uses are called *non-conforming uses*** (commonly referred to as being “grandfathered” uses). The basic intent and expectation of the code is that nonconforming uses are temporary and will eventually be replaced as their functional, economic, and physical lives end.

**To meet that goal**, ordinances will include special regulations governing them. The code may state, for example, that if a nonconforming use is destroyed beyond a certain percentage, such as 50% of its value, it may be replaced only by a use on the allowed list. It is also common for the code to state that if such a nonconforming use is abandoned in excess of a stated period such as two years, the use will lose its nonconforming rights and may not again be used. (The minimum period a “use” must be discontinued or abandoned frequently becomes a

point of contention with regard to enforcement, sale, and expansion.) Regulation of nonconforming uses varies from community to community and may be quite complex, but generally such uses and structures may be maintained and not expanded or substituted.

**The important consideration** to remember is that nonconforming uses *were legally created*. This is often misunderstood, overlooked, ignored, or simply misused. The important consideration the citizen planner must always remember is the basic difference between nonconforming and illegal uses so as not to confuse or improperly classify a specific use being considered. Simply stated, nonconforming uses were once legally allowed whereas illegal uses were *never* allowed!

**While it may seem easy** to differentiate between the two in the eyes of the beginning planner; veteran planners will immediately realize that making the differentiation can and often becomes a difficult task with many technically challenging aspects.

**It is also important to remember** that while the *use* of a property may be conforming; the bulk requirements (standards) applicable to the use on that property may not be met and thus it is *nonconforming* in regard to standards. One such example is the effect of a code being enacted with minimum area requirements exceeding those met by existing development in the district. Another example is when the front yard setback in a district is increased and all structures legally built to the lesser standard are rendered nonconforming in regard to the front yard setback standard.

**When a revision** to an existing code is being considered, it is well to determine whether it is advisable to include an exemption applying to properties/structures meeting the code prior to enactment of the amendment. If such provision is deemed appropriate, it is important to assure that the language of the exemption is carefully and very specifically drafted so that it will do only what is desired — no more, no less. If not, the law of unintended consequences will likely be invoked to the embarrassment of all.

### III. Subdivision regulations

**Although the ownership of land is a protected right** under the Constitution, its division is not so much a right as a privilege. American development has essentially been guided by subdivision regulations since its colonization began! The earliest towns constructed in America were laid out pursuant to royal directives (St. Augustine, Florida and other Spanish settlements by “Royal Ordinances” promulgated by Philip of Spain in 1573). Later, the Continental Congress enacted “regulations to guide the surveying and disposition of the western territories” (1785). Yet later, charters and laws were issued by the newly formed states and finally their political subdivisions are authorized to enact their own regulations under the police power provided certain uniform standards are met.

The division of land results in more intense and different land uses, which have impacts on both surrounding lands and the community as a whole. Consequently, jurisdictions use subdivision regulations to permit and guide the orderly division of land into parcels or lots for development.

**VA Code, Section 15.2-2240** requires [it is *not* optional] that every locality adopt a subdivision ordinance to assure the orderly

subdivision of land and its development. The ordinance must have reasonable regulations and provisions that apply to or provide for such things as standard plats; a coordinated network of streets; provisions for public facilities, and drainage and flood control. In counties and the City of Suffolk, the Code provides for family subdivisions (which are difficult to manage limited exemptions from the subdivision ordinance). The Code also provides for administration fees and enforcement actions.

- ▲ *Subdivision regulations provide for the direct control and standardization of land development. Used in conjunction with a well-organized zoning ordinance, the coordination between development and supporting infrastructure occurs. Such a complementary relationship is sometimes politically difficult to achieve.*
- ▲ *A benefit of subdivision regulations is that they can be applied at the time of development.*
- ▲ *Subdivision of land is a “by-right” allowance for a landowner. The review and approval of a subdivision proposal is a ministerial act by a local government. Therefore, the landowner is only obligated to meet the*

*applicable subdivision and zoning regulations in order to subdivide. If these regulations do not reflect local planning policy, the subdivision itself may not be consistent with current policies; nevertheless, it must be approved. (The proper solution in such circumstances is to amend the subdivision regulations if development does not reflect what is desired.)*

**From the view of the planner,** subdivision regulations are important on two levels. First, they enable coordination of plans from a great variety of sources; and second, they assure uniform development standards and provision of adequate public services. From the standpoint of the governing body and jurisdiction administrator, they may also be considered to have two benefits. First are the design aspects and quality of new development; and second, the costs of new improvements may be more equitably allocated between the new residents and the taxpayers of the community as a whole. Moreover, when the subdivision regulations require a developer to dedicate land and or build improvements, those who most benefit by them must bear the costs of such improvements rather than by the general taxpayers as a whole.



## IV. Capital improvements plan

**Multiple-year scheduling** of public physical improvements helps guide local decisions regarding allocation of scarce funds. It is also a powerful growth management tool. Scheduling and priorities are based on needs identified in the comprehensive plan, studies of available fiscal resources, choice of specific projects for construction during the next five years, and local goals and policies.

**VA Code, Section 15.2-2239** provides that a local planning commission may prepare and submit a Capital Improvement Program (CIP) to the governing body or official charged with preparation of the local budget. A community may also request its commission to review its proposed CIP after it has been prepared by its administration. A CIP is not required but, if a locality chooses to exercise that right, the code further requires that the CIP be "...based on the comprehensive plan for a period not to exceed the ensuing five years."

▲ *The CIP provides a mechanism for estimating capital requirements; planning, scheduling, and implementing projects; budgeting high priority projects; developing revenue policy for proposed improvements; monitoring and evaluating the progress of capital projects; and simply informing the public of needed and projected capital improvements and their costs.*

▲ *Localities use a CIP to support and guide growth through the calculated sizing, timing, and location of public facilities such as roads, school improvements, parks and recreation enhancements, attractions, water and sewer facilities and drainage improvements.*

▲ *Section 15.2-2232 of the Code requires that any proposed public improvement not shown or included within the comprehensive plan shall be subject to a public hearing and*

*determination by the local planning commission that the facility is consistent with the comprehensive plan.*

▲ *Unfortunately, many localities often fail to establish the need and policy for CIP projects in the Comprehensive Plan and the CIP becomes a wish list of desired public projects rather than a careful evaluation of and planned public expenditures to guide development and desired redevelopment.*

The forgoing is only an abbreviated — a short list — of the basic planning tools available to assist a community. When developed prior to the onset of continuing growth and development and when used properly, these tools can effectively guide changes and growth.

While not yet used to a great extent, the following tool is also recommended for consideration by any community not currently actively managing its flood-prone areas.



## V. Flood plain management ordinance

**A flood plain management ordinance** is a challenging law to enforce as it places a burden on private property owners. However, multiple long-term benefit accrues to communities where flood plain management is actively practiced and insurance benefits are available.

**The first and most obvious advantage** of prohibiting new construction in flood prone areas is the avoidance of property damage and loss during floods. A by-product of the ordinance can be the preservation of riparian or wetlands wildlife habitat. Additionally, the floodway areas held open by the ordinance can become welcome open space or greenway buffers in the heart of a community and corridors through which wildlife may travel more safely.

**More information** on this concept can be obtained from the Prince William County Planning Office. The Prince William Planning Commission

and Board of Supervisors have developed a concept and multi-faceted plan to protect these valuable ecological areas.

**Typically, communities with a flood plain management ordinance** have responded to the carrot/stick of the Federal Emergency Management Agency (FEMA). Federally subsidized flood insurance is denied to applicants living in jurisdictions where no flood plain management ordinance is in place and enforced.

**In communities where a significant flood event** has not occurred in recent memory it can be difficult to maintain the credibility of a flood plain management ordinance in the minds of typical citizens.

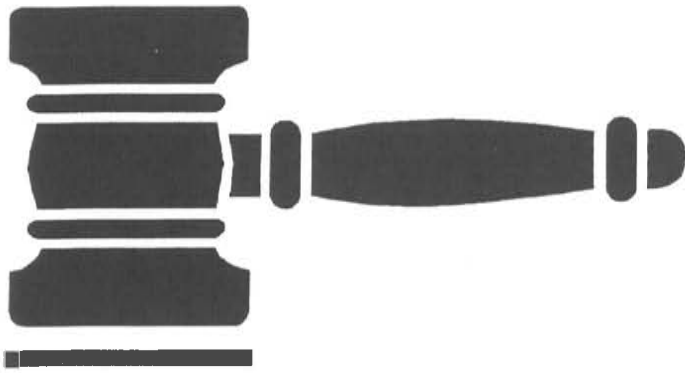
However, planning commission members who are educated in the technical aspects of flood plain management can be of great assistance in persuading the general population that compliance with the

ordinance is in the best long-term interest of the community.

**Before adopting a flood plain management ordinance**, it is necessary to have accurate topographic mapping of the areas within a jurisdiction that will be inundated during a 100-year flood event. Also needed is reliable engineering data indicating where a floodway needs to be located within the 100-year flood plain.

**The hydrological office** of the U.S. Army corps of Engineers in Norfolk, Virginia or in Huntington, West Virginia or the Tennessee Valley Authority is likely to have or be able to locate and provide this data if it already exists for a jurisdiction in Virginia. The Philadelphia office of FEMA will provide a model ordinance text. The Virginia State Marine Resources Commission headquarters in Newport News, is also a valuable source of information.





# Chapter 5

## Guide to defensible local planning commission procedures

**P**lanners are perhaps the “meetingest” people in local government. They must participate in many meetings just to comply with public hearing provisions of the laws under which they operate. Moreover, a large part of the planning business involves participation by the public and coordination of diverse interests. These needs/requirements can best be met by bringing people together and resolving any differences in open discussion.

As mentioned elsewhere in this *Handbook*, the Code [Section 15.2-2221] requires every planning commission to adopt rules and regulations pertaining to its investigations and hearings. Often overlooked or omitted in such regulations are matters relating to the decorum of events. VCPA would recommend the rules and regulations of every planning commission include the following related to decorum in addition to the normally required rules or order:

- ▲ *Citizens should be instructed to address the Chair, not other participants.*
- ▲ *Commissioners should address the Chair, not the public in attendance.*
- ▲ *Commissioners should neither argue, debate with, contradict, mock nor be sarcastic to individuals or the general public, nor members of their staff in attendance. There is no excuse for lack of courtesy.*
- ▲ *The Chair should firmly and courteously maintain the direction of the meeting and the schedule.*
- ▲ *The Chair should continuously maintain firm control of the meeting.*

A meeting is not a simple thing. It is the essence of public relations and more than any other activity of the planning agency, conditions the reception given to its proposals as well as the likelihood they will

eventually be adopted by the governing body. When meetings are properly set up and managed, all participants can leave with a feeling of having successfully accomplished an important task.

### **An equally important**

consideration on the part of those in charge of the meeting is knowledge that the requirements of law, such as required legal notices and due process, have been met. The commission and staff will be comfortable knowing that any challenge of a decision made at the meeting will have to be made on substance and not likely be able to be made as a result of procedural errors, poor meeting preparation or inadequate meeting management.

# I. Meetings and public hearings

**Meetings and hearings** are a vital part of the function/work of the planning commission. While a simple meeting or a work session may be held in an informal manner best suited to the participants and subject at hand; public hearings are legal functions that must be conducted properly after specific preparations have been met. It is the purpose of this chapter to focus on pre-hearing requirements as well as guidance and suggestions designed to result in defensible decision making at hearings.

## Due process

**Due process** is a simple legal concept requiring that those whose rights are affected have an opportunity to be publicly heard by an impartial body after being given reasonable notice of that hearing. It

is important to remember that due process has two aspects — procedural due process and substantive due process. Procedural due process requires that designated procedures be followed. Substantive due

process requires a fair, unbiased and full hearing of the substance of the matter prior to the rendering of a decision by the body conducting the hearing.

## Public notification of meetings and hearings

**Virginia law** requires that any meeting (including conference telephone calls) of three or more planning commissioners may take place only after public notice to do so has been given in order that any interested party may attend and observe.

**The law** [Section 15.2-2204] also requires that before recommending a plan, use permit, or ordinances for adoption, the commission must give public notice and hold a hearing. This public notice requirement is *jurisdictional*, meaning that failure to meet the requirement deprives the commission of the right to hold a hearing on any affected matter. (Failure to detect and correct an error in this process, regardless of when it occurred, will surely result in the entire matter being declared

invalid by a court in the event that the action is later challenged.) There is no substitute for procedural accuracy and thoroughness throughout the process.

**Hearing matters** need not be advertised in full, but may be advertised by reference. However, the notice *must* contain the date, time, place and purpose of the hearing. It must also include information regarding where and when copies of the proposed plans, permits, ordinances or amendments may be freely examined by anyone who desires. The public notices must be published once a week for two successive weeks (at least 6 days must elapse between publications) in a newspaper having general circulation in the municipality. Additionally, the

second notice can not appear more than 21 days or less than 5 days before the hearing.

*VCPA would strongly suggest that consideration be given to scheduling publication of required advertisements on the day of the week the hearing is scheduled. The advertisements should be published on the 21<sup>st</sup> and 14<sup>th</sup> days prior to the scheduled hearing. This schedule will meet code mandated timing. Moreover, in the event a fatal flaw, error, or omission occurs in the first advertisement or a change in the notice is otherwise warranted, the corrected/revised second advertisement may be followed by a third advertisement published the week prior to the hearing (again, on the same day of the week as the*

See **Notices** on Page 3

**Notices**, continued from Page 2 hearing is scheduled). The third advertisement need list only the corrected or changed item(s). This is an easy schedule to remember and administer and one that interested citizens and groups can easily follow.

**VCPA would also strongly suggest** that localities consider publishing

*notices for their planning commission hearings (and also boards of zoning appeals as well as governing body hearings, both of which also have the same public notice requirements) not as legal advertisements, but as commercial display advertisements in order to assure they are as effective as possible; thus without question meeting both procedural and*

*substantive due process notification requirements.*

**A final VCPA suggestion** relates to costs. Since newspaper advertising reflects “column inch cost” and the narrower legal section columns often require more column inches than display advertisements, the cost differential for display ads may be less than expected.

## Written notices to abutting and adjacent property owners

**In addition** to the advertised public notice discussed above, before a Commission may consider a rezoning or use permit request if the request includes 25 or fewer parcels, Virginia law [Section 15.2-2204] also requires written notice be given to certain parties: The owner, the owner’s agent or the occupant, of all abutting property and adjacent property. This requirement also applies to adjacent or abutting property situated in an adjoining jurisdiction.

**Such written notices** must be given to [received by] owners no more than 21 days after the second newspaper notice and no less than five days prior to the hearing. If the hearing is continued, the notice procedure must be redone and provide the new hearing date and time as well as the place. These requirements are *mandatory*. Notices sent by registered or certified mail to the last known address of owners shown on the current real estate tax assessment books will comply with this requirement. If the jurisdiction chooses to send the notices, it may use first class mail. In the event first class mail is used, a jurisdiction “official” must issue an affidavit to be filed with the case documents

certifying the date the notices were mailed (custody of the letters given to the U.S. Postal Service) together with a copy of the notice and list of the names and addresses of the intended recipients. This information should be taken to the hearing and be quickly available for reference should the need arise during the hearing on the matter.

**The law also requires the same procedures for written notice and public hearings prior to official actions by the governing body and the board of zoning appeals.**

**VCPA would note that the costs of public notices and individual written notices are legitimate expenses that may be recovered as part of the application fees when actions are not initiated by a public body. Regardless of the type of mail used to deliver written notices, it is imperative that such notices be mailed sufficiently in advance to allow all recipients to receive them at least five days in advance of the scheduled meeting. A locality is free to choose the means it prefers regarding the collection of property information. However, because the public notices and written notices are jurisdictional [mandatory], VCPA cannot emphasize too greatly**

*how important it is, regardless of by whom or where the information is compiled, that it be carefully and thoroughly verified for accuracy and timeliness before being used. Failure to catch and correct errors will cause hearing postponements that may be costly to the applicant and embarrassing to the locality. Moreover, if procedural errors are not caught prior to hearings and an action is later appealed, errors in information and/or procedures will be caught during the appeal process. The penalty of such errors will surely and quickly result in the action being negated without consideration of its merits. If subsequent actions are taken, such as approvals and initiation or completion of construction in reliance on an approval that was subsequently invalidated, considerable inexcusable legal mischief will result from such careless, administrative procedures and/or errors.*

**Some localities post** or require the posting by applicants of properties subject to zoning or other actions with a sign or signs as a means of further notifying citizens of impending actions that may affect them. Such postings are not required by the Code, but are a

See **Notices** on Page 4

**Notices**, continued from Page 3  
courtesy to citizens. If a locality sets out to provide such notices, it is extremely important to properly and carefully administer the “posting” program. The signs must be placed at appropriate locations and in a timely manner. Signs posted at inappropriate locations, late or stolen, for

example, will likely cause citizens to argue at hearings that the matter cannot be considered (especially if such citizens are opposed to the requested action) because they believe inadequate public notice was given. Prompt removal of signs after hearings is necessary, for if not removed they will

generate confusion and additional telephoned inquiries about the status of the matter.

**Finally, there is the matter of costs.** Posting of signs is both time consuming and expensive although such costs may be included in filing fees if the community is willing.

## II. Public hearings

**Serving on a planning commission** means having to attend and participate in public hearings and meetings. In addition to formal public hearings, some meetings will be informal and intended solely to convey information; while others may be structured and designed to gather information to facilitate the making of a future decision. Yet other meetings will be working sessions that may begin the process of considering and evaluating alternatives in the process that will ultimately lead to a final decision. Such working sessions may or may not involve active participation by those attending — will they be participants or simply observers? Whatever the purpose of a meeting, it is important to announce at its beginning to those in attendance how it will be conducted.

**Public hearings are formal legal proceedings** that precede adoption of official actions by the planning commission. All are matters of public record. As such, it is important that preparations be thorough and complete; that the hearing be conducted in a full, fair and impartial manner; and that commission members conduct themselves appropriately. Remember, it is a hearing of record and that it must not only be conducted properly, but must also be done in such a manner that assures those attending that it has been conducted properly and fairly. Impressions have a way of becoming reality — so strive to make your best impressions! The planning commission will be rewarded with a much more defensible record in the event any of its decisions is challenged. Moreover, decisions of the governing body made pursuant to planning commission recommendations are also subject to the same scrutiny by the court.

## Conduct of the hearing

**The code requires** the commission to have a set of rules and regulations concerning its operations, including the conduct of hearings. Before the hearing starts, the chair should inform those present how it will be

conducted and what is expected of the participants, including such things as use of time and the preferred method for groups to represent themselves. If time limits for speakers or “sides” have been

established; they must be explained and later enforced. However, there should be a procedure and willingness of the chairman to adjust the time limits to reflect

See **Conduct** on Page 5



**Conduct**, continued from Page 4 unexpected and extenuating circumstances. If time limits are adjusted, both “sides” should be given equal time.

**Time limits** serve a valuable hearing function. They require speakers to be better prepared and give greater attention to the content of their presentations. Presentations will be carefully organized to make the most effective use of the allotted time. This discipline will greatly benefit the commission as well as result in a more efficient, smoothly run meeting that stays focused and directed. It will result in better decisions made more easily with the benefit of the most important and timely information.

**Commissions desiring** to initiate time limits must announce their intention in advance. It will be necessary to inform all who are preparing for hearings and each applicant when new applications are filed. An excellent way to inform applicants is to include a section on the application relating to processing and hearing procedures and what is expected of the applicant and/or his representative or agent.

**It is important** to remember that the *commission* conducts hearings — not individual members of the commission. A hearing will always be much more effective if the commission works as a team. Thus, individual members must support one another during the hearing which, after all, is primarily a fact finding process to provide the bases on which the decision will be made. Comments and attitudes of individual members should reinforce this concept. While there is no reason to exclude or limit discussion by commissioners on matters, the chair should insist such debate should be brief and confined

to the substantive issues of the matter under consideration — and presented with the goal of assuring that all sides and views are considered. There is absolutely no justification for actual or perceived bickering and personal argument or animosity among or between commission members.

***Actions or statements by commissioners that imply favoritism or special privilege are never justified. This perception may be created if the hearing is too informal and “folksy” such as addressing one another on a first name basis. Remember that most people simply want “a level playing field” which is expressed in the 14<sup>th</sup> Amendment as “equal protection under the law.”***

**If the hearing** involves multiple cases, such as a rezoning hearing involving several cases, each should be heard in the same manner. Although there are different ways to conduct a hearing on a matter, a typical hearing might include all or most of the following components. Local preference or experience may result in change, however all elements should be considered:

- *Introduction or identification of the case by the secretary;*
- *Presentation of the staff report followed by responses to questions by commissioners;*
- *Presentation by applicant and proponents with responses to questions by commissioners;*
- *Presentation by opponents with responses to questions by commissioners;*
- *Rebuttal of opponent testimony by applicant;*
- *Staff summary of testimony and findings followed by responses to questions; and*
- *Discussion by Commission,*
- *Motion and decision by Commission.*

**The decision of the commission** should be based on the facts as collected from the staff report, personal study of the request by commissioners, the testimony and facts gathered from the hearing and discussion among members of the commission as it evaluates the matter before taking action on a motion. The motion to approve or disapprove should always include the bases [reasons] on which the motion is based.

A simple “**I move to deny**” or “**I move to deny** because this is a bad project” is not enough to defend a legal challenge should one be initiated. It neither implies fairness and impartiality nor a full understanding of the proposal. Rather, a motion in the form of a resolution stating the findings of the commission is appropriate. A basic motion could, for example state: “Whereas the Planning Commission finds the application by Smith and Company is complete as filed; and whereas the Planning Commission further finds the traffic that would be generated on Fronting Street would exceed its capacity by 1,234 trips per day and create unsafe congestion; and whereas, the Planning Commission further finds that the additional design storm water runoff from the development would exceed the capacity of the storm drainage system by 123 cubic feet per minute and result in unsafe and unsanitary flooding of the adjacent properties; the Planning Commission therefore finds and concludes that this application should be and is hereby denied.”

**Although the content** of this example motion could be made in conversational language, the motion should nonetheless always include the pertinent findings and the conclusion drawn from them. Such a motion would show fairness,

See **Conduct** on Page 6

**Conduct**, continued from Page 5  
impartiality, and a decision based on facts determined through investigation and via hearing testimony. It should also stand close judicial scrutiny.

**Such decisions** are sound and defensible. If the governing body were to follow the same path to arrive at its decision, the action would stand challenge. The “assumption of validity” [sometimes referred to as “presumption of validity”] doctrine

given to actions by the governing body gives them great weight.

**Those who challenge** actions of the governing body must bear the heavy burden of proof that it acted in an arbitrary and capricious manner. The weight of evidence favors the governing body because it need only prove that the matter is “debatable.” That is, the governing body must only prove that given the same set of facts; thoughtful, objective and reasonable persons could reach different conclusions.

[*City Council of the City of Salem v. Wendy's of Western Virginia, Inc., 1969*] If the matter is determined by the court to be “debatable,” the preference of the governing body must be honored.

**Therefore**, absent a finding that the governing body has acted arbitrarily and capriciously, or that jurisdictional requirements [required procedures] have not been met, the court will not substitute its judgment for that of the elected legislative body.

### III. Advice to planning commissioners

To be truly effective, the planning commission must be an impartial body. Individual planning commissioners should attempt to be judge-like, and conduct themselves accordingly during meetings and hearings.

**This does not mean** there is no room for light-hearted humor. It simply means a commissioner should be thoughtful, fair and impartial in all decision making.

🏡 *Decisions should be made on facts presented in the hearing room. If provided facts from other sources or by people not attending the hearing when the decision is made, be sure to get them into the public record through letters, statements or otherwise before the decision is made. To be useable, such information must be able to be confirmed.*

🏡 *Do not express opinions outside the hearing room on the merits of pending cases.*

🏡 *Avoid conversations and discussions about pending cases if possible — even a nod of the head or a simple comment can be interpreted as a position. If you cannot avoid such situations, just listen quietly and never express an opinion on the matter, and then encourage the person to come to the hearing and express the position there.*

🏡 *In general, it is not a good practice to visit a site alone before the hearing — visit with*

*a staff member or if alone confine your viewing to a simple, quick drive-by inspection.*

🏡 *No matter how strong you feel about it; do not publicly discuss a pending case prior to its hearing. If it is being discussed in your presence and you cannot excuse yourself, simply listen in a polite manner. Should the subject arise during the public hearing, be quick to fully acknowledge and describe the event and your actions.*

🏡 *Always remember that it is difficult to be both a public servant and a judge!*

# Personal preparation for meetings and hearings

**It has been said** that without preparation, the work produced by a planning commission will undoubtedly be second rate. Should this happen, the community will suffer. Prevention of this situation is the responsibility of everyone on the commission — successful preparation for commission meetings begins at the personal level with each commissioner. Fortunately, a commissioner can take several steps to assure confidence and adequate preparation.

**First, be sure you receive an agenda and information about each of the items at least a week, and preferably two weeks, before the meeting.** Ask for minutes of the previous meeting, especially if the current agenda contains items deferred from that meeting, because you will want to refresh your memory of the discussion. Memory is fallable. You can also assure yourself you have time to complete any follow-up tasks necessitated by the deferral.

**Study the agenda items.** Do your homework and search out answers to questions raised in your mind by the information you have been provided. Talk to staff. Talk to fellow commissioners if necessary. Remember that such conversations

should be one on one because three or more commissioners meeting together or conducting a conference telephone call is by law a public meeting that must be publicly announced in advance.

**Search your personal files** for similar items. Consult the staff or your commission legal counsel if you have questions about aspects of any item you would be more comfortable with if you knew more about the legal considerations involved. Spend time doing whatever research you feel is needed to make you fully knowledgeable about the proposal. After all, the applicant and probably the opposition will be fully aware of all aspects of the proposal and you need to know as much, if not more, than both of them.

**Visit the sites** or properties that will be on the agenda. For simple or routine projects, a simple drive-by view of the property may be all that is required to familiarize you with the site and augment staff information. If the proposal is controversial or unusually important, it would be preferable to visit the site with a staff member who can provide technical information and answer procedural questions. A staff member can also act as a bridge to

contact the applicant and possibly neighbors who may meet you there to provide additional information. It is important to remember that site visits must be used only as a means of gathering site information [discovery] so it is extremely important to maintain a “judge’s decorum” and be very careful to not disclose your opinions, inclinations, or tentative evaluation of the proposal under consideration. It is especially important that you give no indication or information as to your opinion or how you may vote on the proposal.

**After the hearing** when the information is in the record and is being considered and evaluated, there will be time to express your opinions and follow them with your vote. Until then, you must publicly maintain complete impartiality and an open mind — even while asking questions or making comments during the hearing. This will not only help to “keep the playing field level” and enhance the ability to defend your future decision in the event it is challenged; but may prevent personal embarrassment because there is often new information presented at hearings or reports of decisions made prior to hearings that completely alter one’s understanding and opinion of a project.

## Personal actions after meetings and hearings

**If you can find time** immediately after the meeting, take the opportunity to record your general thoughts regarding issues that came up, policies and procedures that were especially effective when dealing with difficult matters, or things you would like to see changed. Make a simple journal.

**Take time to critique** your performance as a representative of the people and what you would like to do to improve your performance. The sum of these thoughts, and any other comments that may come to

mind, will prove valuable to you in the future as well as form the foundation for self-improvement that will make you a more effective, respected, and valued commission member whose advice and judgment is sought on increasingly difficult matters.

**It is always well to remember** that many citizens are neither acquainted with their local government now with its workings. They have never or rarely attended a hearing and even more rarely summoned the courage to speak

publicly on any matter concerning them. Public speaking is scary!

**To such citizens**, you and your fellow commission members sitting before them literally become “their government” and their opinions will be formed about their government based on the conduct they observe. Let those impressions always be good!

**The simple check sheet on the following page** is offered as a starting point for development of your personal check sheet.

### A closing thought ...

The one thing about planning is this:  
If it is done right, the result is often around for a 100 years or more, to be enjoyed again and again by the thousands of people who will follow the planner.

If it is done poorly, it is a 100-year error, annoying the thousands of people who will follow the planner.

*William Toner*

# Checklist

*A suggested Checklist for consideration and modification  
to suit your working style and organizational culture.*

## 1. Before the meeting — do you?

- 🏞 read the minutes of the last meeting and make notes and/or corrections?
- 🏞 study the case reports for the coming meeting?
- 🏞 contact staff for clarification on anything you don't understand in the staff reports?
- 🏞 check the code regarding each case so you understand the issues?
- 🏞 visit or drive by the site?
- 🏞 check your memory and records for precedents and similar cases?
- 🏞 make notes regarding items or points you want to explore with the applicant?
- 🏞 formulate a plan in the event that the issues/merits become debatable?

## 2. During the meeting — do you?

- 🏞 listen carefully as opposed to just hearing what is said?
- 🏞 ask for clarification or additional information/details when the presentation by the staff or applicant is not clear and complete?
- 🏞 require the applicant to carefully and thoroughly prove his case?
- 🏞 attempt to determine if the information/testimony is credible and accurate?
- 🏞 make notes during testimony to assist you when decision making time comes?
- 🏞 ask for additional information or clarification from staff or counsel prior to making a decision if merits of the case are not as clear as you would like?

## 3. After the meeting — do you?

- 🏞 make notes about cases and points discussed or on which crucial decisions were made so that you can build on the knowledge and experience you gained in the meeting?
- 🏞 follow up and discuss with staff points of law or case details that seemed important and perhaps were not as clear as you would have liked?
- 🏞 follow up on deferred (continued) cases to assure yourself that you will have the additional information necessary next month when the case is heard?
- 🏞 express your impressions/thoughts concerning the cases and/or conduct of the meeting to the secretary and/or staff so problems can be avoided in the following meeting or that it can be better organized and managed?
- 🏞 express your opinions as to whether or not staff support has been adequate or whether additional assistance and/or materials would be helpful?
- 🏞 give consideration to your working relationships with fellow members and staff and what, if any, improvements or changes you feel are desirable or need to be made?

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