

Managing Growth and Development in Virginia: A Review of the Tools Available to Localities

**2008 - Edition
October 2008**

*Prepared By
The Virginia Chapter of
The American Planning Association*





On behalf of the Virginia Chapter of the American Planning Association (APA-VA), I am pleased to present the 2008 Edition of *Managing Growth and Development in Virginia: A Review of the Tools Available to Localities*.

Now in its fourth release, this document, more commonly referred to by APA-VA as the “Tool Kit,” has proved to be a valuable resource for those seeking to understand current enabling legislation as it pertains to land use planning in Virginia. This version of the Tool Kit updates the previous edition, following the same outline. For ease of use, the Tool Kit is divided into three main sections consisting of:

- I. Introduction
- II. Comprehensive Plan
- III. Tools for Plan Implementation

Section I provides a brief history of land use planning in Virginia, which can be traced back 400 years to the days of the First English Settlement at Jamestown. Section II focuses on the Comprehensive Plan’s authority and limitations. This edition includes modifications made to Virginia’s planning and zoning enabling authorities during the 2008 General Assembly session. Section III reviews the tools localities may use to implement the Comprehensive Plan. The four primary Comprehensive Plan implementation tools set forth in the Code of Virginia are: The Official Map, Subdivision Regulations, Zoning, and the Capital Improvements Program. Other tools discussed in this section include: information on managing the form and location of growth, managing the financial impacts of growth, tools for revitalization, rural and natural areas preservation, and planning for the regional context.

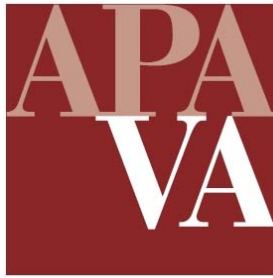
As with previous editions, each tool is defined along with the Code of Virginia citation enabling its use. Narratives describing how localities use each tool are also featured. Finally, use limitations are noted, as are enhancements recommended to strengthen each tool. These recommendations will serve as the basis for future VAPA Legislative Agendas.

Finally, I wish to thank our contributing authors and all who have provided input to this document over the years. It is due to their expertise that VAPA is able to make this document relevant to so many in the Commonwealth.

Sincerely,

Jeryl Rose Phillips

Jeryl Rose Phillips, AICP
President



The Virginia Chapter of the American Planning Association (APA-VA) is a 501 (c) (3) non-profit dedicated to addressing the professional development needs of over 1,600 members. The APA-VA membership includes public sector planners (state, local and federal government), private sector planners (consultants, developers and investors), local planning commissioners, academics, local elected officials, undergraduate and graduate students, as well as everyday citizens from across the state.

The APA-VA mission statement reads:

“Our mission is to promote planning as a foundation for effectively addressing the physical, economic and social changes taking place in Virginia. The Virginia Chapter of the American Planning Association is committed to increasing awareness about planning’s many benefits, and enhancing the practice throughout the Commonwealth.”

This edition, prepared by Eldon James & Associates with editorial assistance from George M. Homewood, AICP, is an update of the Third Edition which was prepared by:

Milton Herd, AICP
Michael Chandler
Terrance Harrington, AICP
Barbara Jacocks, AICP
Eldon James & Associates, Inc.

With editorial assistance from:
Jason Lee Beske, AICP
Jeryl Rose Phillips, AICP

Project Managers:
Glenn Larson, AICP
Denise M. Harris, AICP

Contents

I. Introduction	6
II. The Comprehensive Plan	7
III. The Tools for Plan Implementation	12
A. The Official Map	12
B. Subdivision and Site Plan Regulations	13
C. The Capital Improvement Program	15
D. Zoning Tools	
1. Zoning Overview	16
2. Form-Based Codes	19
3. Large Lot / Agricultural Zoning	21
4. Cluster Subdivision / Zoning.....	23
5. Historic District Zoning	26
E. Tools for Managing the Form and Location of Growth	
1. The “2232” Review	27
2. Urban Growth Boundaries (<i>Land Use and Infrastructure Coordination</i>)	28
3. Special Exception Permitting (<i>Conditional Use Permitting</i>)	30
4. Density Incentives	31
5. Community Design Concepts: Traditional Neighborhood Development and New Urbanism	32
6. Transferable Development Rights (TDR)	36

F. Tools for Managing the Financial Impacts of Growth

1. Conditional Zoning/Cash Proffers	38
2. Level of Service Standards	40
3. Impact Fees	41
4. Service Districts	43
5. Community Development Authorities	45
6. Fiscal Impact Analysis	46

G. Tools for Revitalization

1. Targeted Development Areas	47
2. Revenue Sharing (<i>Tax Sharing</i>)	48
3. Enterprise Zones	50
4. Empowerment Zones	51
5. Tax Increment Financing	52

H. Tools for Rural and Natural Areas Preservation

1. Use-Value Assessment and Taxation (“Land Use”)	53
2. Agricultural and Forestal Districts (AFD)	55
3. Conservation Easements (including Purchase of Development Rights)	57

I. Regional Tools

1. Interlocal Relations / Joint Service Delivery	60
2. Planning District Commissions / Regional Commissions	61

Managing Growth and Development in Virginia: A Review of the Tools Available to Localities

Section I Introduction

Planning is a multi-faceted process localities use to prepare for change. In many respects, it is like the sequencing of steps and activities people and organizations have used for centuries to prepare for the future. Accordingly, it is important to realize that planning is an activity as old as humankind itself. Indeed, the capacity of the human mind to project beyond present reality helps explain, at least in part, civilization's steady march forward. Thus, it is appropriate to view planning as a way of thinking, as well as a process. Planning is often associated with preparations for population expansion, but it is also needed for areas that are seeking to revitalize decaying neighborhoods and/or preserve historic areas, open space and farmland. In Virginia, planning is primarily the responsibility of local governments. Thus, this report focuses on the tools that are available to localities to plan for change of all kinds.

The practice of land use planning in Virginia can be traced to the English settlement at Jamestown, 400 years ago. The fort that sprang up along the James River in 1607 was, in many respects, a planned community. The schematic that became Jamestown featured principles long associated with the 20th century planning technique known as PUDs, or Planned Unit Developments. Planning concerns influencing the Jamestown of 1607 included security issues, access and internal movement considerations, the use and preservation of indigenous natural resources, the procurement and storage of drinking water, the collection and disposal of waste, as well as discernment regarding the location of residential areas within the fort in relationship to needed processing and manufacturing enterprises. On this point, standards governing the minimum distance separating residential areas from processing and manufacturing operations, as well as outdoor privies, were established and strictly enforced. In short, the settlement at Jamestown was designed, constructed and managed with full consideration given to the well-being and general welfare needs of its inhabitants.

Addressing the public safety, convenience and welfare needs of all Virginians is a fundamental reason the state of Virginia has mandated that all local governments plan for the future. The Code of Virginia, specifically Title 15.2, Chapter 22, outlines the legislative intent of the state with respect to the laws and statutes every county, town and city must follow regarding the planning, zoning and subdivision of land within its political boundaries. The declaration of legislative intent (§ 15.2-2200), as noted below, provides Virginia's network of local governments with explicit guidance:

“This chapter is intended to encourage localities to improve the public health, safety, convenience and welfare of its citizens and to plan for the future development of communities to the end that transportation systems be carefully planned; that new community centers be developed with adequate highway, utility, health, educational, and recreational facilities; that the need for mineral resources and the needs of agriculture, industry and business be recognized in future growth; that residential areas be provided with

healthy surroundings for family life; that agricultural and forestal land be preserved; and that the growth of the community be consonant with the efficient and economical use of public funds.”

Section II

The Comprehensive Plan

Description

A comprehensive plan enables local government officials and citizens to anticipate and deal constructively with changes occurring within the community. Though formats vary from jurisdiction to jurisdiction, the comprehensive plan is a broad effort to address a wide range of community issues and concerns, and to understand the important relationships between each part of a community. Typical topics addressed in a comprehensive plan include the analysis of population change, land use and economic trends, natural and environmental features, housing, transportation systems, and community facilities and services.

The Process of Planning. Planning is the process by which a community attempts to deal with present conditions and provide for future needs. Though most often associated with guiding future land development, local government planning efforts can also include such activities as planning for public and private infrastructure, public facilities and service needs, historic preservation, the environment and economic development. While the planning process can take many forms, some of its most important steps include:

- Collection and analysis of information;
- Development of objectives;
- Formulation of goals and recommendations;
- Consideration of alternative courses of action;
- Adoption of a plan; and
- Adoption of measures to implement the plan.

The local planning commission is responsible for drafting and developing the plan, while the local governing body is required to adopt a comprehensive plan.

The Reasons for Planning. Localities in Virginia plan for two major reasons. One is that state law mandates that every local government in Virginia prepare and adopt a comprehensive plan (§ 15.2-2223). In turn, the state code (§ 15.2-2224) identifies four primary tools communities can use to implement local plans (The Official Map, Subdivision Regulations, Zoning, and Capital Improvements Program). Those four primary tools will be described in the following section of this report, along with the many other major tools that derive from, or are meant to supplement those primary tools.

The other major reason Virginia localities undertake planning is to prepare for and cope with change. Change is inevitable, and whether it is a positive or negative force may depend on the

effectiveness of the locality's planning efforts in managing change. Planning can be used to guide and coordinate the changes the locality is experiencing by providing for:

- The wise use of land and resources;
- A good environment for people to live in;
- Anticipated future needs;
- Beneficial development patterns; and,
- The most cost-effective use of tax dollars.

The comprehensive plan is the foundation for all decision-making in matters involving land use planning and growth management. Planning is necessary if a community wants to manage its future. In the absence of monitoring or guidance, change will occur haphazardly without any assessment being made of its impact on the whole community. Planning gives local government the means and opportunity to establish its own community development goals and objectives, and to enact policies, ordinances, and programs necessary to attain them. The planning process also gives citizens an opportunity to participate in the development of local plans, thus increasing the likelihood that the plan reflects the ideas of the community.

A solid comprehensive plan features a descriptive text replete with goals, policies and strategies linked to different aspects of community life. An effective comprehensive plan also includes a series of maps, plats and charts focused on existing land uses as well as proposed future land uses. Taken as a whole, the comprehensive plan should present, in words, analysis, and graphics, images of the present as well as the locality's preferred future, which the comprehensive plan is meant to achieve.

Authority

The authority for comprehensive planning in Virginia is found in § 15.2-2223. According to the code, the local planning commission shall prepare and recommend a comprehensive plan for the physical development of the territory within its jurisdiction. The Code calls for the comprehensive plan to be made with the purpose of

“guiding and accomplishing a coordinated, adjusted and harmonious development of the territory which will, in accordance with present and probable future needs and resources, best promote the health, safety, morals, order, convenience, prosperity and general welfare of the inhabitants.”

In addition, the code mandates that the plan designate the general and approximate location, character, and extent of each feature shown on the plan and indicate where existing lands or facilities are to be extended, widened, removed, relocated, vacated, narrowed, abandoned, or changed in use as the case may be.

The code also mandates that the comprehensive plan show the locality's long-range recommendations for the general development of the territory covered by the plan. In addition, the comprehensive plan must contain the following three elements or chapters:

- A transportation plan that designates a system of transportation infrastructure needs and recommendations that may include new and expanded facilities. Upon request, VDOT is required to provide localities with technical assistance in preparing the transportation plan.
- A map showing road improvements and transportation improvements, including cost estimates of the road and transportation improvements to the extent VDOT can supply the information.
- Designated areas in the locality for the implementation of measures to promote the construction and maintenance of affordable housing.

The Transportation Act of 2007 (HB3202) made significant additions to the Code mandates for comprehensive plans: by July 1, 2011, any county that adopted zoning and has either a 1990-2000 population growth rate of 15% or more **or** a 2000 population of at least 20,000 persons and a 1990-2000 population growth rate of 5% or more is required to incorporate Urban Development Areas (UDA) in their comprehensive plans.

Those counties included in the criteria of the bill include:

- 15% or more growth rate: Accomack, Albemarle, Amelia, Augusta, Bedford, Botetourt, Brunswick, Buckingham, Caroline, Chesterfield, Craig, Culpeper, Cumberland, Dinwiddie, Fairfax, Fluvanna, Franklin, Frederick, Gloucester, Goochland, Greene, Greensville, Halifax, Hanover, Henrico, Isle of Wight, James City, King George, King William, Loudoun, Louisa, Lunenburg, New Kent, Northumberland, Orange, Powhatan, Prince George, Prince William, Richmond, Rockingham, Spotsylvania, Stafford, Sussex, Warren, and York.
- 20,000 population and a 5% growth rate: Amherst, Arlington, Campbell, Fauquier, Mecklenburg, Montgomery, Page, Pittsylvania, Roanoke, Rockbridge, Shenandoah, and Washington.

For those counties the following new mandates apply:

- UDA must be area appropriate for higher density development due to proximity to transportation facilities, availability of public or community water and sewer, or proximity to a city, town or other developed area.
- UDA must allow residential densities of four dwelling units per gross acre and a floor area ratio of 0.4 per gross acre for commercial development.
- UDA must be of sufficient size to accommodate at least 10 years and no more than 20 years worth of residential and commercial development.
- UDA must be re-examined every five years and, if necessary, revised.
- Local comprehensive plan must incorporate principles of new urbanism and traditional neighborhood development, as defined in the legislation, anywhere within the jurisdiction.
- Local comprehensive plan must describe financial and other incentives for development in the UDA.

Additionally, a county may certify that its comprehensive plan already satisfies the requirements of a UDA. The Transportation Act of 2007 also encourages that state and local expenditures for transportation, housing and economic development to be focused in the UDA.

The code provides that a comprehensive plan also may include chapters or elements devoted to the following:

- Designated areas for various land uses including residential, business, industrial, agricultural, conservation, and other uses.
- A system of community service facilities such as parks, schools, public buildings, hospitals, community centers, waterworks, sewage disposal and the like.
- Historical areas and areas for urban renewal or other treatment.
- Areas for the implementation of groundwater protection measures.
- Areas for locating existing or proposed recycling centers.
- Areas for locating military bases, military installations, military airports and their adjacent safety areas.

It is important to note that the code, § 15.2-2224, permits the planning commission to study an extensive list of subjects and topics when preparing a comprehensive plan. In fact, the statute concludes with the statement that the commission may study (in addition to the ones listed) any other matters relating to the subject matter and the general purpose of the comprehensive plan.

Accordingly, the comprehensive plan should be viewed as an important and legally significant policy document by the local governing body and community alike. Section 15.2-2232 of the state code, which is discussed elsewhere in this report, provides the comprehensive plan with its legal standing. The significance the commonwealth attaches to comprehensive plans is evidenced by the requirement that all local plans be reviewed at least once every five years (§ 15.2-2230) to determine if any amendments are needed, and that the plan serve as a basis for any subsequent zoning that may occur in the locality.

Implementation

In 1975, the Virginia General Assembly passed legislation mandating that every local government, if it had not already done so, appoint a local planning commission by July 1, 1976; prepare and adopt a subdivision ordinance by July 1, 1977; and prepare and adopt a comprehensive plan by July 1, 1980. To date, nearly every locality in Virginia has satisfied this mandate. Indeed, the comprehensive plan has matured and gained stature over the past 30 years. Rather than being a “feel good” document with bland and generalized goals, the modern comprehensive plan features specific strategies for specific land use issues, including detailed action agendas designed to implement the plan in a sequential and predictable manner. For example, the City of Williamsburg plan focuses on the city’s historical character and its contribution to the community’s attractiveness as a tourist destination. The Rockingham County comprehensive plan, conversely, is oriented to sustaining the community’s rural character in order to enhance the county’s standing as Virginia’s most productive and most profitable agricultural community. Both plans are oriented and structured to function as a policy guide for local decision makers. Both plans, as do many others across the

state, portray in both pictures and words a desired future for the community and the steps and actions the respective localities must take to make that future happen.

Limitations

Awareness, accountability and content are three significant challenges associated with comprehensive plans. For example, the mandate to plan is not universally understood, nor is there general awareness about the scope and purpose of a comprehensive plan. Educating the public and local decision makers about the role a comprehensive plan can and should play in the community is an ongoing challenge.

Keeping the comprehensive plan up to date and eliminating inconsistencies between the plan and the primary tools of plan implementation must be afforded a higher priority if plans are to be accountable. In like fashion, making sure local decision makers refer to and use the comprehensive plan when making land use, zoning and public investment decisions must become the norm.

To remain relevant, the scope and content of the comprehensive plan must evolve to reflect the opportunities and challenges of the 21st century. Accordingly, it is incumbent upon the executive and legislative branches of state government to work in tandem when adjustments and modifications are made to the state code affecting local government planning and zoning authority. Open and forthright dialogue with local governments should also take place before any significant adjustments to the enabling statutes are made.

Enhancements

A locality can enhance and strengthen their comprehensive plan by reviewing the plan as required by state law and updating the plan on a regular basis. Another worthwhile enhancement would be to correlate the tools of plan implementation with the comprehensive plan. Adding an implementation schedule to the comprehensive plan would also increase the likelihood of the plan being followed and used by local decision makers. Other suggestions worth considering include adding elements concerning regional issues and actions and adding a section focused on the local and regional economy. The Transportation Act of 2007 was intended in part to give greater attention and detail regarding the relationship of transportation infrastructure to the quality and character of local land use and urban form. As localities, primarily counties, endeavor to implement these changes the strengths and shortcomings of this legislation will become evident and needed adjustments can be pursued. Some localities have developed interesting innovations in comprehensive planning, including using “benchmarks” and quality of life “indicators” as well as level of service measures and goals to measure progress toward meeting goals, taking a longer 50-year view into the future in order to identify issues and opportunities that do not appear within a shorter time horizon, and providing more detail about the future street network in relation to buildings and land uses.

Section III

The Tools for Plan Implementation

The first four parts of this section describe the four primary tools of plan implementation as set forth in the code. Following these are the other important tools that are either widely used or offer potential for improving local growth management programs.

A. The Official Map

Description

The official map is one of four primary tools localities can use to implement the local comprehensive plan. According to § 15.2-2233 of the Virginia Code, a local planning commission may make a map showing the location of any:

- 1. Legally established public street, alley, walkway, waterway and public area of the locality; and*
- 2. Future or proposed public street, alley, walkway, waterway and public area.”*

If developed, the official map must establish the centerline, width and right-of-way of streets and the metes and bounds of public areas in relation to known, fixed and permanent monuments either by physical or aerial survey. This admonition applies to mapping existing streets, alleys, walkways and public areas, as well as mapping future or proposed streets, alleys, walkways and/or public areas.

Authority

The official map is defined and described in § 15.2-2233 through § 15.2-2238 of the Virginia Code. The official map is a discretionary tool of plan implementation. This means localities are not mandated to adopt an official map.

Implementation

Numerous localities across the state have developed maps detailing the location of existing streets, waterways and public areas. These maps satisfy a component of the official map definition, yet they completely ignore the second criterion regarding future or proposed public streets, waterways and public areas. No locality in Virginia has an official map that matches the complete code definition.

Limitations

The theory underpinning the official map is to reserve land for future streets and other public uses. This is a very sound idea because once an official map is adopted by the governing body; no structure can be built within the boundaries of the site for the proposed street or other

public use. Herein, however, lies a fundamental challenge in using this tool. Besides identifying the centerline of each proposed road, the official map must also display the proposed right-of-way for each road. For this to happen, approvals from state and federal authorities regarding environmental issues along the proposed roadway would need to be in hand. Satisfying each noted step, while not impossible, may require an amount of upfront money that most local governments are not able or willing to provide for this purpose.

Assuming for a moment that a locality did draw up a “future” official map, when an application for a building permit is made for an area shown on the official map as a proposed future right-of-way, the locality has 60 days to grant or deny the permit. If the permit is denied for the purpose of acquiring the property, the locality will have 120 days to acquire the property. If the locality fails to act within 120 days, the building permit, assuming all other requirements have been met, must be issued. Once again, the locality in question would need to have money on hand to implement and maintain the integrity of the official map.

Enhancements

The official map will likely gain acceptance as a bona fide tool of plan implementation owing to advances in electronic mapping. However, the unpredictable nature of public spending is and will continue to be the major reason no locality in Virginia has utilized this Code provision and created an official map. At minimum, the official map enabling authority would benefit from a Code of Virginia adjustment giving localities more time to secure funds to purchase desired rights-of-way. Another improvement would be to allow future maps to be drawn with reasonable rather than exact accuracy relative to proposed streets, roads and public areas.

B. Subdivision and Site Plan Regulations

Description

Subdivision regulations are also one of the four primary tools of implementing the comprehensive plan referred to in Section II of this report. Each local government in Virginia is required to adopt a subdivision ordinance to assure that land development occurs in an orderly and safe manner. The subdivision ordinance establishes the procedures, platting and design requirements, as well as surety guarantees for public infrastructure improvements, associated with the subdivision of land into parcels or lots of development.

A subdivision according to the Virginia Code means the division of a parcel of land into either three or more lots or into parcels of less than five acres each for the purpose of transfer of ownership or building development. Many Virginia localities have three types of subdivisions: minor, major, and family.

The code defines a site plan as the “proposal for a development or a subdivision, including all covenants, grants or easements and other conditions relating to use, location and bulk of buildings, density of development, common open space, public facilities and such other

information as required by the subdivision ordinance to which the proposed development or subdivision is subject.”

Authority

Land subdivision and development standards are contained in § 15.2-2240 through § 15.2-2279 of the Virginia Code. As prescribed, a subdivision ordinance will specify administrative procedures to be followed in the division of land; design standards for subdivisions; and the identification of improvements (e.g., streets, utilities) to be installed.

Implementation

Every local government in Virginia has adopted a subdivision ordinance to promote the safe, functional, and proper development of property. The subdivision ordinance provides details for plats and plat approval, a coordinated network of streets; provisions for public facilities; drainage and flood control; fees and enforcement; and in selected localities family subdivisions. The subdivision of land is generally viewed as a ministerial act. This means the local governing body does not have to review and approve the proposed subdivision. Typically, only the staff, and/or planning commission will review proposed subdivisions to assure conformity with the subdivision and related ordinances. In order to promote better coordination, a 2007 change requires that the subdivision plat, if approval of a feature or features of the plat by a state agency or public authority authorized by state law is necessary, be forwarded for review by that agency. The agency has 45 days to complete their review.

Limitations

Because the subdivision of land is considered a by-right activity, the landowner’s only obligation is to meet the applicable subdivision (and zoning) regulations before subdividing. This guarantee can become a liability if the subdivision regulations are out of date or the underlying zoning of the property does not reflect the intent of the community’s comprehensive plan. When this happens the subdivision, regardless of the concern expressed by citizens, the planning staff, the planning commission or the governing body, must be approved. Accordingly, it is essential that subdivision ordinances be reviewed and updated on a regular basis.

Family subdivision (see §15.2-2244) provisions are required to be a part of subdivision ordinances in counties. While these provisions can be tailored somewhat to local needs, they can represent a substantial loophole in a county’s ability to affect the type of growth and development envisioned in the local comprehensive plan.

Enhancements

Committing to a periodic review and update of the subdivision ordinance should become standard operating procedure statewide. In addition, correlating the goals and objectives of the comprehensive plan, the zoning ordinance and the subdivision ordinance should be considered an essential land use requirement for every locality.

C. The Capital Improvement Program

Description

The Capital Improvement Program (CIP) is also one of the four primary tools of implementing the comprehensive plan referred to in Section II of this report. It is an integral component of a locality's overall growth management program. It outlines the multi-year scheduling of public physical improvements and related costs to help guide the locality's decisions on how to allocate available funds over a 5-year period. The CIP is sometimes called a Capital Improvement Budget or Capital Improvement Plan.

Authority

Virginia Code § 15.2-2239 provides that the local planning commission shall prepare and submit a Capital Improvement Program to the governing body or official charged with preparation of a local budget. The preparation of a CIP is not required, but if directed by the local governing body, the planning commission shall prepare and revise annually a CIP "...based on the comprehensive plan for a period not to exceed the ensuing five years."

Implementation

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 projected capital improvements.

Localities use the CIP to support 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. (Note: This determination was commonly known as a "456 Review" process prior to the recodification of § 15.1 to 15.2.)

Section 15.2-2303.2 requires that any locality eligible to accept proffered cash payments (as of the 2006 Session this includes localities with population growth of 5% or more), shall for each fiscal year beginning with FY07 include in its CIP the amount of all proffered cash payments received during the most recent fiscal year. This includes all road and transportation improvements to meet increased demand attributable to new development.

The locality may use any cash payment proffered for capital improvements for alternative improvements of the same category within the locality and in the vicinity of the improvements

for which the cash payments were made. Such action requires notification of the original entity or rezoning applicant prior to a public hearing.

Flexibility is provided in § 15.2-2303.2 to enable the locality to negotiate and award a contract without competition to an entity that is constructing road improvements pursuant to a proffered zoning condition in order to expand the scope of the improvements by using cash proffers or other available locally generated funds.

Limitations

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 public expenditures to guide development and redevelopment.

Cash proffers represent a relatively new source of revenue to be accounted for in the CIP and to be used in the vicinity of the project. Since cash proffers are often tied to issuance of building permits, collection takes place over a number of years, and it may take years to see the impact that such proffer payments will have in funding capital improvements for the benefit of the locality. In the November 2006 'Report on Proffered Cash Payments and Expenditure by Virginia's Counties, Cities and Towns' published by the Commission on Local Government, the annual survey found that only 42 or 29.8% of the 141 eligible localities reported an aggregate amount of \$67.3 million collected. The largest share of revenue in FY 2006 went for roads and other transportation improvements.

Enhancements

Localities must clearly establish the need and policy for the CIP project list in the comprehensive plan and local planning commissions must ensure that the CIP implements the comprehensive plan.

D. Zoning Tools

1. Zoning Overview

Description

Zoning is considered the quintessential tool of plan implementation. Zoning divides a locality into specific districts and establishes regulations concerning the use, placement, spacing and size of land and buildings within the respective districts.

This section of the report provides an overview of the zoning tool in general (Part 1), and is then followed by descriptions of a few of the major variants on zoning that are used in the commonwealth, including Agricultural or Large Lot Zoning, Cluster Zoning, Traditional Neighborhood Development, and Historic District Zoning. (Also, Conditional Zoning/Cash Proffers are discussed under financing tools rather than zoning tools). This

short list does not include every variation used by Virginia localities, but does include several of the more prominent ones.

According to the Virginia Code (§ 15.2-2280) any locality may, by ordinance, classify the territory under its jurisdiction or any substantial portion thereof, into districts of such number, size and shape as deemed important to needs of the community and the purposes of zoning as defined by the code. Accordingly, zoning is a discretionary tool of plan implementation. It is not a mandated tool like the subdivision ordinance.

Zoning is intended to avoid disruptive land use patterns by preventing activities on one property from generating external effects that are detrimental to other properties. Zoning ordinances, if drafted by the planning commission and adopted by the governing body, must feature a text describing each district and the district regulations, as well as a map detailing the location and extent of each district throughout the community.

Conventional zoning is called “Euclidean”, named after the Town of Euclid, Ohio, whose zoning ordinance was upheld by the U. S. Supreme Court in a landmark case in 1926. This conventional approach divides the land within the jurisdiction into discreet geographic districts based on the general use and intensity that is permitted for land and buildings. Typical zoning districts under this approach are residential, commercial and industrial. Many variations on this approach have been devised during the past 80 years, and many of these are used in various counties in Virginia. One prominent variation is called “Planned Unit Development” (PUD), in which some amount of flexibility is permitted for lot sizes and uses within the district, based upon a detailed conceptual development plan submitted by the applicant.

Authority

Standards authorizing the use of zoning in Virginia are found in § 15.2-2280 of the state code. The purposes of zoning are spelled out in § 15.2-2283 of the code, while matters that a locality shall consider when developing a zoning ordinance and when applying or using the zoning ordinance are outlined in § 15.2-2284. The 2008 General Assembly added flood inundation zones and impoundment structures as new items of consideration when developing a zoning ordinance.

Criteria governing the preparation, administration and enforcement of zoning, along with zoning standards applicable to group homes, airports, conditional uses, affordable dwelling units, historic properties and the vesting of rights are found in § 15.2-2285 through § 15.2-2307 of the code.

Implementation

On its own initiative or at the direction of the governing body, the planning commission may prepare a zoning ordinance, including text and maps dividing the community into districts; detailing the regulations applicable in each district; and providing for enforcement, variances, conditional zoning, special exceptions, appeals and penalties. To

date, every city in Virginia, most towns and 87 of the 95 counties have chosen to adopt zoning to regulate land use and to help manage local growth. This is a remarkable statistic considering zoning is not mandated by the state of Virginia. It is important to note however, that zoning is mandated in localities affected by the 1988 Chesapeake Bay Act. Generally speaking these cities, counties and towns are east of the fall line in eastern Virginia.

To be effective, zoning ordinances need to reflect the views of how land within a jurisdiction can, or should, be used at the present time, as well as in the future. These views should be reflected in the community's comprehensive plan. Thus, when a property owner petitions a locality for a rezoning (zoning map amendment), the planning staff, planning commission and the local governing body must refer to the comprehensive plan to determine if the rezoning request comports with the plan's goals, objectives, policies and vision. Indeed, the planning commission and the governing body must each hold public hearings before acting on any rezoning proposal. In addition to hearing the public's perspective regarding the proposed rezoning, the commission and governing body alike must identify and share the facts and findings each body used in deciding to support or reject the proposed rezoning. Action taken by a governing body is final unless parties file an appeal with the local circuit court. In contrast to subdivision approvals, which are ministerial, zoning actions are legislative acts. Localities enjoy the "presumption of validity" under the law when approving or denying zoning amendments.

Localities have devised many and various ways to craft and implement the broad tool called zoning. Several of the major variations are described in the following pages of this report, although this is by no means intended to be an exhaustive catalogue of every variation to be found throughout the commonwealth.

Limitations

Throughout most of the 20th century, zoning was used to prevent incompatible land uses from locating close to one another. While not inherently wrong, this rather narrow perspective thwarted zoning's use as a proactive or anticipatory tool of planning.

Another limitation centers on stale or old zoning. Unlike the comprehensive plan, there is no mandate that a zoning ordinance be reviewed on a periodic basis. It is not uncommon to discover localities using zoning ordinances first developed 30 and 40 years ago to implement current comprehensive plans. Not surprisingly, problems can and do result when this situation occurs.

Another limitation long associated with zoning practices in Virginia involves the mindset that downzoning, i.e., diminishing the number of development rights permitted by right in a district or zone, is illegal. This perspective (which is unfounded) is a major reason localities cite for not rewriting or modifying, in a substantial manner, their zoning ordinances. This erroneous view must be corrected.

Enhancements

Zoning regulations, in both theory and practice, should be consistent with the local comprehensive plan. Indeed, this is a mandate in nearly half of the states nationwide. Better decisions and better communities, arguably, would be the byproduct of enhanced plan and ordinance consistency. This does not necessarily mean that a locality should “zone to the plan” by rezoning property on their own motion to conform to the planned future land use map. Rather, it means that the development standards pertaining to various districts and land uses should reflect the goals and policies set forth in the comprehensive plan.

The mandate to review local zoning ordinances on a periodic basis is worthy of consideration as is the admonition that every locality be required to adopt zoning.

Lastly, by separating structures and land uses, conventional zoning regulations tend to reinforce dispersed settlement patterns, which many localities are finding to be less than desirable when compared to compact, pedestrian-friendly historic areas. By softening zoning’s hard edge, by creating situation-based development standards, and by encouraging localities to adopt flexible techniques such as traditional standards modeled after historic neighborhoods, zoning may become truly a 21st century tool for planning.

2. Form-Based Codes

Description

Form-based codes are a basic zoning mechanism for directing development toward meeting specific goals, and are the primary tools used to implement Traditional Neighborhood Development (TND) and New Urbanism development form concepts, which are discussed as community design policy tools in Section E.5.

A few definitions of form-based Codes are offered:

Form-based codes are a method of regulating development to achieve a specific urban form. Form-Based Codes create a predictable public realm by controlling physical form, primarily with a lesser focus on land use, through city or county regulations.

-- Form-Based Code Institute

Form-based codes add the details of relationship between buildings and the public realm of the street, the form and massing of buildings in relation to one another, and the scale and types of streets and blocks.

-- Paul Crawford, AICP

Form-based codes in particular differ from conventional codes in that they make greater use of graphics to reinforce the text of the regulations, and they emphasize the *form* of

development, especially the relationship of building mass and openings to the public street, rather than the use and density of development.

Authority

Same as for conventional zoning techniques (§ 15.2-2280, et seq.)

Implementation

The preparation of a form-based code typically includes the following steps:

- Existing conditions analysis and inventory
- Public visioning/charette
- Determine appropriate spatial basis for regulation
- Determine standards
- Illustrate standards

The typical components of a form-based code include:

- Regulating plan
- Building form standards
- Public space standards
- Architectural standards
- Streets standards
- Definitions
- Administration

Zoning regulations that implement New Urbanism principles differ from conventional zoning regulations in that the standards do not require that structures and uses be separated and dispersed. Instead, they promote a more compact, pedestrian-oriented streetscape with a mixture of residential and commercial land uses.

Arlington County has a true form-based code for the Columbia Pike corridor district. Arlington's form-based code is implemented through an optional overlay district that offers development incentives, including density bonuses and an expedited site plan review process. The unincorporated village of Marshall is currently developing a form-based code for its main street area, on behalf of Fauquier County.

Limitations

In Virginia, form-based codes should not regulate architectural design, per se (unless they also use the provisions of the code for conditional zoning or historic district zoning in §15.2-2306), but should adhere to the normal topics of zoning regulations such as bulk, height, and use of structures. Because form-based codes govern very specific aspects of how buildings and parking areas are located on a site, it is important that they be based upon a detailed comprehensive plan element for the area covered by the district.

Enhancements

Form-based codes should be based upon detailed comprehensive plans for the areas to which they pertain. This approach should encourage localities to prepare plans that show specific concepts for street networks, relationships of buildings and parking areas to streets, and provisions for pedestrian and bicycle circulation as well as for motor vehicles. Goals and objectives within comprehensive plans should include language that promotes a desirable development form, thus establishing an appropriate nexus for the development of an implementation device (i.e. zoning ordinance, form-based code). The benefits of outlining community “transects” in Comprehensive Plans to help direct the type of desired development form the locality is seeking in a particular location. Other broad public health and safety items, such as transportation, open space or civic areas (parks, community buildings, etc.) are community forms that should also be considered as subjects in form-based codes.

3. Large Lot/Agricultural Zoning

Description

Large lot zoning is one of the techniques in a more inclusive category of zoning techniques called agricultural zoning or agricultural protection zoning. Large lot zoning simply requires that the minimum lot size in a designated rural zoning district is set at a large enough size to protect agricultural activities from excessive encroachment of residential and other non-agricultural land uses.

The American Farmland Trust defines a “large lot” for the purposes of agricultural protection as being 20 acres or more. Many localities consider smaller minimum lots sizes such as five or 10 acres as being a “large lot” measure. However, if lots less than 10 acres are permitted without a clustering provision (described later in this report), there is a risk that such development will create undue encroachment on agricultural areas and undermine the purposes of the tool. Thus, large lot zoning provisions are often combined with cluster zoning provisions within a given zoning district.

Large lot zoning is relatively inexpensive in that it relies on the police power of conventional zoning to protect farmland from encroachment of residential development, thereby helping to reduce conflicts between farms and non-farm neighbors. If lot sizes are large enough, and if the locality provides for more intensive development to locate in urban areas or service districts, this technique can help reduce sprawl and public infrastructure costs. It appears to be used most commonly in areas where the farm economy is strong and farmers generally want protection from development. Thus, in areas where the value of rural land for development is far higher than its value for farming, it can be difficult to implement without support of the farming community. Like all zoning measures, it is not permanent and can be changed by local legislative action.

Authority

Same as for all zoning techniques (§ 15.2-2280, et seq.)

Implementation

Large lot zoning is implemented like any other conventional zoning technique, through minimum lot sizes for the large lot district set forth in the zoning ordinance, and the location of the district shown on the official zoning map.

In Virginia, many counties use large lot zoning. Most of these localities have a large agricultural industry, with many farm owners and operators who want protection from the encroachment of residential and other urban land uses. As noted above, many localities include a cluster development option within the provisions of a large lot zoning district.

Examples of Large Lot Zoning in Virginia

- Accomack County (5 acre minimum lot size)*
- Amelia County (5 acre minimum lot size)
- Fauquier County (25 to 50 acre minimum lot size)*
- Hanover County (10 acre minimum lot size)*
- Isle of Wight County (40 acre minimum lot size)*
- Loudoun County (20 to 40 acre minimum lot size)*
- Powhatan County (10 acre minimum lot size)
- Prince William County (10 acre minimum lot size)
- Rappahannock County (25 acre minimum lot size)

**also allows a cluster option*

Limitations

Large lot zoning tends to limit the intensity of rural development by dispersing new houses in a low density pattern. It can reduce the immediate development pressure on farmland, but is not a permanent measure. When establishing large lot zoning regulations, care must be given to ensure that landowners continue to be permitted a reasonable use of their property. Further, in localities that face strong pressures for residential growth, an expansive large lot zoning district may actually exacerbate sprawl unless care is taken to provide areas to absorb the demand for residential development and/or provide clustering provisions within the district.

Enhancements

When combined with other rural planning tools such as cluster development zoning and conservation easements, large lot zoning can preserve significant blocks of open land. While large lot zoning is not a panacea for growth management or rural land preservation, it is a critical tool for local governments to be able to use.

4. Cluster Subdivision/Zoning

Description

Under cluster subdivision/zoning provisions, when a residential subdivision is created, it is designed so that the dwelling units are clustered together on smaller than average lots on only a portion of the tract, leaving the remainder available for open space or similar uses. Clustering may be used in either urban or rural areas. However, the term “cluster zoning” is usually associated with rural land use issues.

Depending on the provisions of the specific cluster ordinance, the remaining open space within a cluster development may be held in common and/or be strictly an agricultural or environmental area with no “development rights” remaining on it; or, the open space parcel(s) may be allowed to have a dwelling unit with a permanent easement that prohibits further subdivision or additional dwellings.

In urban areas, cluster provisions are typically used for preserving sensitive environmental features and/or for encouraging a compact development pattern that makes efficient use of infrastructure. In rural areas, cluster provisions are typically aimed at agricultural and forest conservation.

Cluster provisions can be voluntary options within a zoning district, or they can be mandatory. Per §15.2-2286.1, a rezoning, use permit or special exception may not be required in order to create a cluster development, unless there is a density increase involved in the request.

One of the key advantages of rural cluster techniques is that the tool can help to preserve rural land resources while still meeting the desires of rural landowners to obtain a relatively high development value for their property. Typically, rural cluster provisions allow roads and dwellings to be sited with less disruption to views from the public road right-of-way and/or with greater buffer distances between neighboring properties.

There are many variations on the rural cluster technique, including the following:

- *Percent of Land Developed.* One variation on rural clustering is to specify a maximum percentage of the parent parcel or tract that can be converted to non-agricultural or non-open space uses. Such a provision can be relatively simple and may permit a great deal of flexibility to the developer in terms of lot size and unit type on that portion of the land that is permitted to be converted.
- *Lot Size Averaging.* Another variation on rural clustering is to specify the average minimum lot size for a rural subdivision, but permit the developer to achieve that average by creating some lots that are larger and some smaller. Again, the advantage of this variant is to provide more design flexibility in order to respond to unique site conditions and to the local market demand.
- *Maximum Size of Building Lots.* Another variation is to set a *maximum* rather than *minimum* lot size for rural subdivisions, thereby forcing a clustered layout. The

percentage of open space remaining will be determined by the actual maximum lot size required in relation to the maximum overall site density required.

Authority

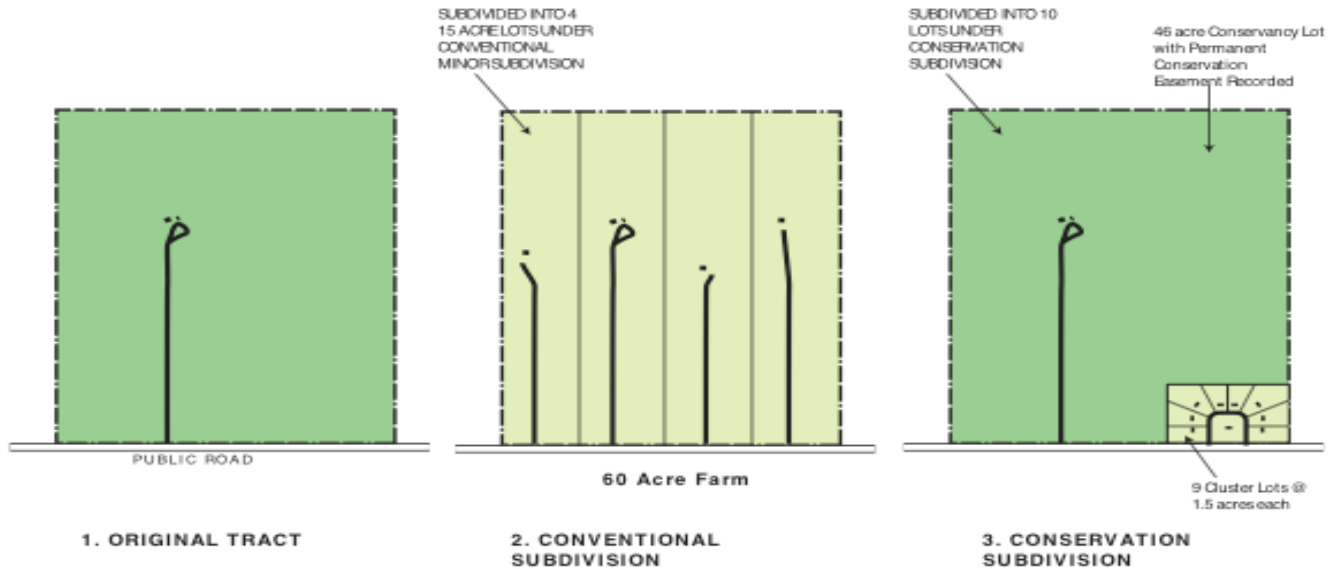
Same as for all zoning techniques (§ 15.2-2280, et seq.) Note new legislation that limits cluster provisions (§ 15.2-2286.1), described below.

Implementation

Some examples of rural cluster provisions in Virginia:

- *Loudoun County*. Voluntary rural cluster. In the AR-1 District, a minimum lot size of 20 acres is required, unless lots are clustered. In this case a lot yield of one lot per 5 acres is allowed, with cluster lots at least 20,000 square feet and not more than four acres in size, with at least one lot of at least 15 acres, and at least 70% of the land in the cluster subdivision in common open space. In the AR-2 District, a minimum lot size of 40 acres is required, unless lots are clustered. In this case a lot yield of one lot per 15 acres is allowed, with cluster lots at least 20,000 square feet and not more than four acres in size, with at least one lot of at least 25 acres, and at least 70% of the land in the cluster subdivision in common open space.
- *Hanover County*. Mandatory rural cluster to obtain maximum permitted density. Sixteen clustered lots are permitted per each 100 acres with a minimum of 70% open space required (slightly more than six acres per lot on average). If cluster is not used, minimum lot size/density is 10 acres per dwelling in the agricultural zone.
- *Isle of Wight County*. Voluntary rural cluster with density incentives. In order to get a higher density than the restrictive agricultural zone allows (about 40 acres per lot), the owner may cluster the subdivision lots and achieve a density of 1 per 10 acres if 50% of the tract is preserved in open space, 1 per 8 acres if 60% is preserved, and 1 per 5 acres if 70% is preserved.
- *Accomack County*. Voluntary rural cluster with density incentives. Cluster lots of 30,000 square feet up to one acre in size are allowed with two bonus lots per parent tract in addition to the base density of one dwelling per five acres.

Example of Rural Cluster



Graphic courtesy of Paradigm Design

Example of Urban Cluster

Conventional Site Plan



Cluster Site Plan



Graphic courtesy of Sympoetica

Limitations

Clustering is a middle ground between full preservation and full development, and thus doesn't completely "solve the problem" of preserving agriculture or rural character. Also, additional design effort is usually required to create a cluster subdivision compared to a conventional, large lot subdivision. Yet, cluster zoning is becoming more widespread as localities seek to deal with the conflicting pressures for development and preservation.

§ 15.2-2286.1 requires that, effective July 1, 2007, most high-growth localities (10 year growth rate over 10%) must provide cluster regulations applicable to at least 40% of the unimproved land in residential and agricultural zoning districts. Such cluster developments must be permitted by right under the local subdivision ordinance, without a public hearing or any kind of special use permit.

Enhancements

Localities should be given the maximum possible discretion and flexibility in crafting cluster zoning regulations that fit the particular needs and circumstances of each locality. As noted above, cluster zoning can be particularly effective when used in combination with other rural preservation tools.

5. Historic District Zoning

Description

Localities are authorized by the Virginia Code to establish Historic Districts for designated historic landmarks and defined “historic areas”, including adjacent properties and land contiguous to road corridors leading to such areas. The code defines “historic area” to mean

"an area containing one or more buildings or places in which historic events occurred or having special public value because of notable architectural, archaeological or other features relating to the cultural or artistic heritage of the community, of such significance as to warrant conservation and preservation."

The governing body may provide for a review board to administer the ordinance, often called a Board of Architectural Review. The ordinance may include a provision that no building or structure, including signs, shall be erected or altered within any such district unless approved by the review board as being *architecturally compatible* with the historic landmarks, buildings or structures in the district. Localities typically prepare design guidelines to aid in the administration of such districts.

Such districts are established as “overlay” districts which do not alter the underlying zoning regulations, per se, but rather provide additional requirements for the design and form of new and/or expanded buildings.

The establishment of a Historic Overlay District provides a great deal of authority to a locality in affecting visual character of a neighborhood in terms of architectural and urban design, going well beyond the accepted purview of conventional zoning provisions which deal merely with the height, bulk, use and intensity of buildings.

Authority

Authority for historic district zoning is provided in § 15.2-2306 of the code.

Implementation

Many localities throughout the commonwealth have established historic overlay districts. Most often these are urban areas in cities and towns, but rural historic districts can also be created, such as the Goose Creek Historic District in Loudoun County. More recently, entrance corridor overlay districts have been established in the Town of Leesburg and in Albemarle County.

Limitations

Historic overlay districts control only the form and visual character of buildings, not the intensity, use, height, bulk or other aspects that are controlled by conventional zoning regulations. Thus, historic districts can be important tools for preservation and growth management, but only for their specific purposes.

Enhancements

It would be helpful to update the provisions of § 15.2-2306 that deal with demolition, to reflect current dollar values. Further, as form-based codes become more commonly used, it would be helpful to allow some of the provisions of § 15.2-2306 pertaining to architectural design to be used in areas outside designated historic districts, in concert with form-based zoning standards.

E. Tools for Managing the Form and Location of Growth

1. The “2232” Review

Description

As noted in Section II of this report, the comprehensive plan is considered advisory and it serves as a guide for the physical development of the territory within the locality’s jurisdiction. However, according to § 15.2-2232 of the Virginia Code, the comprehensive plan “shall control the general and approximate location, character, and extent of each feature shown.” Thus, while the comprehensive plan itself does not directly regulate land use, the plan does have status as a fundamental instrument of land use control once it is adopted by the local governing body.

Section 15.2-2232 provides that unless a feature is already shown on the adopted plan, no street or connection to an existing street, park or other public area, public building or public structure, public utility facility or public service corporation, whether publicly or privately owned, shall be constructed, established or authorized until its location has been approved by

the local planning commission as being substantially in accord with the adopted comprehensive plan.

Authority

Provided by § 15.2-2232 of the Virginia Code.

Implementation

A “2232 review” is required whenever a project is proposed to construct, establish or authorize a public facility not shown on the comprehensive plan. The local planning commission, if it holds a public hearing, is required to communicate its findings to the governing body. The governing body is not required to follow the planning commission’s recommendation. However, if the proposed facility does not conform to the comprehensive plan, it may not be constructed.

Limitations

A primary limitation associated with the 2232 review centers on what activities prompt or require a review. To date, Virginia case law has clearly identified privately constructed wireless facilities in VDOT rights-of-way, sanitary landfills, school sites, parks and water impoundment facilities as activities requiring a 2232 review. Another 2232 issue involves the lack of specific code procedures that localities are to follow when conducting and administering a review.

Enhancements

Making sure all localities conduct the 2232 review is essential. Many do not consistently do so. In addition, strong consideration should be given to mandating that all local planning commissions, when needed, hold a public hearing when conducting a 2232 review. At present, a planning commission is not required to hold a hearing unless directed to do so by the governing body. Thus, some planning commissions hold hearings and some do not. This lack of consistency has produced some confusion on the part of localities and citizens alike. Finally, by not conducting a 2232 review, a locality is shortchanging the planning process by denying itself the opportunity to use the limited but specific legal status or power the code gives the plan. Sponsorship of a 2232 review means the locality, even if it is the applicant, is following the plan. This sends a strong message that the plan is a critical tool of public policy.

2. Urban Growth Boundaries (*Land Use and Infrastructure Coordination*)

Description

Extensions of infrastructure, particularly water and sewer lines and major streets, significantly affect the timing and density of development. The comprehensive plan can designate areas which are planned for immediate or long-term utility service, thereby

coordinating development approvals (rezonings) and utility extensions to achieve an orderly and compact development pattern adjacent to existing settlements. Urban Growth Boundaries in Virginia are not zoning designations per se, but rather policy designations established in the comprehensive plan so as to guide decisions about rezoning applications and public infrastructure investments.

Authority

Virginia Code § 15.2-2223, § 15.2-2232 and § 15.2-2283(vi).

Availability

All local governments.

Implementation

Examples include:

- *Chesterfield County:*

- Planned Growth Area

- Public water and sewer is required for development in the planned growth area.
 - Public sewer is required in areas planned for nonresidential and higher density residential development. Septic tanks are required in designated areas for residential lots of 2 acres or more.

- Deferred Growth Area

- No planned water and sewer extensions in this area where [urban] development is deferred.

- *Hanover County:*

- Planned growth areas require public water and sewer.
 - Timing of [urban] development depends on planned extension of public water and sewer trunk lines.

Limitations

Urban Growth Boundaries are an important tool for focusing growth in places where infrastructure exists or can be efficiently provided. Care must be taken, however, to ensure that an adequate supply of developable land is provided within the UGB in order to ensure enough choice in available land for the land market to function and to provide enough users of the utilities to create an adequate revenue stream to support the utility systems.

Example

A planning commission may reject a rezoning application and/or a requested sewer line extension if it is not located within a designated area as set forth in the comprehensive plan because it would not be in substantial accord with the comprehensive plan as per Virginia Code § 15.2-2232.

3. Special Exception Permitting (*Conditional/Special Use Permitting*)

Description

Zoning ordinances usually delineate a number of uses that are allowed as a matter of right, and a number of uses that are allowed by special exception. (Special exceptions are also called “special use permits” or “conditional use permits”, which mean the same thing).

Uses allowed by special exception are those considered to have a potentially greater impact upon neighboring properties or the public than those uses permitted by right in the district. For example, houses of worship may be desirable in a residential area, but controls over parking, circulation, setbacks and landscaping may be needed to prevent them from adversely affecting surrounding residences. By classifying them as special exceptions, separate and specialized regulations or conditions can be imposed by the locality to mitigate the adverse impacts. These conditions may be imposed and need not be negotiated or agreed to by the applicant. Such conditions must be specific, reasonable and enforceable.

Authority

Section 15.2-2286 (A)(3) of the Virginia Code empowers each local governing body with the authority to grant special exceptions. As noted above, special exceptions are also sometimes known as special use permits or conditional use permits. Of equal importance, a governing body may delegate the authority to grant special exceptions to the local Board of Zoning Appeals (BZA). If this occurs, the BZA, when deciding special exception applications, will be acting in a legislative capacity rather than their normal quasi-judicial capacity.

Implementation

It is nearly impossible to find a zoning ordinance that does not authorize the use of special exceptions. It is equally challenging to find a locality that does not employ the special exception process on a regular basis.

It is important to note that special exceptions may pertain to more than land uses. Several local zoning ordinances allow deviations from certain setback regulations with conditions if approved by the governing body. This use of the special exception process is designed to preclude having to seek a setback variance from the BZA which, by statute, does not have the right to exercise discretion when deciding variance setback cases.

Limitations

The Virginia Code places limitations on a locality's authority to require a special exception. Section 15.2-2288, for example, precludes a locality from requiring a special exception for any production agriculture or silviculture activity in an agricultural zoning district. Special exceptions may not be required, assuming statutorily prescribed circumstances exist, for cluster developments, manufactured housing in agricultural zoning districts, group homes of eight or fewer persons where single family residential use is allowed by right, and family day homes of five or fewer persons where single family residential use is allowed by right.

Enhancements

As constituted, the special exception is a much used and very valuable component of the local zoning process. Care needs to be exercised when granting special exceptions and when attaching conditions to special exceptions. Conditions, if attached, must be reasonable as well as enforceable.

At present, a BZA may impose limitations on the life of a special exception if the BZA is empowered to grant a special exception. Ironically, local governing bodies do not enjoy the same authority when they grant special exceptions. The General Assembly should strongly consider granting local governing bodies the authority enjoyed by the BZA.

4. Density Incentives

Description

A zoning ordinance is a principal planning tool used by localities to achieve their development objectives. Historically, zoning ordinances were purely regulatory tools that established minimum standards for new development. However, because "minimum standards" many times become "maximum performance", zoning ordinances have evolved to include incentive-based approaches to community development objectives.

Although different types of incentives can be incorporated into a zoning ordinance (fast track plan reviews, reduced application fees, etc.), the most positive incentive to developers is often increased density.

Incentives may be considered and applied through the rezoning process and/or directly through provisions of the zoning ordinance text. In the rezoning process, a locality's comprehensive plan provides recommended density ranges for areas planned for residential use and intensity ranges (i.e., ranges of building square footage, floor area ratios) for nonresidential use areas. Establishing density as part of a rezoning approval is a matter of the extent to which the objectives as specified in the comprehensive plan are met by the rezoning proposal.

Incentives may also be directly incorporated into a locality's zoning ordinance text, and be available to anyone who meets the standards established in the zoning ordinance. Incentives may be structured to foster an assortment of community objectives including, but not limited to affordable housing, dedication of land for highway improvements, reservation of land for open space, enhanced landscaping or signage design, or dedication of land for public uses.

Authority

Existing planning and zoning enabling legislation contained in Title 15.2 Chapter 22 of the Code of Virginia, sets forth broad purposes and objectives which allow localities to establish density ranges and the criteria to be satisfied in order to develop at certain densities. In the legislative act of rezoning, there is opportunity and the discretion to achieve local objectives of the comprehensive plan.

Implementation

When applying density credits, the extent to which density may be awarded will reflect the priorities of the community as may be set forth in the comprehensive plan. Purposes are therefore varied and should be left to the discretion of the local governing body (ex: open space, preservation of environmentally sensitive lands, land area for public facilities, land for public roads, affordable housing, etc.).

5. Community Design Concepts: Traditional Neighborhood Development and New Urbanism

Description

Traditional Neighborhood Development (TND) and New Urbanism are forms of development that reflect the principles of New Urbanism, which is aimed at achieving a "human-scale" built environment of mixed uses and interconnected streets that is conducive to pedestrian movements, as well as to motor vehicle movements.

New Urbanism is a planning concept that includes, or is otherwise known as neo-traditional design, transit-oriented development, and traditional neighborhood development. It has blossomed into a widespread planning movement during the past two decades, largely as a reaction to some of the deficiencies and unintended consequences of conventional suburban development patterns. The "Smart Growth" movement has adopted New Urbanism and TND as a part of its toolbox of solutions.

It is based upon principles of community development that have been used successfully for centuries, but which have been largely neglected during the advent of the motor vehicle in the post-World War II 20th century. Indeed, much of New Urbanism is a reflection of the sort of organic growth that occurred in towns and villages prior to the widespread use of zoning. It seeks to combine classic principles with the best features of modern urban design to create walkable, human-scale communities that have the timeless quality of historic settlements while also meeting the needs of modern society.

New Urbanism is aimed at creating new communities that have the civic features that people have long enjoyed, including “human-scale” streetscapes that are comfortable for pedestrians, a “fine-grain” of mixed-uses, usable public spaces, prominent civic buildings, and strong neighborhood identity. These are provided in ways that still accommodate motor vehicles, modern commercial markets, and consumer preferences.

New Urbanism is based on principles of urban design rather than architectural design. Whereas architecture is concerned with style and materials, urban design is concerned with the relationship of buildings to the street, the real and perceived scale of buildings, public space design, site access, and street networks. For example, New Urbanism will typically provide for parking to be at the side or rear of buildings, and will locate buildings fairly close to the street so as to provide spatial definition to the public right-of-way. Wide sidewalks, street trees, on-street parking, and other pedestrian amenities are common features as well. These elements will produce the benefits of New Urbanism regardless of the architectural style of the buildings.

One fundamental difference between conventional suburban development patterns and New Urbanism is the street network. Conventional suburban areas typically feature “spine” roads and cul-de-sacs. New Urbanism instead uses an interconnected street network to distribute traffic, much like the street grid in many historic cities and towns. However, whereas historic street grids were often very rigid, New Urbanism typically allows the grid to “flex” as needed to accommodate topography, natural features and modern buildings. New Urbanism streets are designed to naturally limit speeds and be inviting to use by pedestrians and bicyclists while in many 20th Century suburbs, traffic calming devices are commonly being demanded by residents to slow the speed of vehicles on residential streets and increase the safety for non-motorized transportation modes. Thus, comprehensive plans that incorporate New Urbanism principles will typically include a detailed conceptual plan for the future street network, rather than just showing “blobs” of land use connected only by arterial highways. Plans may also provide guidance for land use intensity across the locality, from the least dense rural areas, to the most dense urban cores, on a gradient known as the “transect”.

New Urbanism can occur as infill projects, as transit-oriented developments, or as suburban planned communities as extensions of urban areas, or on “greenfield” sites. Hundreds of new urbanism projects have been built or planned across the U.S. Many localities have adopted zoning regulations that permit, encourage, or even require New Urbanist elements.

At the heart of the New Urbanism concept is the design of neighborhoods, and there is no clearer description than the 13 points developed by town planners Andres Duany and Elizabeth Plater-Zyberk. An authentic neighborhood contains most of these elements:

- The neighborhood has a discernible center. This is often a square or a green, and sometimes a busy or memorable street corner. A transit stop would be located at this center.
- Most of the dwellings are within a five-minute walk of the center, an average of roughly 2,000 feet.

- There is a variety of dwelling types -- usually houses, rowhouses and apartments -- so that younger and older people, singles and families, the poor and the wealthy may find places to live.
- There are shops and offices at the edge of the neighborhood, of sufficiently varied types to supply the weekly needs of a household.
- A small ancillary building is permitted within the backyard of each house. It may be used as a rental unit or place to work (e.g. office or craft workshop).
- An elementary school is close enough so that most children can walk from their homes.
- There are small playgrounds near every dwelling -- not more than a tenth of a mile away.
- The streets within the neighborhood are a connected network, providing a variety of pedestrian and vehicular routes to any destination, which disperses traffic.
- The streets are relatively narrow and shaded by rows of trees. This slows traffic, creating an environment suitable for pedestrians and bicycles.
- Buildings in the neighborhood center are placed close to the street, creating a strong sense of place.
- Parking lots and garage doors rarely front the street. Parking is relegated to the rear of buildings, usually accessed by alleys.
- Certain prominent sites at the termination of street vistas or in the neighborhood center are reserved for civic buildings. These provide sites for community meetings, education, religion or cultural activities.
- The neighborhood is organized to be self-governing. A formal association debates and decides matters of maintenance, security and physical change. Taxation is the responsibility of the larger community.

Authority

In order to adequately plan for communities with New Urbanism characteristics, a Virginia locality can take its authority from §15.2-2200, which:

“...is intended to encourage localities to improve the public health, safety, convenience and welfare of its citizens and to plan for the future development of communities to the end that transportation systems be carefully planned; that new community centers be developed with adequate highway, utility, health, educational, and recreational facilities; that the need for mineral resources and the needs of agriculture, industry and business be recognized in future growth; that residential areas be provided with healthy surroundings for family life; that agricultural and forestal land be preserved; and that the growth of the community be consonant with the efficient and economical use of public funds.”

Further, §15.2-2283 calls for Zoning ordinances to be for the general purpose of promoting the health, safety or general welfare of the public and of further accomplishing

the objectives of § 15.2-2200. Many of the purposes cited in § 15.2-2283 are consistent with the features of New Urbanism. Also, definitions for mixed use and planned unit development expressed by § 15.2-2201 help define a mix of land uses typically found in a community demonstrating New Urbanism principles.

In sweeping land use and transportation legislation enacted during the 2007 General Assembly Session, TND and New Urbanism became formally recognized as a development forms in the Code of Virginia. As part of HB3202, the comprehensive planning enabling authority section of the Code was revised with the following title and language inserted:

15.2-2223.1. Comprehensive plan to include urban development areas; new urbanism.

B. The comprehensive plan shall further incorporate principles of new urbanism and traditional neighborhood development, which may include but need not be limited to (i) pedestrian-friendly road design, (ii) interconnection of new local streets with existing local streets and roads, (iii) connectivity of road and pedestrian networks, (iv) preservation of natural areas, (v) satisfaction of requirements for stormwater management, (vi) mixed-use neighborhoods, including mixed housing types, (vii) reduction of front and side yard building setbacks, and (viii) reduction of subdivision street widths and turning radii at subdivision street intersections.

Implementation

TND and New Urbanism development concepts should be implemented through both comprehensive plan policies and zoning regulations.

Many localities in Virginia have policies in their comprehensive plans that promote elements of New Urbanism, including, among many others, Albemarle County, Loudoun County, Fauquier County, the City of Suffolk, the City of Lynchburg, the City of Chesapeake, and the Town of Warrenton.

Many localities also implement the principles of New Urbanism by using what are called “Form-Based Codes”; refer also to Section D.2., “Form-Based Codes.” Although New Urbanism can be implemented through text-only standards, form-based codes can be more effective because they provide a means of better addressing the three-dimensional nature of New Urbanism by using diagrams to illustrate the rules.

Zoning regulations that implement New Urbanism principles differ from conventional zoning regulations in that the standards do not require that structures and uses be separated and dispersed. Instead, they promote a more compact, pedestrian-oriented streetscape with

a mixture of residential and commercial land uses.

Implementing New Urbanism through zoning typically involves creating one or more districts that are a variation of “planned” districts, or “planned unit development” districts. These TND districts typically allow (or require) a variety of dwelling types, relatively narrow streets that form a connected network, a variety of permitted uses, location of parking at the rear of lots, and the use of alleys for motor vehicle access.

Several localities in Virginia have TND districts that do not actually use form-based provisions per se, including the City of Lynchburg, the Town of Stephens City, Loudoun County, and Botetourt County.

The Town of Leesburg received a Charter Amendment (Senate Bill 1246) in 2007 granting the authority to designate Architectural Control Districts (ACD) on the basis of protecting the general welfare and to prevent deterioration of the appearance of the town. The Town Council may establish, enlarge, contract, or alter ACD’s anywhere within the Town. The compliance of the ACD’s may be determined either by a form-based code through an administrative process, or a design guideline, the compliance of which is determined by a Board of Architectural Review. Leesburg’s Charter Amendment also allows the Town to review architectural design.

The City of Suffolk’s “Unified Development Ordinance” adopted in the year 1999 expresses many New Urbanism principles.

Enhancement

Localities should be encouraged to pursue New Urbanism in areas where such patterns are appropriate. State agencies such as VDOT should be encouraged to cooperate with such localities so as to ensure that appropriate road infrastructure can be created that achieves the important goals of New Urbanism, which seeks to balance the needs of motor vehicle movement with pedestrian and bicycle movement. The concept of the “transect” which establishes a continuum of densities and land use mixes from very urban to very rural, is an appropriate policy framework for comprehensive plans. It provides a framework for implementing New Urbanism through a variety of tools, including form-based codes as discussed earlier in Section D.2.

6. Transferable Development Rights (TDR)

Description

TDR, or transfer of development rights, is a concept in which some or all of the rights to develop a parcel of land in one district (the sending district) can be transferred to a parcel of land in a different district (the receiving district). TDR is a tool used to preserve open space, farmland, water resources and other resources in areas where a locality wishes to limit or curtail development.

In a classic TDR system one or more sending districts are identified as well as one or more receiving districts. “Development rights” are assigned to landowners in the sending district, typically on the basis of a certain number of permitted dwellings per acre. Owners of land in the sending district instead of developing at the full level of their development rights, may sell their development rights to owners of land in the receiving district, who may then use the newly acquired development rights to build at higher densities than normally allowed by existing zoning (without further legislative approval). TDR systems are intended to maintain designated land in open or nondeveloped uses and to compensate owners of the preserved land for the loss of their right to develop it.

Authority

In 2006, the Virginia General Assembly authorized any Virginia locality to provide for transfer of development rights (§ 15.2-2316). The Virginia statute, as crafted, contains many of the characteristics associated with TDR provisions used elsewhere in the country. For example, when development rights are transferred from a sending parcel, a permanent conservation easement must be placed on the land. In addition, the decision to use TDR is voluntary. The Virginia statute does not mandate its use.

Implementation

The Virginia TDR statute took effect in 2006. To date, no locality has developed an ordinance permitting the use of TDR. A 2007 amendment allowed the transfers across the boundaries of two adjacent jurisdictions. A 2008 bill authorized Albemarle County to sever and transfer development rights from a sending property without requiring those rights to be immediately affixed to a specific receiving property. This was a “Section One” bill which is recorded in the Acts of Assembly but not made a part of the Code of Virginia. The bill included an “Enactment Clause” stating that the provisions of this act shall expire on July 1, 2012, if Albemarle County has not enacted an ordinance for the transfer of development rights as described in this act prior to that time. Further, that the provisions of this act shall not become effective unless or until Albemarle County adopts an ordinance pursuant to this chapter. If Albemarle County acts it is presumed that the severance techniques will be the subject of future authorizing legislative, an enhancement spoken to below.

Limitations

TDR programs are technically complicated and will require a significant investment of time and local government resources to implement. Key questions for a locality include:

- Which areas should be protected?
- How should development rights be allocated?
- To where should development be transferred and at what densities?
- What mix of incentives should a locality use to encourage landowners to use TDR?

A major challenge associated with TDR involves predicting the likely supply of and demand for development rights in the real estate market. Indeed, the pace of transactions will depend on the private market for development rights.

Enhancements

Although not yet implemented, ideas are being advanced with the goal of enhancing the potential of TDR as a viable Virginia planning tool. Chief among them is the suggestion that the statute be modified to permit the evolution of a market for the transfer of development rights that is mutually satisfying for sending and receiving property owners. The experience of many localities outside Virginia suggests a “TDR bank” might be an appropriate enhancement. The bank allows development rights to be held in reserve until market prices are favorable for one or both parties interested in the transfer. Another suggestion is that the TDR statute be modified to allow Virginia general law on vesting to determine when transferred development rights actually vest. The statute’s current language involves a series of convoluted and seemingly redundant steps before vesting occurs. A simpler vesting process will enhance TDR’s attractiveness as a potential tool of land preservation and targeted development.

F. Tools for Managing the Financial Impacts of Growth

In addition to the Capital Improvements Program (CIP) which was discussed as one of the four primary tools of plan implementation in Part C above, other tools are available for managing the fiscal impacts of growth.

1. Conditional Zoning / Cash Proffers

Description

Conditional zoning was enabled by the Virginia General Assembly 30 years ago to address the shortcomings of traditional zoning methods when competing and incompatible land uses conflict. While it is actually a zoning tool, it is discussed here as a tool for managing the financial impacts of growth, since that is the way this tool is used by many localities.

As designed, conditional zoning allows reasonable conditions, known as proffers, to be offered by the applicant during a rezoning process as a way of mitigating the impacts of the proposed rezoning. Proffers may include land, infrastructure, cash or other conditions/constraints on the use of the property. These proffers, if accepted by the governing body as part of the rezoning approval, become part of the zoning ordinance as it applies to that property. In theory, conditional zoning allows land to be rezoned that might not otherwise be rezoned because the proffers will protect the community or area affected by the rezoning.

Authority

The rezoning of land with proffers is authorized in § 15.2-2296 of the Virginia Code and is referred to as conditional zoning. There are three sources of enabling authority for conditional zoning. The first is § 15.2-2303, which enables Fairfax County, those localities surrounding it, and the two counties east of the Chesapeake Bay, to adopt proffered or conditional zoning. This form of conditional zoning was authorized in 1973 and it did not limit the potential scope or character of proffers accompanying the rezoning request.

In 1978, § 15.2-2297 was added to the Virginia Code authorizing conditional zoning for localities not enabled under § 15.2-2303. Restrictions, precluding the acceptance of cash proffers and off-site improvements, accompanied the new authority.

In 1989, section § 15.2-2298 was added to the Virginia Code allowing high growth localities (whose population grew by ten percent or more “from the next-to-latest to latest decennial census year” and are subject to § 15.2-2297), to accept cash proffers and off-site improvements. In 2006, this section of the Virginia Code was modified to include localities whose population grew by five percent during that census period.

A 2007 change allowed all high growth localities (as defined in 15.2-2298: any locality which has had population growth of 5% or more from the next-to-latest to latest decennial census year, based on population reported by the United States Bureau of the Census; any city adjoining such city or county; any towns located within such county; and any county contiguous with at least three such counties, and any town located in that county) to utilize this authority.

All proffers must be voluntarily made. Therefore a governing body is not authorized to require a specific proffer as a condition to granting a rezoning. While they are not mandated, many localities have developed proffer guidelines linking conditional zoning with growth strategy contained in the comprehensive plan.

Limitations

Conditional zoning can be used only if a rezoning of property is required for development. Conditional zoning cannot be used with land already zoned for development, unless an application for greater intensity is submitted by the landowner. Thus, cash proffers cannot be assessed for by-right development.

Enhancements

Some consideration should be given to making the acceptance of proffers a universal practice statewide.

As noted above, one of the limitations on proffers is that they only apply to properties being rezoned. For by-right lots, it has been suggested for years that general impact fees

be authorized. The Code of Virginia does allow a limited application of impact fees for transportation infrastructure (see section 3 below); however the process is quite cumbersome and intensive. In the 2008 Session of the General Assembly, there was an effort to substitute impact fees for cash proffers. The proposal had three major problems from the perspective of Virginia's localities—it maintained the same cumbersome and data intensive process as exists for transportation impact fees, it completely eliminated cash proffers and certain off-site physical improvements as part of the zoning process, and it artificially capped the amount of impact fees that could be levied. This is a concept that can be expected to be considered again, perhaps not in 2009, but almost certainly in 2010.

2. Level of Service Standards

Description

Level of service (LOS) standards specify the public facilities needed for new residential developments in an effort to determine if those facilities are adequate to support a proposed rezoning.

Authority

Virginia Code § 15.2-2223-2280 allows any locality to incorporate level of service standards as a means in determining adequacy of facilities for future development. This does not apply to land already zoned for development.

Implementation

Level of service standards are typically set out in a guidance document or comprehensive plan for public facilities such as schools, roads, libraries, parks, public transit, water and sewer systems. An example of localities that use LOS follows.

The City of Chesapeake requires all rezoning applications to be subject to level of service standards for roads, schools and sewer capacity. If the proposed development fails any of the standards articulated in the plan, the staff recommends denial of the application. The policy exempts a development that will have minimal impact on schools and roads.

Prince William County has linked the demand for public services created by new development with the County's fiscal ability to provide those services at the level of service standards set forth in the plan. If the development does not meet the LOS established in the plan, either a proffer for improvements or cash proffer can be used to offset the impact.

James City County has also adopted a version of a level of service policy.

Limitations

This tool can be applied only if a rezoning of the property is required for development and cannot be applied, by Virginia law, on land already zoned for development.

This tool typically requires a sophisticated technical and fiscal impact analysis in order to

set the level of service standards and criteria.

Enhancements

Enabling legislation allowing localities to adopt Adequate Public Facilities Ordinances (APFO) and permit them to apply level of service standards at the time of plan review and building permit issuance would further enhance the LOS concept.

3. Impact Fees

Description

Making growth “pay its own way” is a major reason local governments across America have adopted impact fee programs through which developers are required to pay for, in whole or in part, the infrastructure improvements required by the new growth associated with each development project. The costs to be paid are often for utilities and streets, as well as schools, parks and other public facilities. Where impact fees are permitted, they must be specific, based on a reasonable formula, and uniformly applied. Classic impact fee programs provide for the fees to be collected at the time of building permit approval, thereby applying to “by-right” ministerial development approvals, as well as to rezonings.

Authority

Chapter 22, Article 3 of the Code of Virginia, § 15.2-2119 enables counties, cities and towns to charge a fair and reasonable fee for connection to a water and/or sewer system. Although there are no specific parameters, the fee typically includes the actual connection charge as well as a capitalized portion of the cost associated with the water and sewer facility.

The Transportation Act of 2007 (HB3202) made significant additions to the code for localities that can use transportation impact fees. It included the same localities that are captured by the comprehensive plan changes described beginning on page 7 of this document. It applies to any county that adopted zoning and has either a 1990-2000 population growth rate of 15% or more **or** a 2000 population of at least 20,000 persons and a 1990-2000 population growth rate of 5% or more.

Those counties included in the criteria of the bill include:

- 15% or more growth rate: Accomack, Albemarle, Amelia, Augusta, Bedford, Botetourt, Brunswick, Buckingham, Caroline, Chesterfield, Craig, Culpeper, Cumberland, Dinwiddie, Fairfax, Fluvanna, Franklin, Frederick, Gloucester, Goochland, Greene, Greensville, Halifax, Hanover, Henrico, Isle of Wight, James City, King George, King William, Loudoun, Louisa, Lunenburg, New Kent, Northumberland, Orange, Powhatan, Prince George, Prince William, Richmond, Rockingham, Spotsylvania, Stafford, Sussex, Warren, and York.

- 20,000 population and a 5% growth rate: Amherst, Arlington, Campbell, Fauquier, Mecklenburg, Montgomery, Page, Pittsylvania, Roanoke, Rockbridge, Shenandoah, and Washington.

Virginia Code § 15.2-2317-2327 also authorizes these localities to enact an impact fee program for road improvements to roads and related appurtenances. This authority specifically states that Road Impact Fees may:

- Be used to expand existing roads in order to serve new development;
- Be imposed for the construction of new roads or improvement or expansion of existing roads and related appurtenances to meet increased demand attributable to new development.

Implementation

The impact fee program for roads must be assessed at the time a building permit is issued for new development according to the code. In addition, localities wishing to initiate an impact fee program for roads must complete the following steps:

- Establish an impact fee advisory committee; at least 40% of the members must represent real estate, development, or building interests.
- Designate one or more Impact Fee Service Areas (IFSA).
- Conduct a road improvement needs assessment for each IFSA according to certain statutory standards.
- Develop a road improvements plan for each IFSA according to certain statutory standards.
- Adopt each IFSA road improvements plan as an amendment to the comprehensive plan.
- Incorporate each IFSA road improvements plan into the local capital improvements plan and/or the six-year secondary road program.
- Adopt an impact fee ordinance for each IFSA.

Further, a locality is required to update its needs assessment, road improvements plan, and impact fee schedule every two years, but any impact fees not paid by a development will be assessed at the updated rate. Impact fees may be imposed upon a development or subdivision that has proffered conditions, but a locality must allow credit against the impact fees the value of any off-site or other transportation improvements benefiting the impact fee service area. Local governments may exempt development in the Urban Development Area from impact fees. A locality must refund any unused impact fee after 15 years; however, after 7 years the unused impact fees may be committed to any urban or secondary road improvement program benefiting the impact fee service area.

Stafford County adopted a road impact fee program in 2003. Fees apply to both residential and commercial land uses, and only to new development. Through August 2006, the County had collected \$2.1 million through the impact fee program.

With respect to fees for water and sewer systems, most Virginia localities have in place a system whereby tap fees are assessed in exchange for receiving water and/or sewer service.

Limitations

Prior to the Transportation Act of 2007, which significantly broadened this authority, the road impact fee program was limited to selected Northern Virginia localities. This option had seen limited use, in part because of perceived problems with the mandated administrative procedures. Other concerns included the inability to use funds for road operations, specifically repair and maintenance, as well as the inability to apply funds to previously approved projects or developments. Further concerns included that impact fees for a specific development or subdivision must be determined before or at the time the site plan or subdivision is approved, and the fee must be collected when a certificate of occupancy is issued. Some of these concerns were addressed with the 2007 changes. Efforts by counties to implement this authority under these new rules will reveal the strengths and weaknesses of this enhanced authority.

Enhancements

Impact fees can benefit a locality by providing additional revenue to offset the impact generated by development. Impact fees are an extension of the philosophy that new developments should pay their own way. The authority to establish an impact fee program should be made available to all localities. For ease of administration, impact fees should be collected at issuance of the building permit. An option to allow credits should also be provided in cases where a development has previously paid fees through proffers. Landowners, planners and policy makers should communicate openly about the lessons learned from implementation of the enhanced authority created by the Transportation Act of 2007.

4. Service Districts

Description

Service Districts (sometimes called Special Service Districts) are legally defined geographic portions of a jurisdiction established by the local governing body. They are created to provide additional, more complete, or more timely services of government than are desired in the locality as a whole. Property owners within the special service district may pay a higher tax rate in exchange for these enhanced services.

Authority

Sections 15.2-2400 through 15.2-2405 of the Code of Virginia grant localities the authority to create and fund service districts. Any locality may by ordinance, or any two or more localities may by concurrent ordinances, create service districts within the locality or localities. In addition, in any city created from the consolidation of two or more localities,

service districts may be created by order of the circuit court for the city upon the petition of fifty voters of the proposed district.

Once created, the additional revenue derived from service districts is used for a wide variety of public enhancements including, but not limited to, water supply and sewerage facilities; garbage removal and disposal; fire-fighting equipment; sidewalks; economic development services; promotion of business and retail development services; beautification and landscaping; beach and shoreline management and restoration; public parking; extra security, street cleaning; snow removal; sponsorship and promotion of recreational and cultural activities and other services, events, or any other activities that will enhance the public use and enjoyment of, and the public safety, public convenience, and well-being within, a service district.

The Transportation Act of 2007 broadened Service District authority. Sections 15.2-2328, 2329 and 2403.1 were added to the Code to create a new type of service district – the Urban Transportation Service District (UTSD). Section 15.2-2403.1 authorizes the creation of such districts for “urban counties” and defines them as counties with a population of more than 90,000 persons in 2000 that do not currently maintain their own roads. (This includes Chesterfield, Fairfax, Loudoun, Prince William, Spotsylvania and Stafford).

The boundaries of such districts must be agreed upon by the county and the Commonwealth Transportation Board. If agreement cannot be reached the parties may ask the Commission on Local Government to serve as a mediator.

Counties that establish a UTSD will be required to assume maintenance responsibility for streets and roads within the service district. A county that adopts UTSD will receive from VDOT the urban maintenance allocation per lane mile for all streets within UTSD. Overall residential density in the UTSD must be at least one dwelling unit per acre. No counties have considered moving in this direction and the authority will expire December 31, 2008.

The authority granted in Section 15.2-2403 to levy and collect an annual tax on property within the district also applies to the UTSD.

Sections 15.2-2328 and 2329 grant authority to charge Impact Fees for a broad array of “public facilities” to each county establishing a UTSD except Chesterfield. This broad list of “public facilities” includes:

- ♦ Roads, streets, and bridges, including rights-of-way, traffic signals, landscaping, and any local components of federal or state highways;
- ♦ Stormwater collection, retention, detention, treatment, and disposal facilities, flood control facilities, and bank and shore protection and enhancement improvements;
- ♦ Parks, open space, and recreation areas and related facilities;
- ♦ Public safety facilities, including police, fire, emergency medical, and rescue facilities;
- ♦ Primary and secondary schools and related facilities; and

- ♦ Libraries and related facilities.

In order to exercise this authority the UTSD and impact fees must be adopted by December 31, 2008. The impact fees can only be imposed outside of the UTSD and only on parcels zoned for agriculture that are being subdivided for by-right residential development.

Chesterfield County is limited to the imposition of impact fees on transportation facilities.

Implementation

Service districts are easy to create and have a long history of use across the Commonwealth for the purposes listed above.

Limitations

Not all property owners within a service district may support the higher tax rate nor desire the enhanced services offered. In addition, the tax rate increment approved by the local governing body may not generate sufficient revenues to fully fund enhancements desired by some property owners. Initial property owner support for a service district may erode through time as properties change ownership, or if too large of a portion of the additional revenue is used for administrative expenses.

5. Community Development Authorities

Description

A community development authority (CDA) is a political subdivision of the Commonwealth. A CDA can be authorized and created by a local governing body upon petition by at least 51% of the land owners within the proposed CDA boundaries. CDAs are authorized and created for the purpose of providing public infrastructure associated with the development or redevelopment of an area.

Authority

Community development authorities are authorized by §15.2-5152 through §15.2-5158 of the Code of Virginia.

Implementation

Cities may directly consider any valid property owner petition to create a CDA, in accord with the requirements noted in the description above. Counties and towns must first elect by ordinance to accept CDA creation authority. A CDA is empowered to issue tax-exempt bonds for many different kinds of infrastructure improvements including roads, parks, recreation facilities, educational facilities, water and sewer, and fire prevention and control systems. Any bonds issued by the CDA are repaid through special assessments levied

upon all the property owners within the boundaries of the CDA district. Such special assessments cannot exceed .25 dollars per \$100 dollars of assessed value unless every property owner in the CDA agrees to a higher special assessment. Repayment can be either by a single payment at time of first property transfer or by a special increment tax levy. Most localities prefer the single lump sum payment for CDA districts created for residential development and the tax increment approach for those CDA districts created for commercial and industrial districts.

Limitations

Obtaining the consent of the majority of the property owners within a proposed CDA for both the creation of the CDA and special assessment may limit their applicability in a locality. Bond repayment is contingent upon an expected revenue stream. A reduction in land values within the CDA might result in a default on the repayment of the bonds floated to finance the infrastructure in the CDA.

6. Fiscal Impact Analysis

Description

A fiscal impact analysis is used to forecast the net operating expenditures and capital outlays for public services required to serve a proposed development. Net expenditures equal total expenditures less the revenues a government expects to receive as a result of the development.

Authority

Virginia Code § 15.2-2223-2280 allows any locality to incorporate fiscal impact analysis into their planning, zoning and land use decisions both as a formal model and as an informational guide for decision-making.

Implementation

Localities use a fiscal impact analysis to examine the short and long term fiscal effects of land use and development. They may use the information provided by the analysis in a variety of ways, including:

- In the plan review and rezoning process, to gauge the impact of any development and to assist in the short term planning for new public facilities.
- In the long range planning process, to test alternative patterns of development (growth scenarios) and to assist in the setting of level of service standards.
- Several of the high growth jurisdictions applied fiscal impact studies as part of their update process to their comprehensive plans to test alternative patterns of development. These include Loudoun, Prince William, Chesapeake and Fairfax. Chesapeake routinely uses fiscal impact modeling to examine the costs and revenues

associated with all proposed rezoning applications.

Limitations

This tool is primarily used to gather information as a basis for employing other tools such as level of service standards and is not in itself used to regulate development. Although the tool can be used as an informational item at the time of development plan review, it cannot be used to stop or postpone development of land already zoned.

G. Tools for Revitalization

1. Targeted Development Areas

Description

A targeted development area (TDA) designates a specific area within a locality for development and growth. It is an area of a jurisdiction where a local government would like to see most new growth occur, and a local government can utilize its own criteria to define a TDA. Targeted development areas are depicted on comprehensive plan maps, and can be defined by comprehensive plan policies. Implementation of targeted development areas can occur through many means including the adoption of zoning standards applicable only to the TDA, and through public capital facility investment within the targeted development areas.

Authority

Virginia Code, § 15.2-2232 and 2283 (legal status of plan and zoning) allow any locality to designate areas for various types of public and private development, use and density.

Implementation

There are several different ways a locality may implement a targeted development area. Some of the most popular tools include:

- Phasing of tiered growth boundaries around a developed area for five to twenty years into the future;
- Creating service districts in a county; and
- Growth boundaries dividing urban areas from rural land.

Targeted development areas are effective means of guiding development. Localities that utilize this tool are many, and include:

- Fauquier County first designated service districts in 1967. The county continues to guide growth to achieve and maintain a more compact development pattern and tries to preserve agricultural lands by limiting the extension of water and sewer outside the

- designated service district.
- Virginia Beach adopted the growth boundary, known as the Greenline, in 1979 to run east and west through the city's center. The land to the north of the line is designated for urban development and services. The area immediately to the south is a transition area. The land lying south of the transition area is zoned agricultural. To complement the Greenline, Virginia Beach adopted a Purchase of Development Rights program to purchase acres in the agricultural zone for open space. (See discussion on PDRs in Part H.3, page 57.) The city has purchased over 4,000 acres as part of this program and has succeeded in maintaining the majority of the city's growth in the northern area for over 25 years.
 - Prince William County introduced a "Rural Crescent" into its comprehensive plan in 1998, and continued this concept in the 2003 plan. It designates a band of rural development along their western boundary and targets county growth along the eastern boundary of the county and the interstate corridors. Over 100,000 acres are within this "Rural Crescent".
 - Westmoreland County amended its comprehensive plan in 1999 to identify two Primary Growth Areas and six Secondary Growth Areas.
 - The 1999 and draft 2007 comprehensive plans for Prince George County designate a targeted development area in the northern portion of the county. Implementation is guided through zoning standards and utility policy.

Limitations

Targeted development areas and service districts are created within the framework of a comprehensive plan and are applicable to guiding future development. They are not applicable to land already zoned. A comprehensive downzoning is required if the land zoned exceeds the density guidelines of the targeted area.

2. Revenue Sharing (*Tax Sharing*)

Description

The sharing of revenues between jurisdictions involves the transfer of some portion of a locality's revenue receipts, with the individual political subdivisions retaining full autonomy over tax rates applied within their jurisdiction. Revenue-sharing programs have been employed to offset inequitable consequences (service costs v. revenue attained) in an area from the nature and pattern of development and to address problems caused by local reliance on the property tax.

Authority

Section 15.2-3400, Code of Virginia authorizes all localities to include provisions establishing long-term, permanent revenue-sharing agreements settling annexation or governmental transition issues. Further, §15.2-1301, Code of Virginia permits all local governments to enter into voluntary economic growth-sharing agreements for purposes

other than the settlement of boundary change or transition issues. Finally, there are specific jurisdictions that have been granted authority by the General Assembly to enter into revenue-sharing arrangements with regard to economic development [§15.2-6214, Code of Virginia (Town of Clifton Forge and Alleghany County) and §15.2-6407, Code of Virginia (the localities in Planning Districts 1-5 and 10-15)].

Implementation

For settling annexation issues: City of Radford-Pulaski County, City of Charlottesville-Albemarle County, City of Franklin-Isle of Wight County, and City of Lexington-Rockbridge County.

For annexation and economic development purposes: City of Radford-Montgomery County, City of Franklin-Southampton County, City of Bristol-Washington County, and City of Bedford-Bedford County, County of Roanoke and Town of Vinton.

For economic development purposes: Town of Clifton Forge-Alleghany County, Cities of Buena Vista and Lexington-Rockbridge County, and the jurisdictions of Planning Districts 1-5 and 10-15.

Limitations

Negotiations to reach a revenue-sharing agreement are very complex and require a considerable amount of time and patience because of their long-term and permanent nature.

In all but a few circumstances, a revenue-sharing program that calls for a county to transfer monies to a municipality is considered a general obligation debt of the former and thus requires referendum approval by county voters.

The most common form of revenue sharing in use in Virginia today requires review by the Commission on Local Government and approval by a special three-judge court appointed by the Virginia Supreme Court.

Revenue-sharing agreements generally require the receiving jurisdiction to surrender permanently some governmental or functional authority (e.g., a city's right to revert to town status, some portion of the capacity in municipal water and sewer systems, etc.).

Localities that have low property tax rates and growing capital needs may not be able to "afford" to enter into revenue-sharing arrangements.

Enhancements

Since 2002, the number of localities that have been granted specific authority by the General Assembly to enter into revenue-sharing arrangements with regard to economic development has been greatly expanded to include all localities in Planning Districts 1-5

and 10-15.

A December 2006 report published by the Virginia Commission on Local Government lists all cities and counties that participate in revenue-sharing arrangements and the amounts of revenue involved.

3. Enterprise Zones

Description

An enterprise zone is defined by the state code as an economically distressed, distinct geographical area of a county, city or town. The Enterprise Zone Program is based upon a state and local partnership in which both parties seek to improve economic conditions within a targeted area of distress. Enterprise zones are designated by the Governor.

Authority

Section 59.1-538 et seq of the Code of Virginia allows for the governing body of any county, city or town to make written application to the Department of Housing and Community Development (DHCD). The Governor may approve, upon the recommendation of the Director of DHCD, the designation of up to thirty areas as enterprise zones for a period of ten years, with the option of two five-year renewal periods. Two or more adjacent jurisdictions can file a joint application. Each county, city and town is limited to a total of three enterprise zones. Zone applications are considered for approval on the basis of community distress factors as follows:

- (i) the average unemployment rate for the locality over the most recent three-year period;
- (ii) the average median adjusted gross income for the locality over the most recent three-year period; and
- (iii) the average percentage of public school students within the locality receiving free or reduced price lunches over the most recent three-year period.

These distress factors account for at least 50 percent of the consideration given to local governments' applications for enterprise zone designation.

Implementation

In early 2007, there were 57 designated enterprise zones in Virginia. These zones are dispersed throughout the state with the greatest concentration being in Central and Tidewater Virginia. Local incentives vary but Virginia provides two programs as incentives to private enterprise to encourage job creation and investment within enterprise zones: These programs are known as Enterprise Zone Job Creation Grants (§ 59.1-547) and Enterprise Zone Real Property Investment Grants (§ 59.1-548).

Limitations

The Governor must approve enterprise zones in order for them to qualify for the incentives listed above and the total number of zones allowed is limited by the General Assembly.

Enhancements

Major program changes were made in 2005.

4. Empowerment Zones

Description

An Empowerment Zone is a community characterized by poverty, unemployment and general distress. A local government and the Commonwealth must nominate a local area meeting the required size, population and poverty criteria. Originally selected Empowerment Zones were awarded block grants from the Department of Health and Human Services under Title 20 of the Social Security Act.

Authority

Empowerment Zones were established by the Omnibus Budget Reconciliation Act of 1993 (Title XIII, Chapter I). This initial 10-year initiative instituted funding, designation procedures and eligibility criteria for creating both Empowerment Zones and Enterprise Communities. HUD re-energized this initiative in December 2001 by designating 40 urban and rural Renewal Communities and eight new urban Empowerment Zones.

Utilization

Together with 22 Empowerment Zones that HUD designated in separate competitions in 1994 and 1999, 70 communities are now able to share a \$17 billion tax-incentive package that encourages entrepreneurs to invest in these communities, open new businesses and expand existing ones, and hire tens of thousands of local residents. The administrative leaders of each Renewal Community and Empowerment Zone work closely also with government, business, and local community representatives to implement strategic plans and courses of action to improve social and economic conditions throughout the designated areas.

Limitations

Empowerment Zones are very unique and selective sites. There are very few throughout the country and they are not widely available to local governments as a tool. Virginia has one designated Empowerment Zone in Norfolk/Portsmouth.

Enhancements

None.

5. Tax Increment Financing

Description

Tax increment financing is a redevelopment funding tool that earmarks anticipated increases in tax revenues from a defined redevelopment area to pay the debt service issued to finance the public improvements in the redevelopment area. Based on the earmarking of increased revenues, public debt can be issued for public improvement in a redevelopment area. These public improvements serve as a catalyst for private investment.

Authority

The Virginia Code, § 58.1-3245 through § 58.1-3245.5, has authorized the use of real estate tax increment financing to promote private investment as part of the blighted area redevelopment program since 1988. The code states that it is within the public interest of local governments to provide public facilities (such as roads, water, sewer, safety services, parks, and schools) to blighted areas. The code requires jurisdictions to establish a Tax Increment Financing Fund for each project. Increases in real estate taxes attributable to the redevelopment project, as determined by a base assessment value, are paid into the Tax Increment Financing Fund and used to pay the principal and interest on loans for public development costs.

Implementation

Few jurisdictions in Virginia have used tax increment financing. Virginia Beach was one of the first localities in the state to use this tool, creating a tax increment financing district in the area of the Lynnhaven Mall shopping complex. The financing was used for public acquisition of property and public improvements (which resulted in the lease of parking spaces, improved traffic flow, improved transit service, and improved storm water management practices) associated with the expansion of the mall. According to Virginia Beach the advantages of this financing were:

- It allowed the incremental increase in real estate tax revenues from new development, redevelopment or expansion to pay for public investments and infrastructure needed to attract private investment;
- It provided another tool for job creation;
- Property owners paid no more than the normal tax rate;
- Tax increment bonds were not counted against the city's annual charter limits; therefore, they do not detract from other needed infrastructure financing; and
- In effect, the new development pays for itself with property taxes, while other benefits and taxes flow to the community at large.

Limitations

- Tax increment bonds are inherently less secure than General Obligation Bonds, as they apply to only a small portion of the City, which typically means higher interest costs;

- Tax increment financing districts may be seen to potentially divert future property taxes from other uses; and
- If tax increment financing districts proliferate and take up too much of the tax base of the community, then the tax base available to support the locality’s general fund could be impaired.

Enhancements

None.

H. Tools for Rural and Natural Areas Preservation

This section describes the major tools available to local governments to preserve the State’s agricultural and natural, open space resources. Several tools are available in Virginia to aid in the preservation of these lands. This section of the report reviews conservation easements (including purchase of development rights, leasing of development rights and the donation of easements), use-value assessment and taxation programs, and agricultural and forest districts. Each tool provides a unique strategy to preserve rural and natural areas.

These tools, like those that help ensure adequate public facilities, are enhanced by a strong comprehensive plan that clearly articulates the value of open space and farmland preservation to the community, and indicates clear priorities for areas to be preserved. A common limitation of these tools is the funding they require to administer the program, to publicize it, and often, to operate it. For example, lack of information limits the use of voluntary conservation easements, and lack of funding limits the purchase of conservation easements (purchase of development rights).

A common tool used by other states and only recently authorized in Virginia is the Transfer of Development Rights (TDR). The TDR concept is discussed elsewhere in this report as a general plan implementation technique, since it serves not only to preserve rural and natural areas, but also to encourage compact urban growth patterns.

1. Use Value Assessment and Taxation (“Land Use”)

Description

The Use Value Assessment and Taxation Program uses discounts in property tax assessments to promote and preserve agricultural, forestal, and open space lands.

Use Value Assessment (also commonly known as “land use” or “land use assessment”) is a state guided program available to localities in which the locality can tax farmland and open space land at its “use” value rather than its fair market value. In most rapidly growing jurisdictions, this typically reduces the real estate tax on the land by a significant amount, thus making it easier to continue a farming business. The program is voluntary to the landowner and requires only five acres to qualify under agricultural or open space

classification or 20 acres under the forest use classification (areas as small as one quarter acre may qualify if adjacent to a scenic river or scenic highway or other specific instances provided by the code). Rollback taxes must be paid when the property is removed from the program.

Authority

Virginia Code, § 58.1-3231 through § 58.1-3244 allows any locality, which has adopted a land-use plan, to adopt an ordinance to provide for use value assessment and taxation in certain districts.

Implementation

Use Value Assessment is used in nearly every state and in many counties and cities in Virginia. According to a survey completed by Virginia Tech's Rural Economic Analysis Program in 2004, approximately 90 counties and independent cities in Virginia have some form of land taxation based on use value.

The program's purpose is to:

- Ensure a readily available source of agricultural, horticultural, and forestal products;
- Conserve natural resources, preventing erosion and protecting water supplies;
- Preserve scenic natural beauty and open spaces;
- Promote proper land-use planning and the orderly development of real estate for the accommodation of an expanding population; and
- Promote a balanced economy.

Use Value Assessment does not stop the pressure to convert farmland to urban development, but does appear to temporarily reduce some of the pressure on landowners in areas where urban development pressures are causing tax burdens to rise.

Limitations

Many jurisdictions have the personnel to process the applications but often lack of the resources to verify the information provided by the property owner. Consequently, the honor system is often used. More importantly, owing to the temporary nature of the program, it tends to function as a stop-gap measure against pressures for farmland conversion, as well as a method of allocating the local tax burden in accord with the actual use of land.

Enhancements

None.

2. Agricultural and Forestal Districts (AFD)

Description

The Virginia Code provides for the voluntary creation of Agricultural and Forestal Districts (AFDs) in order to “provide a means for a mutual undertaking by landowners and localities to protect and enhance agricultural and forestal land as a viable segment of the Commonwealth's economy and as an economic and environmental resource of major importance.”

Agricultural and/or Forestal Districts are established by local ordinance to run for a set number of years (from 4 to 10), during which the property owner continues to hold fee simple title to the land, and enjoy various benefits provided by the code for such districts. The local ordinances usually include provisions that permit the landowner to withdraw from the program under certain defined circumstances.

AFDs are established at the request of landowners, who must assemble at least 200 acres of contiguous land and be approved for a district by the local governing body. Districts last from 4 to 10 years and can be renewed. Being in a district ensures a landowner that his land will continue to be eligible for Use Value Assessment, even if the program is otherwise rescinded by the locality. The AFD also provides some extra protection against certain public infrastructure improvements. In and of itself, an AFD does not change the zoning within its borders. However, an AFD can be a factor in the locality's zoning decisions and planning policies. Further, in adopting an AFD, the governing body may require, as a condition to creation of the district, that any parcel in the district shall not, without the prior approval of the governing body, be developed to any more intensive use or to certain more intensive uses (other than uses resulting in more intensive agricultural or forestal production), during the period which the parcel remains within the district.

Other protections for landowners in AFDs include:

- The local governing body may adopt programs offering incentives to landowners to impose land use and conservation restrictions on their land within the district.
- Local ordinances, comprehensive plans, land use planning decisions, administrative decisions and procedures affecting parcels of land adjacent to any district must take into account the existence and purposes of the district.
- No special district for sewer, water or electricity or for non-farm or non-forest drainage may impose benefit assessments or special tax levies on the basis of frontage, acreage or value on land used for primarily agricultural or forestal production within a district, except a lot not exceeding one-half acre surrounding any dwelling or nonfarm structure located on such land.
- Any agency of the Commonwealth or any political subdivision which intends to acquire land in an AFD must provide individual notice to landowners in the AFD. The local governing body then holds a public hearing on the proposal. If the local governing body determines that the proposed action is not necessary to provide service to the public in the most economic and practical manner and will have an

unreasonably adverse effect upon state or local policy, it is to issue an order prohibiting the proposed action.

Authority

Virginia Code, §§ 15.2-4300 et seq. allows any locality to adopt Agricultural and Forestal Districts. Land lying within a district and used in agricultural or forestal production is automatically qualified for a land use assessment pursuant to Article 4 of Chapter 32 of Title 58.1 regardless if a local ordinance pursuant to § 58.1-3231 has been adopted. (See the discussion on Use Value Assessment and Taxation).

Section 15.2-4400 allows for certain localities to create “Local Agricultural and Forestal Districts” for periods of eight years. These can be as little as twenty acres in size and have similar provisions as regular AFDs.

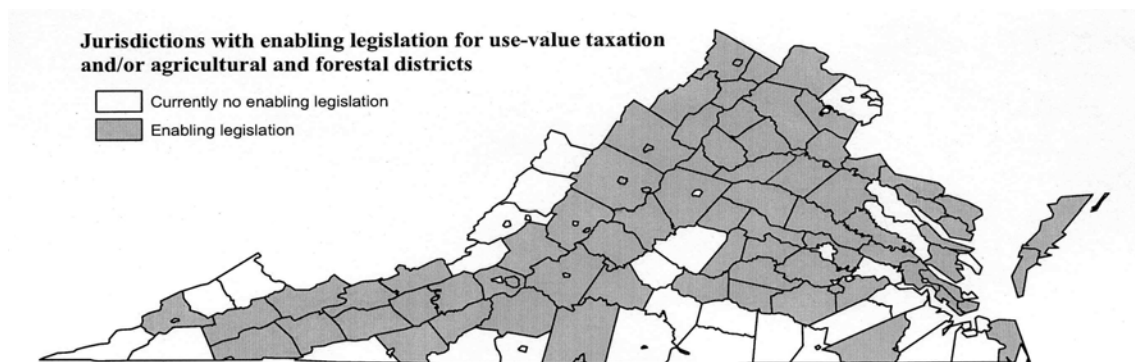
Implementation

Approximately 700,000 acres of land in twenty-six localities in Virginia is in Agricultural and Forestal Districts. Farmers and farmland owners typically seek these districts in order to protect their farms from non-farm development, ensure their qualification for use value assessment, and protect against nuisance regulations. These districts can also be used for the purpose of minimizing the impact of incompatible development in agricultural areas and can be made more effective by incorporating a PDR program.

An added benefit for using Agricultural and Forestal Districts as a conservation tool is that it promotes communication and collaboration between local government, farmers, foresters and landowners regarding long-term farmland protection.

Limitations

No local ordinances may be applied to an Agricultural and Forestal District that would unreasonably restrict or regulate farming practices, other than to provide for the health and safety of the public.



Source: Virginia's Rural Economic Analysis Program (REAP) Horizons volume 18, Number 1, January/February 2006

3. Conservation Easements (including Purchase of Development Rights)

Description

A conservation easement (also known as an Open Space or Scenic Easement) is a legal agreement between a landowner and a land trust or government agency that limits the use of the land by recording deed restrictions that prohibit or severely restrict further development in order to protect the conservation value of the property, such as farmland, watersheds, wildlife habitat, forests, and/or historical lands. Each easement is unique in terms of acreage, description, use restrictions, and duration. These details are negotiated between the property owner granting the easement, and the organization that will be holding the easement.

Conservation easements are typically established in perpetuity, but may be established for shorter periods. The easement allows a property owner to continue to own any underlying interest in the land that is not specifically limited by the easement, to use the land within the terms and restrictions of the easement, and to sell the land or pass it on to heirs (with the easement restrictions conveying with the land). Conservation easements do not permit public access unless specifically provided.

Conservation easements may be established through *purchase*, *lease* (short term), or through *donation*. In all of these easement programs, the easement is established through the voluntary cooperation or initiative of the landowner.

Purchase (PDR). When conservation easements are purchased as part of a broad government program, it is typically called “Purchase of Development Rights” or PDR. In some other parts of the country it is also known as PACE or Purchase of Agricultural Conservation Easements. Purchasing “development rights” is the same as purchasing conservation easements or that portion of the “bundle of rights” that allows landowners to construct dwellings or non-farm commercial structures on the property. Thus, when a locality purchases a conservation easement from a landowner, it essentially “buys” the right to develop the land and “retires” that right by placing a permanent conservation easement on the property that restricts or prohibits further non-farm development. Typically, these easement restrictions run in perpetuity.

Lease. When conservation easements are acquired for short periods, they are called easement leases, term easements or the leasing of development rights (LDR).

Lease of Development Rights (LDR) is the same as Purchase of Development Rights except that the term of the easement can be as short as five years, under amendments to Virginia’s Open Space Land Act made in 1981. To date, no Virginia locality has enacted an LDR program, but the concept has the potential to be a good alternative to Use Value Assessment, because the locality can set the terms of eligibility, easement duration, restrictions, and compensation; whereas under the Use Value program, the state sets most of the rules. However, like Use Value Assessment, an LDR program is a temporary solution to the problem of farmland and open space conversion.

Donation. When conservation easements are accepted as donations from landowners, the donor property owner qualifies for certain tax incentives at the state and federal levels, instead of receiving payment from the locality. For landowners in the upper tax brackets, these provisions can be quite lucrative. Localities may accept donations of conservation easements, and many private or semi-private institutions also accept easement donations. Easement donations can also be promoted by localities in conjunction with a PDR program.

The Internal Revenue Service (IRS) code allows two principal forms of tax benefit - a federal income tax deduction and an estate tax exclusion. The amount of the deduction or exclusion is determined by an appraiser who calculates the diminution in value resulting from the permanent restriction on the use of the land resulting from the placement of the easement on the land. Only easements granted in perpetuity are eligible for the tax benefit. The donation must be made to a qualified organization exclusively for “conservation purposes.”

In Virginia, the charitable gift deduction taken for a conservation easement on the federal tax return results in the same diminution in taxable income for state income tax purposes as it does for federal income purposes. Virginia Code Sec. 58.1-510 through 513 allows a tax credit of an amount equal to 40 percent of the value of a gift of easement up to \$100,000. As with the federal tax benefits, the unused portion of the credit may be carried forward for a maximum of five consecutive tax years.

Authority

Virginia Code, §10.1-1009 et seq. allows any locality or land trust (defined in §§ 10.1-1700-5) to purchase or accept as a donation, and hold a conservation easement for periods of as little as five years, and for as long as perpetuity. In addition, §§ 10.1-1801.1, enacted in 1997, created a fund to assist landowners with the costs of preparing and conveying conservation easements.

Virginia localities are authorized within their general powers (§15.2-1800) to acquire property to initiate a purchase of development rights program (PDR); however, funding such a program may be limited, as in the case of counties, by constitutional authorities to incur debt.

Implementation

Purchase (PDR). Several jurisdictions in Virginia have established Purchase of Development Rights (PDR) programs, including Albemarle County, Clarke County, James City County, Loudoun County (2000 to 2004), and the City of Virginia Beach.

Virginia Beach was the first to fully adopt and fund a PDR program. The City enacted its Agricultural Reserve Program (ARP) in 1995 as a non-development option for property owners located in the City’s designated rural area. The property owner voluntarily nominates his property for inclusion in the program. A commission reviews the

applications and rank them based on (1) the quality of the farmland, (2) circumstances supporting agriculture, (3) likelihood of conversion to non-farm use, (4) environmental quality, and (5) historic or scenic value. Once eligible properties are determined, the City Council approves the purchase of development rights and directs the City Manager to proceed with negotiations with the landowner. Once the development rights are purchased, the property cannot be developed for non-farm purposes for a pre-determined period of time. After this period, the property owner may request the local government to repurchase the development rights. The Program has several dedicated funding sources: a dedicated \$0.015 property tax; partial revenues of a local cellular phone tax; and payment in lieu of taxes from the U.S. Fish and Wildlife Service. These three sources provide approximately \$ 3.5 million in annual funding. Landowners participating in the program are paid through installment purchase agreements of twenty-five years maturity.

Some other states have been more active in promoting easement acquisition than Virginia. Suffolk County, New York, on the eastern end of Long Island, pioneered the PDR concept in the mid 1970s. Soon after, Maryland, Massachusetts, Connecticut and New Hampshire authorized such programs at the state level. Since then, several other states have authorized such programs at the local level, and/or funded PDR programs at the state level. Collectively, state and local PDR programs have preserved nearly a half million acres of farmland in the United States, most of this in the mid-Atlantic and northeast regions.

Lease. No broad conservation easement leasing programs appear to be active in Virginia. Short-term easements would seem to offer great prospects as a tool for growth management, as a supplement or alternative to Use Value Assessment, for example. The General Assembly amended the Code of Virginia in 1981 specifically to provide the option of short-term easements, but localities have not availed themselves of it to any substantial degree.

Donation. Primary holders of donated easements in Virginia include the Virginia Outdoors Foundation (VOF), the Virginia Department of Historic Resources, Soil and Water Conservation Districts, and local organizations and land trusts such as the Piedmont Environmental Council, the Valley Conservation Council, the Land Trust of Virginia, and the James River Association. The VOF currently holds over 329,000 acres of conservation easements in 91 jurisdictions throughout the Commonwealth.

Limitations

In general, conservation easements provide for a great deal of flexibility in implementation. Features include:

- Placing land under easement does not make it open to the public unless specifically provided.
- The property is maintained in private ownership.
- Segments or whole parcels may be placed under easement.
- Some or all of the property rights may be deed restricted.
- The easement may be held in perpetuity or for a set number of years.

- The financial benefits of conservation easements can be substantial in reduced real estate taxes and inheritance taxes if the conservation is donated.

Purchase of Development Rights (PDR) programs require a dedicated source of stable revenues in order to be most effective. Most local governments simply do not have the funds required for such a program and counties are further restricted in that they cannot incur debt.

Albemarle County is considering a lease purchase program that would depend on an annual appropriation by their Board of Supervisors in order to implement this program within their constitutional limitations.

Enhancements

Providing additional funding or funding incentives at the state level would enhance the attractiveness and effectiveness of PDR programs, and of conservation easement leasing programs.

I. Regional Tools

1. Interlocal Relations/Joint Service Delivery

Description

Because the problems and opportunities facing localities do not necessarily respect jurisdictional boundaries, the Code of Virginia provides Virginia's network of local governments broad authority to cooperate with one another. The most frequently used grant of authority for interlocal cooperation is the joint exercise of powers provision found in § 15.2-1300 of the Virginia Code. This section of the code permits any two or more localities to exercise jointly any power, privilege or authority they would be able to exercise separately.

Authority

The joint exercise of powers authority also permits a local government to partner with any other political subdivision of Virginia or another state. The General Assembly has also enacted numerous statutes that permit interlocal and regional cooperation in specific functional areas such as jails and juvenile facilities, libraries, law enforcement, and emergency services. The Virginia Code also permits two or more localities to create service authorities covering a wide range of activities. The code also allows two or more localities to establish a joint planning commission.

Implementation

According to information collected by the Commission on Local Government, there are numerous examples of collaboration involving two or more Virginia localities. The scope of the collaboration is varied, ranging from administrative agreements to formal mutual assistance agreements to interlocal service agreements.

In addition, Virginia has numerous special-purpose political subdivisions that address a broad range of interests. Most of these subdivisions are established to perform a single function or several related functions. Examples include industrial development authorities, water and wastewater authorities, hospital, electric, park or tourism development, and public recreation facility authorities.

Selected Virginia localities have also created joint planning commissions such as the Appomattox – Appomattox County Planning Commission. In like fashion, some small towns have chosen not to appoint a local planning commission, relying instead on the host county to function as their commission.

Limitations

Local government operates within an intergovernmental environment. As creatures of the state, Virginia's 324 local governments are subject to numerous state laws and regulations, as well as federal statutes, regulations and procedures. It is incumbent upon local governments to understand the full range of options associated with planning, financing, administering and delivering services. It is equally incumbent upon citizens to understand and appreciate the options that exist for voluntary collaboration involving two or more localities. This is especially critical when planning for issues that cut across political boundaries.

Enhancements

Interlocal agreements can be a useful tool for achieving economies of scale in providing public services. They represent a means for addressing problems, opportunities and needs that cut across local boundaries. The General Assembly, historically, has been very supportive of interlocal cooperation and has been open to authorizing cooperative managements when approached by localities. The opportunity to build on this legacy is limited only by the imagination and confidence of local governments.

2. Planning District Commissions / Regional Commissions

Description

In 1968, the Virginia Area Development Act, now called the Regional Cooperation Act, established Virginia's network of regional planning district commissions (PDC). At present, there are 21 PDCs in Virginia. The purpose of the PDC is to encourage orderly physical, social and economic development on a regional basis and to address problems

and challenges of area-wide significance. The PDC functions as a forum for regional communication, coordination and cooperation.

Authority

Section 15.2-4200 delineates the function and authority of the planning district commission. Each commission is made up of elected officials and other citizens appointed by the member governments. Cities, counties and towns of 3,500 or more population are eligible for commission memberships. No action of a planning district commission may affect the powers and duties of local planning commissions. In addition, a PDC may not implement the plans and policies it establishes without the concurrence of the member local governments.

Implementation

As noted, the PDC was envisioned and charged with the responsibility of addressing and solving problems affecting more than one locality. In addition, the PDC may provide planning assistance to individual member jurisdictions such as in helping a locality prepare a comprehensive plan. The services Virginia's PDCs provide include regional economic development planning, regional water supply, solid waste and environmental resource protection planning, transportation planning including, in U.S. Census designated urban areas, the management of the metropolitan planning organization (MPO). The MPO has a crucial role in the planning process of roads and transit in Virginia's urban areas. To receive federal funding for highways and grants for transit systems within an MPO area, the project must be included in an approved Transportation Improvement Program of the MPO. Regional strategic planning services and programs, many of which focus on economic development activities, are also offered by most PDCs.

Limitations

According to the state code, PDCs are mandated to prepare a comprehensive plan to guide development in the district with respect to issues of regional significance. If such a plan is adopted by the governing bodies of a majority of the member local jurisdictions, it will become effective with regard to all actions of the PDC. To date, very few PDCs have satisfied this code requirement. Accordingly, the promise of greater regional coordination among neighboring local governments is not being fully realized.

Enhancements

Many of the most vexing land use challenges facing localities in the 21st century do not respect manmade political boundaries. As such, regional dialogue and regional problem solving will be required when dealing with issues such as transportation, economic development, farmland preservation, and affordable housing. The PDC can be the forum for this dialogue.