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Proceedings

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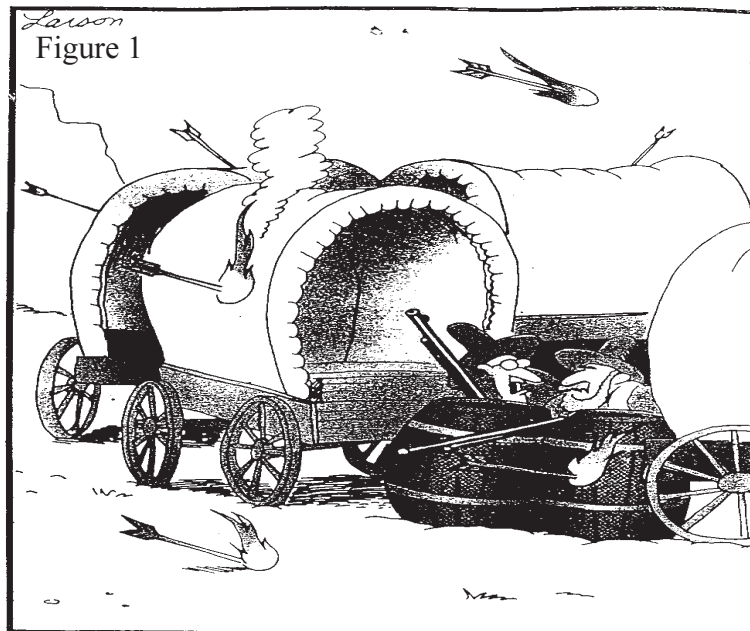
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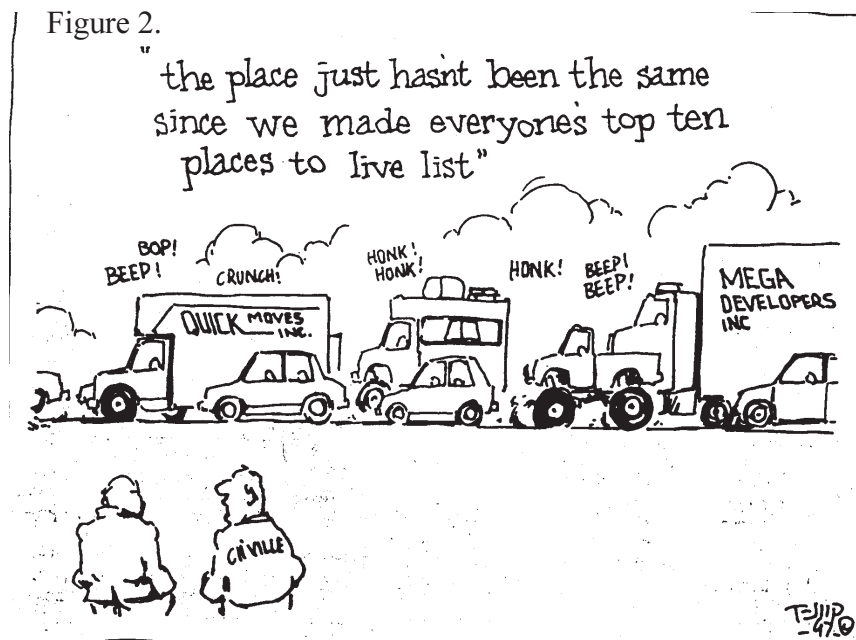
**Managing Agriculture and Growth in Virginia:
The Role of Planning
and Zoning**

Michael Chandler

The previous speakers described the various elements we associate with change. Garry Larson, our modern day cartoon philosopher captures the essence of change in this visual (Figure 1). Indeed, change is occurring in our localities. You are here today because of the rate of population expansion you are experiencing. And in deference to our host community, it is only fitting we share a visual that appeared in the local paper a year or so ago (Figure 2). It says, "This place just hasn't been the same since we made the top ten places to live list." Both visuals underscore the challenge facing each community attending this conference: namely, how will the needs of agriculture be addressed in the face of growth and change?



"Hey! They're lighting their arrows! . . .
Can they DO that?"



My purpose this morning is to discuss the role planning and zoning can play in managing growth and agriculture. To accomplish this purpose, I intend to review the foundational underpinning for planning and zoning in the Commonwealth (Figure 3).

Figure 3. Key planning and zoning activities impacting Virginia agriculture

- 1926 Enabling authority for zoning adopted by the Virginia general assembly
- 1962 Agriculture is added to the Virginia Code as a permissible land use category
- 1970 Open Space Land Act authorized (10.1-1700)
- 1971 Use Value Assessment (58.1-3329 through 3244) authorized by the General Assembly
- 1975 Local comprehensive planning mandated by the General Assembly
- 1977 Agricultural and forestal districting authorized by the General Assembly (15.2-4400 through 4407)
- 1981 Federal Farmland Protection Act adopted
- 1982 Agricultural Stewardship Act authorized (10.1-559.1 through 559.7)
- 1988 Chesapeake Bay Act adopted (10.1-2200)
- 1995 Right to Farm Act adopted (3.1-22.28 through 22.99)

In 1926, the General Assembly passed legislation authorizing the practice of zoning. Four years later, Herbert Hoover, while serving as the Secretary of Commerce, crafted an enabling act for planning and zoning. In fact, Virginia's current planning and zoning statutes borrow heavily from the work of Herbert Hoover.

In 1962, agriculture was added to the Virginia Code as a permissible land use classification. Virginia's open space land act was authorized in 1970. Although Virginia is a strict Dillon's Rule state, the open space land act is one of the most liberal in the country. When used with certain planning tools, numerous Virginia localities have been able to secure open space. Use-value assessment was authorized in 1971. In 1975, the General Assembly mandated that all local governments engage in local comprehensive community planning. Specifically, the General Assembly required every locality in the Commonwealth to appoint a planning commission by 1976, adopt a subdivisional ordinance by 1977, and by 1980, adopt a comprehensive plan. Most localities have complied with this mandate.

Additional actions taken by the Commonwealth affecting agricultural practices include the authorization of forestal districts, authorization of the Federal Farmland Protection Act and the Agricultural Stewardship Act in 1982. The Chesapeake Bay Act was adopted in 1988, and the Right to Farm Act was adopted in 1995. I make reference to the Chesapeake Bay Act for several reasons. Specifically, zoning is a discretionary tool of planning implementation in Virginia. However, if a locality comes under the purview of the Chesapeake Bay Act, zoning becomes mandatory. About one-third of Virginia is impacted by the Chesapeake Bay Act.

What is the nature of planning (Figure 4)? We need to think about planning as both a concept and a process. For example, each of us had to plan to be here today. Some of you made your plans several weeks ago while some of you decided to attend this program just yesterday. This kind of forward thinking or anticipatory action helps define planning. Peter Drucker, the noted management expert, defines planning as “. . . consciously recognizing the futurity of the present decisions.” His powerful insight provides clarity and balance, whether we are thinking about planning in our personal lives, business lives, or the lives of our communities.

Figure 4. The nature of planning

1. Viewed in isolation, what does the term planning mean to you?
2. Characteristics of a planned activity.
3. What does the term land use planning mean to you?

Who is responsible for land use planning in your community?

Through land use planning we purposely give definition to what we want our communities to be in the future. In many respects, a land use plan is the preferred future captured in pictures, symbols, policies, and narrative (Figure 5).

Figure 5. The comprehensive plan

1. Focuses on physical development.
2. Should reflect community goals and should define development policies.
3. Should be an articulate statement about a community's preferred land use pattern.
4. Should be comprehensive in design and long range in orientation.
5. Should be vision driven and a by-product of civic input.

Planning can be defined as a process that helps move a community from where it is today to where it would like to be tomorrow. Most land use plans feature a 5, 10, 15, 20, and in some instances, a 25-year planning horizon. If the document is to have meaning it must be adopted by the locality and subsequently followed.

As Figure 6 suggests, a variety of elements help define the comprehensive plan. Facts are the study and analysis of present and past condition as well as emerging trends. Potential involves deciding what we would like to see happen in the future. Perception involves reaching out, getting in touch with the community to get a sense of what people want for the future. Concepts provide a summary of what the plan intends to accomplish. Feedback and implementation represent ways to bring the plan to life.

Federal law is supreme and it generally takes precedence over state law, which, in turn, takes precedence over local actions or statutes (Figure 7). The authority to engage in land use planning is an extension of the police power provision, which is a by-product of the tenth and fourteenth amendments to the United States Constitution.

The presumption of legislative validity is another concept of importance to planning. Legislative validity means your comprehensive plan, under the law, is presumed valid: each element and attribute contained in the plan will stand unless someone, through a court proceeding, successfully challenges the plan as being unreasonable and contrary to the interest of the community.

Figure 6. What goes into a comprehensive plan	
<u>Facts:</u>	The study and analysis of past and present conditions, as well as emerging trends.
<u>Potential:</u>	A prediction of future conditions. An analysis of potential opportunities and potential problems. A futures orientation.
<u>Perceptions:</u>	An assessment of the community's aspiration and attitudes.
<u>Concepts:</u>	A statement about the policies and/or plans, methods, and tools which will bring the plan to life.
<u>Feedback:</u>	A system to analyze plan accomplishments, deficiencies, and make necessary adjustments.
<u>Implementation:</u>	The plan shall recommend methods of implementation.

The content of the declaration of legislative intent as it applies to planning is terribly important (Figure 8). It establishes the foundation for local planning and zoning practices across the Commonwealth. The statement begins with a review of the police power provision. The declaration next addresses transportation and community facility needs. Providing for the future needs of agriculture, industry, business, and residential uses is another vital function of planning. Item G states that growth in the community will be consonant with the efficient and economical use of public funds. Many local governments in Virginia are using this section of the code to incorporate growth management strategies with their local comprehensive plans.

Section 15.2-2223 of the Code says: "The Commission shall make studies and surveys of existing conditions and trends of growth and probable future growth requirements of the community..." (Figure 9). Furthermore, "The plan shall be general in nature and shall designate the general location, character and extent of each feature shown on the plan and will indicate where existing lands or facilities will be extended, removed, relocated, vacated, narrowed, abandoned, or changed in use." Some opponents of planning point to this section of the code and the language, "general in nature," to suggest that the comprehensive plan is of little value. Section 15.2-2232, however, puts some teeth in planning. This section of the code states

Upon adoption, the plan shall control the general location, character, and extent of each feature shown on the plan. No street, connection to an existing street, park or other public area, public buildings or public structures, public utility, facility, or public service corporation facility, other than a railroad facility, whether publicly or privately owned, shall be constructed, established or authorized until its location has been approved by the planning commission as being substantially in accord with the Plan.

This section of the code states very clearly that once adopted, the local plan shall control. Thus, the plan does have impact.

Figure 7. Basic legal concepts

1. Supremacy of federal law
2. Precedence of state over local law/ordinance
3. Police power provision
4. Presumption of legislative validity
5. Federal role
 - A. U.S. Constitution
 1. First amendment
 2. Fifth amendment
 3. Fourteenth amendment
 4. Supremacy clause, article six
 - B. Acts of Congress
 1. Section 1983, Civil Rights Act of 1871
 2. NEPA, 1970 other acts of the Congress
 - C. Judicial rulings
6. State role
 1. Guarantees/prohibitions
 2. Code of Virginia
 3. Acts of the legislature
 4. Judicial rulings
7. Local role
 1. Local charter/uniform powers act
 2. Local plans
 3. Local ordinances

Figure 8. Declaration of Legislative Intent: (Virginia Code 15.2 – 2200)

The purpose of enabling authority for planning is to encourage localities to

- A. Improve the public health, safety, convenience, and welfare of their citizens;
- B. Plan for future development of existing communities so that transportation systems are carefully planned;
- C. Develop new community centers with adequate highway, utility, health, educational, and recreational facilities;
- D. Recognized the need for mineral resources and the need of agriculture, industry, and business in future growth;
- E. Provide residential areas with healthy surroundings for family life;
- F. Preserve agricultural and forestal land be; and
- G. Make growth of the community consonant with the efficient and economical use of public funds.

Figure 9. 15.2 – 2223 Comprehensive plan scope and purpose

1. The commission shall make studies and surveys of existing conditions and trends of growth and the probable future growth requirements of the community.
4. The plan shall be general in nature and shall designate the general location, character and extent of each feature shown on the plan and will indicate where existing lands or facilities are to be extended, removed, relocated, widened, vacated, narrowed, abandoned, or changed in use.

Section 15.2 – 2224 of the code talks about planning process. Item 1 states, in part,

The Commission shall survey and study such matters as the preservation of agricultural and forestal land, production of food and fiber, characteristics and conditions of existing growth, trends of growth, natural resources, historical areas, groundwater, surface water, geologic factors, population factors, employment, environment, and economic factors, existing public facilities, drainage, flood control and damage prevention measure, transportation facilities, and the need for affordable housing and any other matters related to the subject matter and the general purposes of the plan. . . .

I call this section of the code the “Prego” factor. If you are familiar with the television commercial, you know the announcer, talking about Prego’s ingredients, says, “It’s in there.” The same can be said for 15.2-2224. As long as we can show linkage back to some demonstrable public purpose, we can include almost anything in our plans. A nexus, or relationship, must exist between each planning principle and each regulation. By proving or documenting the nexus we are positioning the plan to withstand legal challenge.

The basic steps in the planning process are logical and pretty straight forward (Figure 10). One difference we see today compared to a few years ago is the role visioning plays in the process. Increasingly, before getting into the plan development process, localities are going through a visioning exercise. The visioning process helps a community invent its future by actively thinking about the possibilities implicit in the future. Visioning is a proactive process. It is the process William Jennings Bryan had in mind when he stated during the 1896 Presidential campaign that the future should not be something we wish for, it should be something we work to achieve. The future should not be a matter of chance; it must be a matter of choice. Having a plan should mean we have made a choice.

Bringing a plan to life means we have to implement the plan (Figure 11). We have four primary tools of planning implementation in Virginia: the official map; the capital improvement program (CIP); the subdivision ordinance; and the zoning ordinance.

Figure 10. Basic steps in the planning process

1. Plan and schedule the process, including a planning horizon.
2. Gather and analyze data.
3. Identify issues, define problems, define opportunities, define plan elements.
4. Develop a preferred vision of the future.
5. Develop goals and objectives for the plan and each plan element.
6. Develop the plan.
7. Evaluate the plan and modify accordingly.
8. Adopt the plan.
9. Implement the plan according to a schedule.
10. Monitor the plans impact, determine the plans effectiveness and make adjustments.

Figure 11. Bringing the plan to life

1. Adopting the plan
2. Implementing the plan
3. The official map 15.2-2233 (discretionary)
4. The capital improvements program 15.2-2239 (discretionary)
5. The subdivision ordinance 15.2-2240 (mandatory)
6. The zoning ordinance 15.2-2280 (discretionary)

Section 15.2-2280 (Figure 12) defines zoning as a legislative process by which a locality identifies or classifies land within its jurisdiction into discrete districts. In your local zoning ordinance, for example, you might have several residential districts. You might have planned commercial, business, and industrial districts. Each district regulates land use, building placement, and building density. The authority to zone is derived from the police power, and it is a discretionary authority. Zoning ordinances must feature a map as well as a text. The zoning ordinance is a powerful tool for plan implementation because it is the means by which we actually regulate land use. The plan is a projection of what we hope to see in our community. However, the pretty colors on the land use map will not happen unless we have a zoning ordinance. Zoning is the way we bring the land use map to life.

Figure 12. The zoning ordinance: 15.2-2280

1. Zoning is a legislative process by which a locality classifies land within its jurisdiction into districts.
2. Authority for zoning is discretionary.
3. Zoning regulates the use of land, the size and location of buildings.
4. Zoning derives its authority from the police power.
5. A zoning ordinance must feature a map and a text.
6. The zoning ordinance is a powerful tool of plan implementation.

Managing agriculture and growth through planning and zoning practices is a viable and potentially beneficial exercise. Our very brief journey through the planning and zoning maze suggests a couple of broad generalizations. First communities can plan for tomorrow today. The code not only sanctions planning (15.2-2200), it clearly and forcefully articulates the purpose and scope of planning (15.2-222 through 2232).

Second, the code makes clear that zoning is a permissible and legal activity (15.2-2280). Further, the code artfully links the purposes of zoning (15.2-2283) (Figure 13) back to the comprehensive plan (15.2-2200). Finally, the criteria to be considered when developing zoning districts (15.2-2284) (Figure 14) plainly suggests that zoning, when linked to the goals and policies featured in the comprehensive plan, creates a powerful bond and defensible public policy which a locality can use to the collective benefit of the community.

In many respects, the issue facing local governments across Virginia is not whether we *can* plan, but rather on our capacity and community *will* to plan. Agriculture and growth can coexist. Prudent, equitable, and fair planning and zoning practices will make such a future possible. Our challenge is to make the future happen.

Figure 13. Purpose of Zoning: 15.2-2283

1. To provide for adequate light, air, convenience of access and safety from fire, flood, crime, and other dangers
2. To reduce or prevent congestion in the public streets;
3. To facilitate the creation of convenient, attractive, and harmonious community;
4. To facilitate the provisions of adequate police and fire protection, disaster evacuation, civil defense, transportation, water, sewerage, flood protection, schools, parks, forests, playgrounds, recreational facilities, airports, and other public requirements;
5. To protect against destruction of or encroachment upon historic areas;
6. To protect against the overcrowding of land, undue density of population in relation to existing or available community facilities, obstruction of light, air, danger and congestion in travel and transportation, or loss of life from fire, flood, or panic;
7. To encourage economic development activities that provide desirable employment and enlarge the tax base;
8. To provide for the preservation of agricultural and forestal lands and other lands of significance to the natural environment;
9. To protect approach slopes and other safety areas of licensed airports; and
10. To promote creation and maintenance of affordable housing and to protect surface water and ground water.

Figure 14. Criteria to be considered in drawing and applying zoning ordinances and districts 15.2 – 2284

1. The existing use of character of property;
2. The comprehensive plan;
3. The suitability of property for various uses;
4. Trends of growth or change;
5. Current and future land requirements as determined by population, economic and other studies;
6. Requirements for transportation, airports, housing, schools, parks, playgrounds, recreation areas, and other public services;
7. The conservation of natural resources;
8. The preservation of flood plains;
9. The preservation of agricultural and forestal lands;
10. The conservation of properties and their values; and
11. The encouragement of the most appropriate use of land throughout the county or municipality.