

Planning Commission, Planning Board and Board of Appeals Education Course

Introduction



Maryland Department of Planning



Welcome

- **Maryland Joins 9 States Requiring Education**
 - SB280 and HB 297 (Chapters 180, 181) require training for planning boards, commissions and boards of appeals members
 - Must complete a course by July 1, 2010
 - New members must complete a course within 6 months of appointment



Welcome

- **Who?**
 - Applies to non charter counties and municipalities who exercise p and z authority
 - Applies to charter counties including Montgomery and Prince George's
 - Each individual member of a planning board, planning commission
 - Each individual board of zoning appeals member
 - Current and new members



Welcome

- How?
 - MDP online course www.planning.maryland.gov
 - Available as a hard copy package upon request
 - No testing or tracking
 - Certificate upon completion
 - No cost to jurisdictions or individuals
 - As Painless as Possible
- Today covers everyone in attendance



Welcome

- **Thanks to MPCA**
 - For hosting this session
- **Thanks to You!**
 - For volunteering to serve your communities as Planning Commissioners, Planning Board members, and members of the Board of Appeals



Planning Commission, Planning Board and Board of Appeals Education Course

Planning 101



Maryland Department of Planning



Planning 101

- **What is Planning**
 - Values of Planning
 - What Planners Do
 - History and Milestones of Planning
- **Smart Growth**
 - Twelve Visions
 - Trends and Growth Patterns
 - Priority Funding Areas



Planning 101

- **The Comprehensive Plan**
 - What is a Comprehensive Plan
 - Required and Optional Elements
 - Developing the Comprehensive Plan
 - County-Municipal Coordination

What is Planning?

- **Community's Vision for the Future**
- **Accounting for Past and Present**
- **Goals, Objectives and Policies to Realize the Vision**





Why Do We Plan?

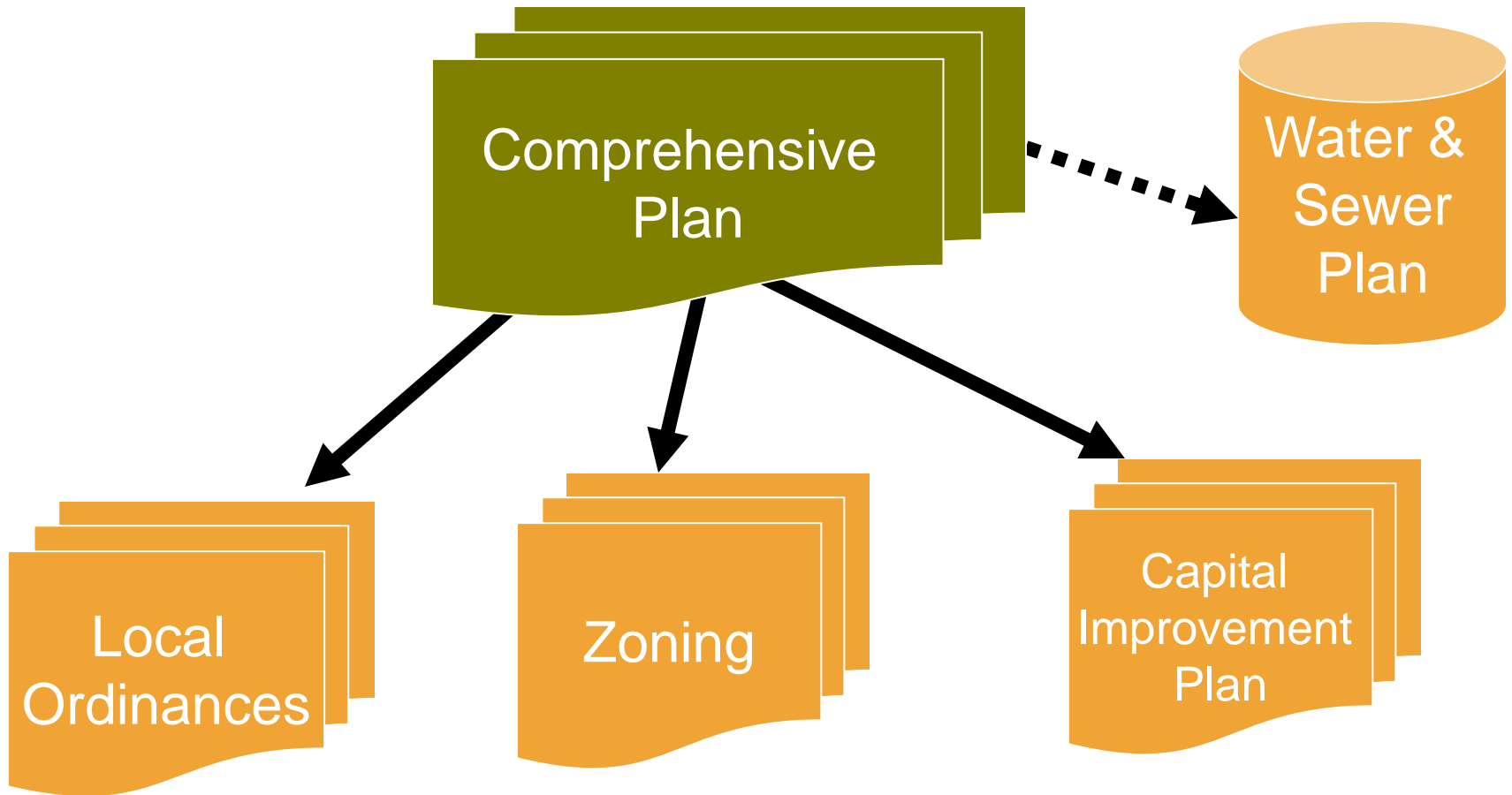
- Guide sustainable and efficient land use
- Provide adequate public facilities such as roads and sewers
- Protect our sensitive land and water resources
- Accommodate growth in an environmentally sound and cost efficient manner
- Foster economic development and housing



Values of Planning

- **Public Health, Safety and Welfare**
 - Conservation of Resources
 - Protection of Natural Environment
 - Efficiency, Orderliness and Rationality of Built Environment
 - Predictability
 - Public Participation

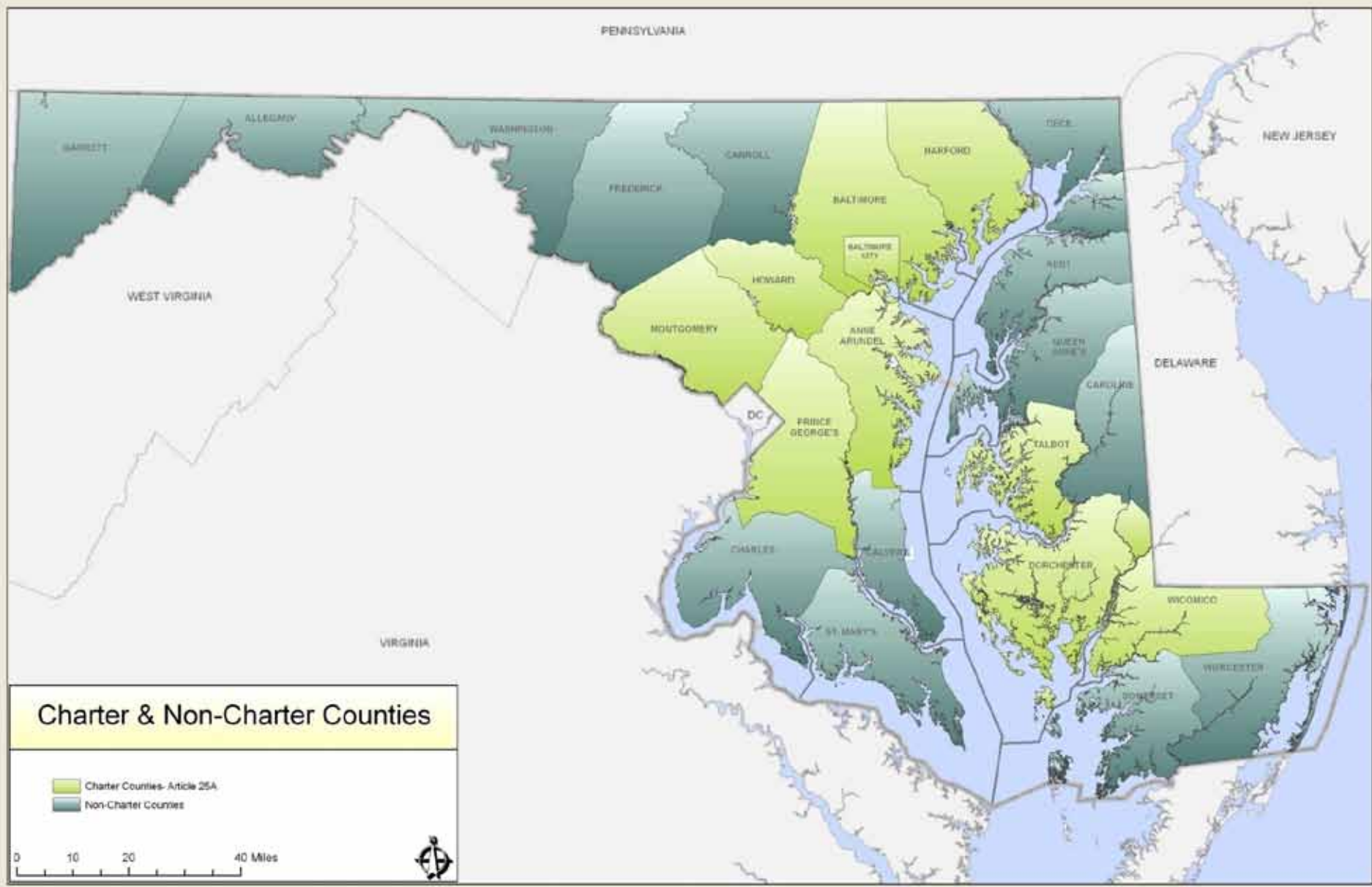
Planning and Implementation





Maryland Statutes

- **Delegation of planning and zoning authority to local jurisdictions:**
 - MD Code, Article 25A -- Charter Counties
 - MD Code, Article 66B -- Non-Charter Counties, Municipalities, some provisions -- all jurisdictions
 - MD Code, Article 28 -- M-NCPPC
 - Other planning-related state legislation





What Planners Do

- **Balance**
 - Distant Goals v. Immediate Decisions
 - Incremental v. Comprehensive Planning
 - Public v. Private Sector Decisions
 - Local, Regional and State Perspectives
- **Understand Implications of Law**
 - U.S. Constitution
 - Federal and State Laws



History and Milestones

- **Early U.S. Planning**
 - Plans for Washington DC (1790)
 - Central Park, NYC (1865)
 - Regional Plan for NY (1932)
- **Major Milestones in Planning**
 - Euclid v. Ambler Realty (1926)
 - U.S. Housing Act (1937)
 - National Environmental Policy Act (1970)



History and Milestones

- **Maryland Planning Milestones**
 - State Land Use Act (1974)
 - Economic Growth, Resource Protection and Planning Act (1992)
 - Smart Growth Areas Act (1997)
 - House Bill 1141 (2006)
 - Smart, Green and Growing Act (2009)

Smart Growth

- Goals for land use planning
- Promotes livability, sustainability, well managed development
- Minimizes development footprint
- Quality of life





Smart Growth

- **Directs new growth into:**
 - Existing population and business centers
 - Growth areas adjacent to population centers
 - Strategically located new growth areas
- **Scale should be tailored to your locale**
- **Compact and consolidated design saves money on new infrastructure**



The Twelve Visions

- Housing
- Economic Development
- Environmental Protection
- Resource Conservation
- Stewardship
- Implementation
- Quality of Life and Sustainability
- Public Participation
- Growth Areas
- Community Design
- Infrastructure
- Transportation



Trends and Growth Patterns

- **Development Patterns**
 - 650,000 acres developed in the past 30 years
 - 400,000 additional households
- **Out-Migration**
 - 55,000 Maryland workers relocated to PA since 1980
 - Miles traveled will increase by 28% by 2020



Trends and Growth Patterns

- **Farms and Natural Resources**
 - 500,000 acres of farmland lost to development between 1982 and 2007
 - 430,000 septic systems in Maryland in 2007
- **Housing Affordability**
 - Percent of homes sales affordable to Maryland teachers declined from 41% to 26%

Trends and Growth Patterns

- **Jobs and Economic Development**
 - 600,000 new jobs over next 20 years
 - Movement of jobs outside urban communities contributes to decline of older commercial areas





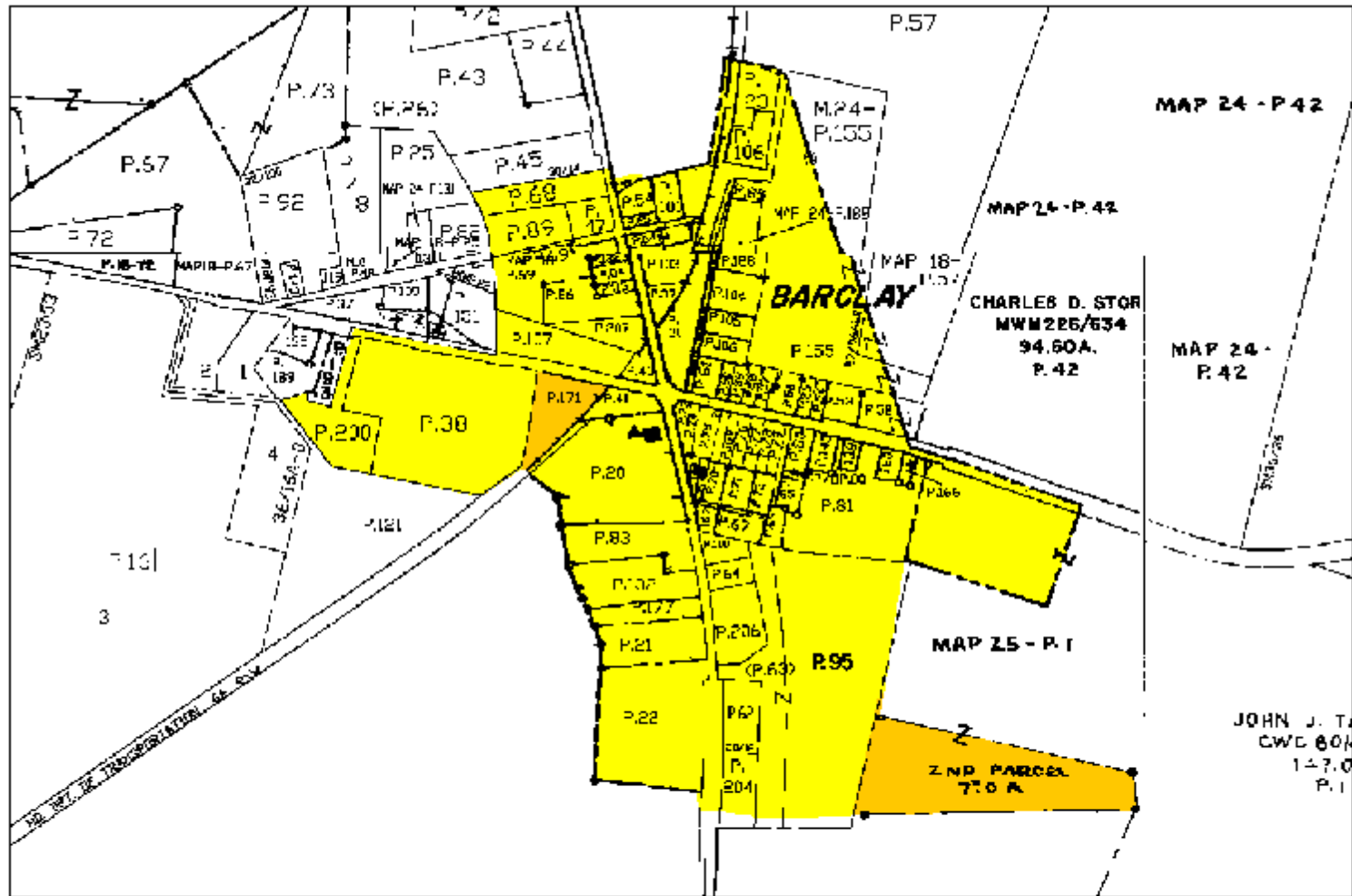
Priority Funding Areas

- PFAs focus State spending to:
 - Make the most efficient and effective use of taxpayer dollars
 - Preserve existing neighborhoods
 - Preserve fields, farms, and open spaces
 - Reduce pollution
- Municipal boundaries in place by 1997 are automatically PFA



Priority Funding Areas



- Existing or planned water and sewer service
- Average residential density of 3.5 units per acre
- Growth plan consistent with projections
- Size of the PFA must be based on assessment of land needed for 20 years growth



Legend

- PFA Changes
- Municipal PFA
- Municipal PFA Comment Area
- Assessed but not PFA
- PFA
- PFA Comment Area

Town of Barclay PFA Changes
Queen Anne's County

MDP

March 29, 2010



Comprehensive Plan

- **Guides future growth, development and preservation for an area**
 - **Inventory**
 - **Analysis**
 - **Recommendations**
 - **Implementation Strategies**
 - **Feedback and Adaptive Management**



Required Elements of Comprehensive Plans per 66B

1. Statement of Goals, Objectives, Principles, Policies and Standards
2. Transportation Plan Element
3. Mineral Resources Plan Element (if applicable)
4. Water Resources Plan Element
5. Municipal Growth Plan Element
6. Sensitive Areas Plan Element



Required Elements of Comprehensive Plans

7. Land Use Plan Element
8. Community Facilities Plan Element
9. Fisheries (if located on tidal waters of the State)
10. Areas of Critical State Concern (within the County)
11. Recommendation for Development Regulations to Implement the Plan



Optional Elements of Comprehensive Plans

- Community Renewal Elements
- Housing Elements
- Flood Control
- Pollution Control
- Conservation
- Natural Resources
- Priority Preservation Areas
- General Local and Extent of Public Utilities
- Workforce Housing Plan Element

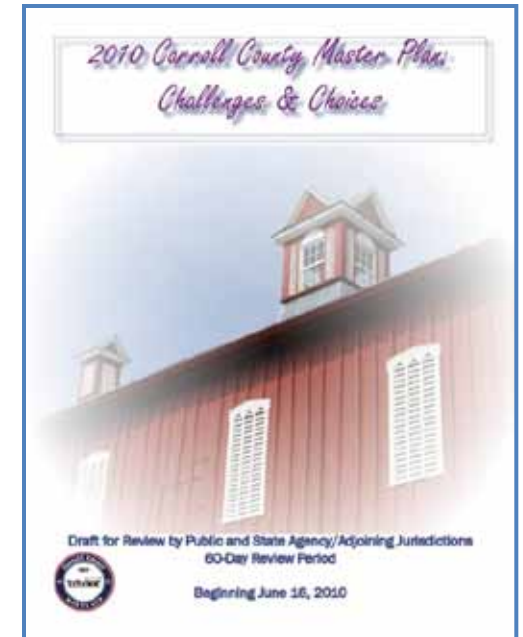


Developing a Comp Plan

- **Draft Developed by Planning Commission**
 - 60 Day Public Notice of Draft Plan
 - Review of Public and Agency Comments
 - Required Public Hearing
 - Recommendation for Adoption by Council
- **Adoption by Council**
 - May hold another public hearing
 - Final decision on Comp Plan

Developing a Comp Plan

- Required to review every 6 years
 - Update if necessary





Inter-Jurisdictional Coordination

- **Comprehensive Planning is Cornerstone**
 - Developing mutual goals and objectives
- **Potential Coordination Issues**
 - Municipal Growth
 - School Planning
 - Water Resource Planning
 - Transportation Planning
 - Comprehensive Water and Sewer Plans



Planning Commission, Planning Board and Board of Appeals Education Course

Review Questions



Maryland Department of Planning

Over the next 20 years, Maryland's population is expected to grow by:

- A.) 1 million new residents
- B.) 400,000 additional households
- C.) 600,000 new jobs
- D.) All of the Above

Over the next 20 years, Maryland's population is expected to grow by:

A.) 1 million new residents

B.) 400,000 additional households

C.) 600,000 new jobs

D.) All of the Above

How many Planning Visions were included in the 2009 State Law?

- A.) Eight
- B.) Nine
- C.) Twelve
- D.) Thirteen

How many Planning Visions were included in the 2009 State Law?

A.) Eight

B.) Nine

C.) Twelve

D.) Thirteen

The following is NOT a required element of a Comprehensive Plan:

- A.) Housing Element
- B.) Land Use Plan Element
- C.) Transportation Plan Element
- D.) Water Resources Element

The following is NOT a required element of a Comprehensive Plan:

A.) Housing Element

B.) Land Use Plan Element

C.) Transportation Plan Element

D.) Water Resources Element

Who is required to hold a public hearing on a Comprehensive Plan update under Article 66B?

- A.) County Council or Commission
- B.) Local Planning Commission
- C.) Maryland Department of Planning
- D.) Plan Advisory Committee

Who is required to hold a public hearing on a Comprehensive Plan update under Article 66B?

- A.) County Council or Commission
- B.) Local Planning Commission**
- C.) Maryland Department of Planning
- D.) Plan Advisory Committee

How often must a local government review the local comprehensive plan?

- A.) Every year
- B.) Every 6 years
- C.) Every 10 years
- D.) Every 20 years

How often must a local government review the local comprehensive plan?

A.) Every year

B.) Every 6 years

C.) Every 10 years

D.) Every 20 years

Planning Commission, Planning Board and Board of Appeals Education Course

Planning 201



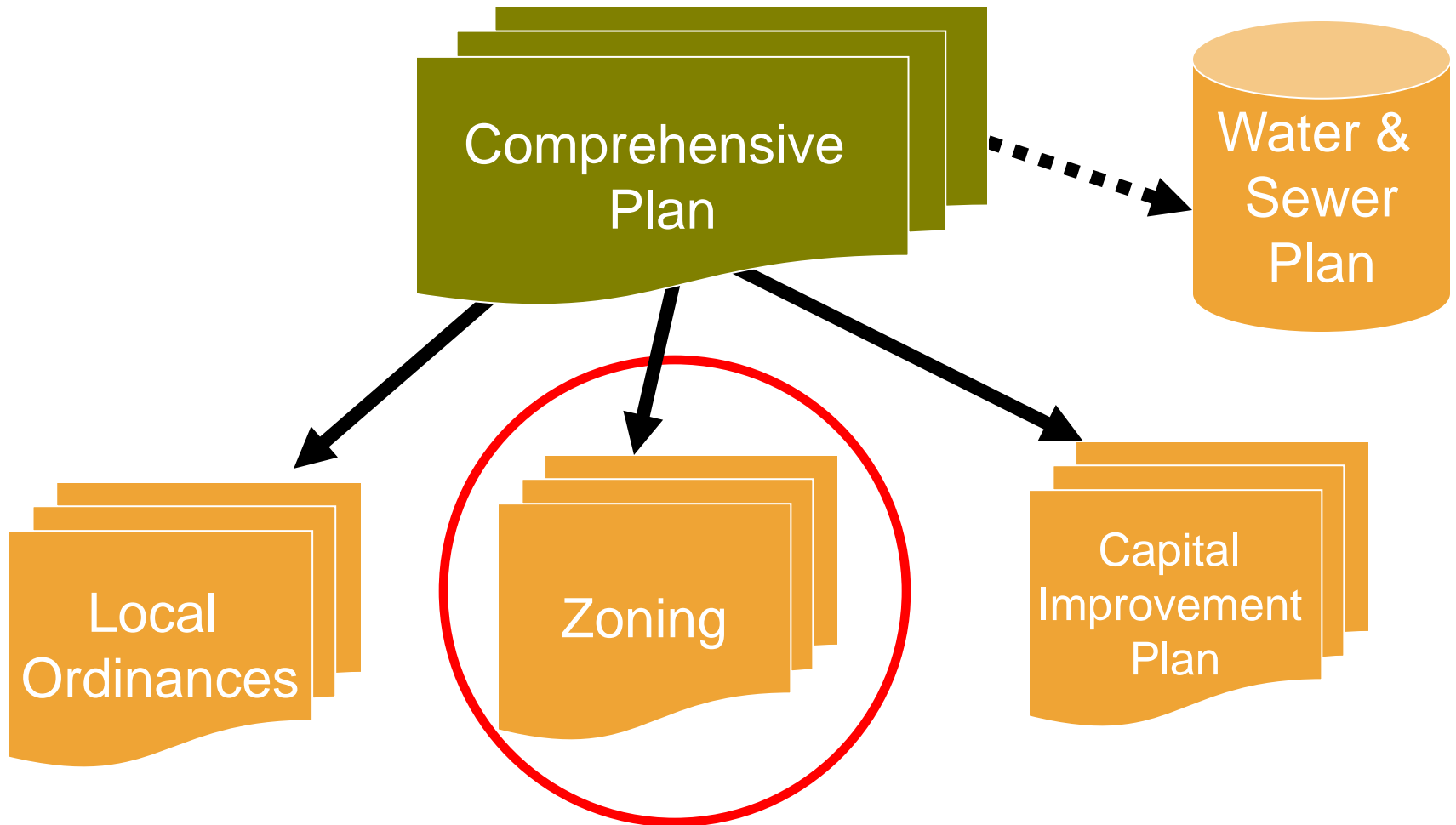
Maryland Department of Planning



Planning 201

- **Growth Management Tools**
 - Zoning and Subdivision
 - Adequate Public Facilities
 - Capital Improvement Programs
 - Water and Sewer Master Plans
 - Land Preservation Tools
 - Annexation
 - Developers Agreements

Planning and Implementation





Zoning

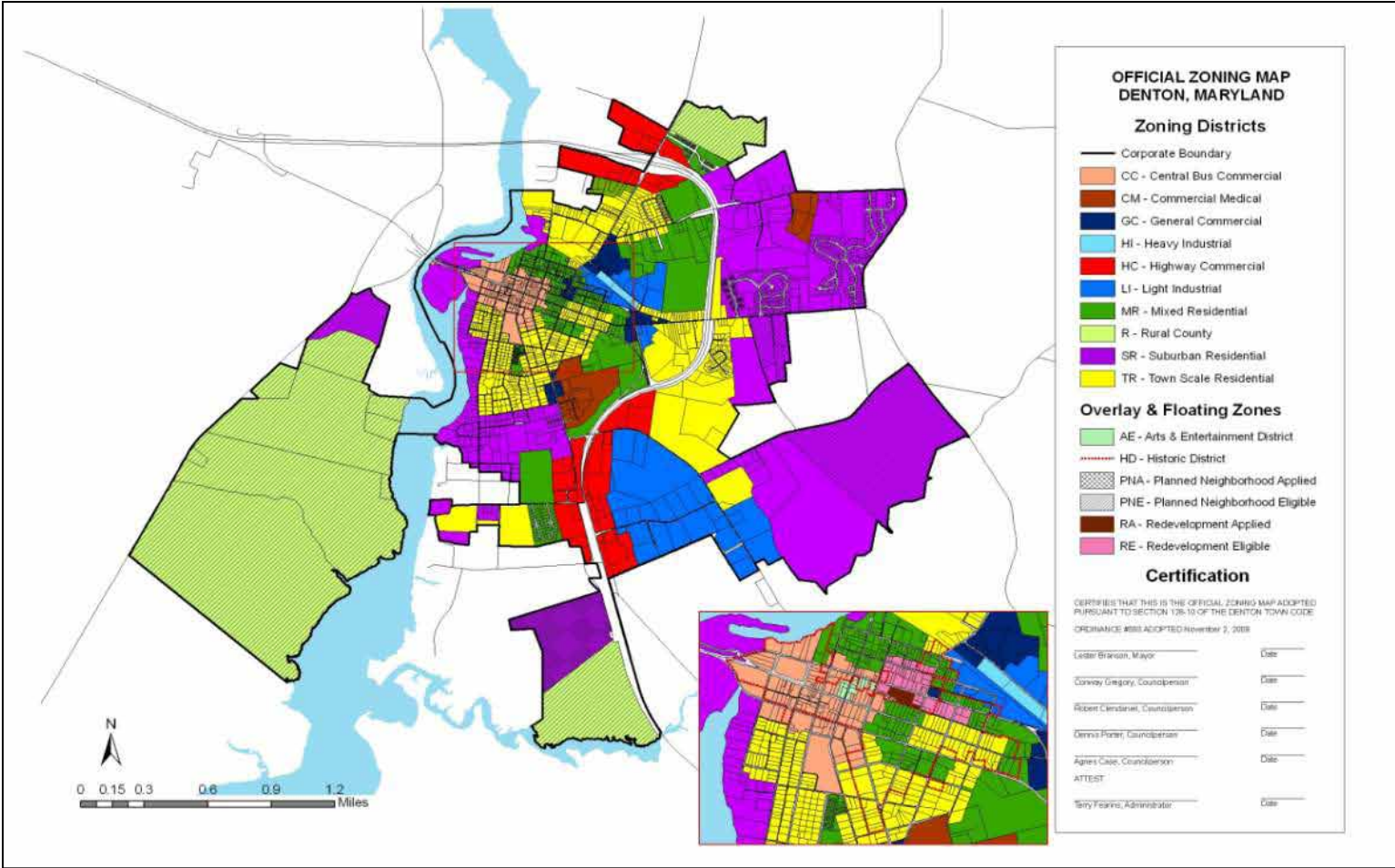
- Practice of designating permitted uses of land based on mapped zones
 - Most common form of land use control through ordinance
 - A zoning ordinance consists of text and maps
- Regulates Uses of the Land
 - Also can control density, building height, and bulk of building on the land



Zoning

- Traditional ordinances relied on “Euclidean zones”
 - Strict separation of land uses
- Modern ordinances often allow some mixing of uses
 - Floating zones, performance zoning, and planned unit developments (PUDs)

Zoning





Subdivision Regulations

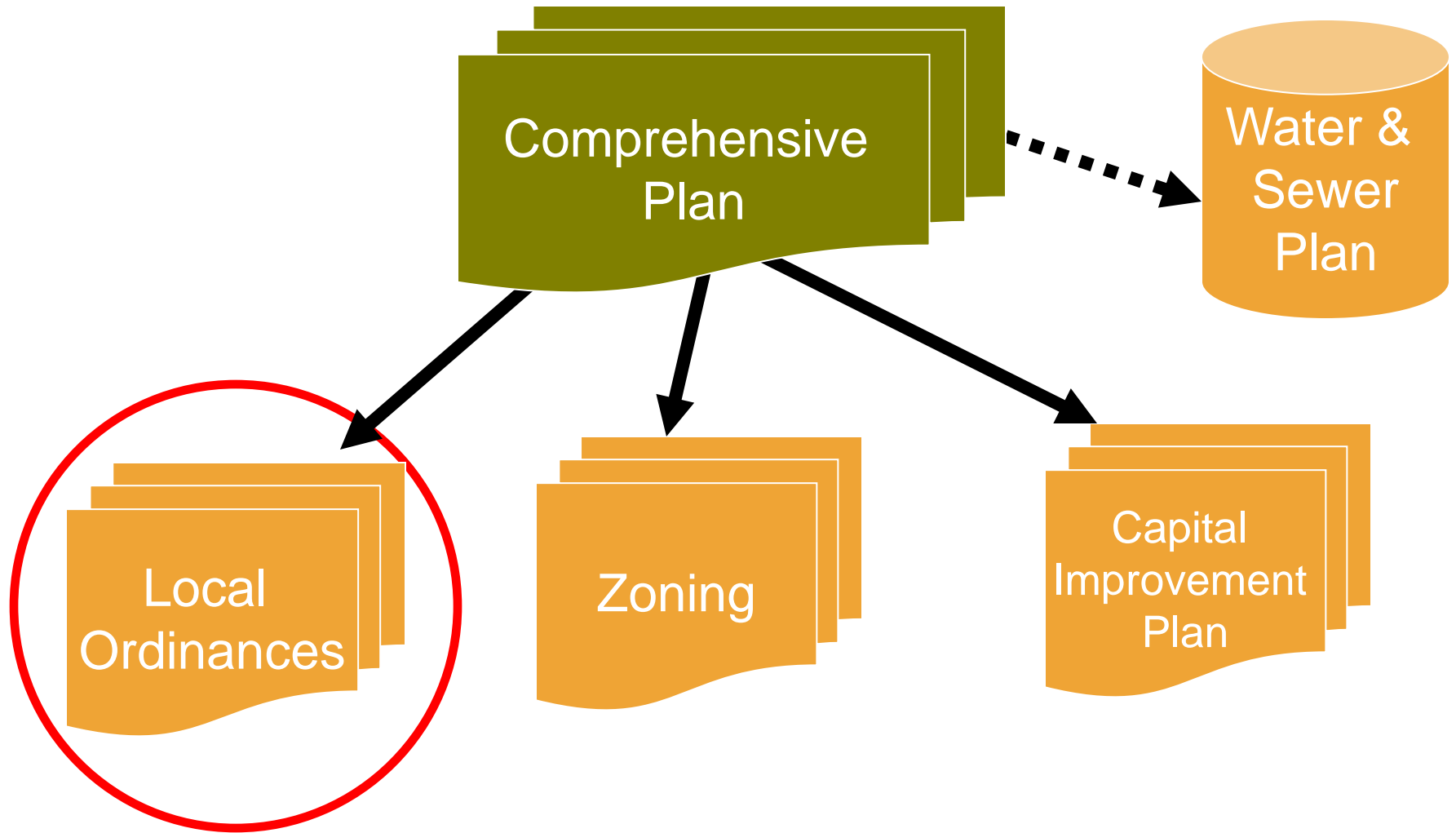
- **Division of property**
 - Into one or more lots for development purposes
 - May include consolidation of smaller lots or re-subdivision



Subdivision Regulations

- Typically include standards for lot layout for:
 - Streets
 - Utilities
 - Landscaping
- Usually requires specifications for information included on subdivision plat submittals

Planning and Implementation





Adequate Public Facilities (APFOs)

- **Primarily Addresses**
 - Roads, Schools, Water and Sewer
 - What is adequate and what is not
- **Adequate Public Facilities Ordinances**
 - Relationship to development approvals
 - Relationship to smart growth
 - Used in 13 Counties and 23 Municipalities

Adequate Public Facilities(APFOs)

- Any jurisdiction can adopt APFOs
 - Development approval can be contingent on being able to provide service
 - Adequate facilities must be reasonably probable of fruition in the foreseeable future
 - Lack of standards can lead to invalidation of regulations

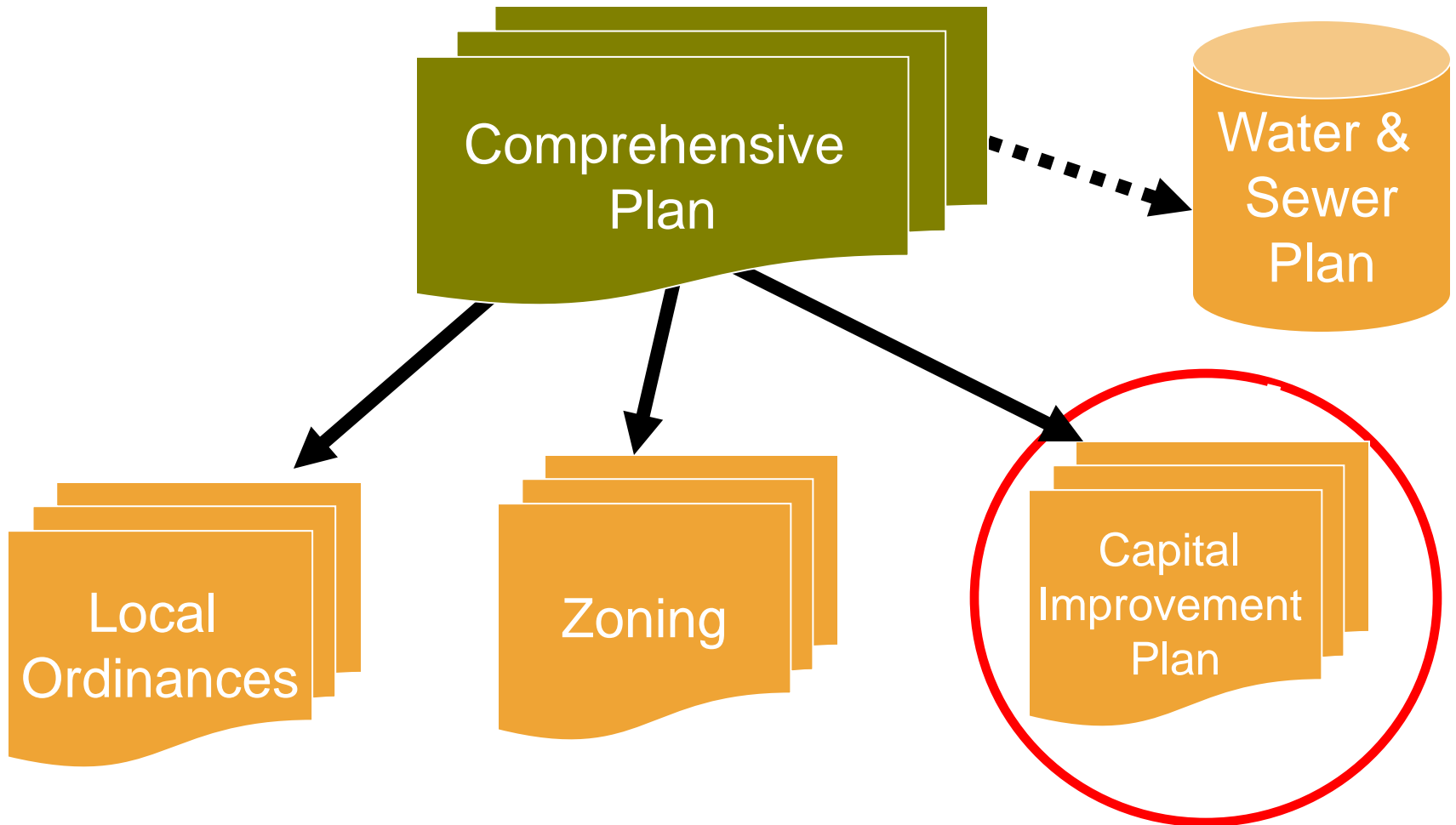




Adequate Public Facilities(APFOs)

- Jurisdictions must submit a report to MDP every two years if APFO restricts development in the PFA
 - MDP is required to submit a report every two years on the statewide impacts of APFOs
 - Local jurisdiction reports must include six items
 - First reports are due July 1, 2010

Planning and Implementation





Capital Improvement Programs (CIP)

- **Blueprint for planning a community's capital expenditures**
 - Roads, Schools, Water and Sewer, Recreation, Community Facilities,
 - Coordinates community planning, financial capacity and physical development
- **Includes a capital budget and a capital program**



Capital Improvement Programs (CIP)

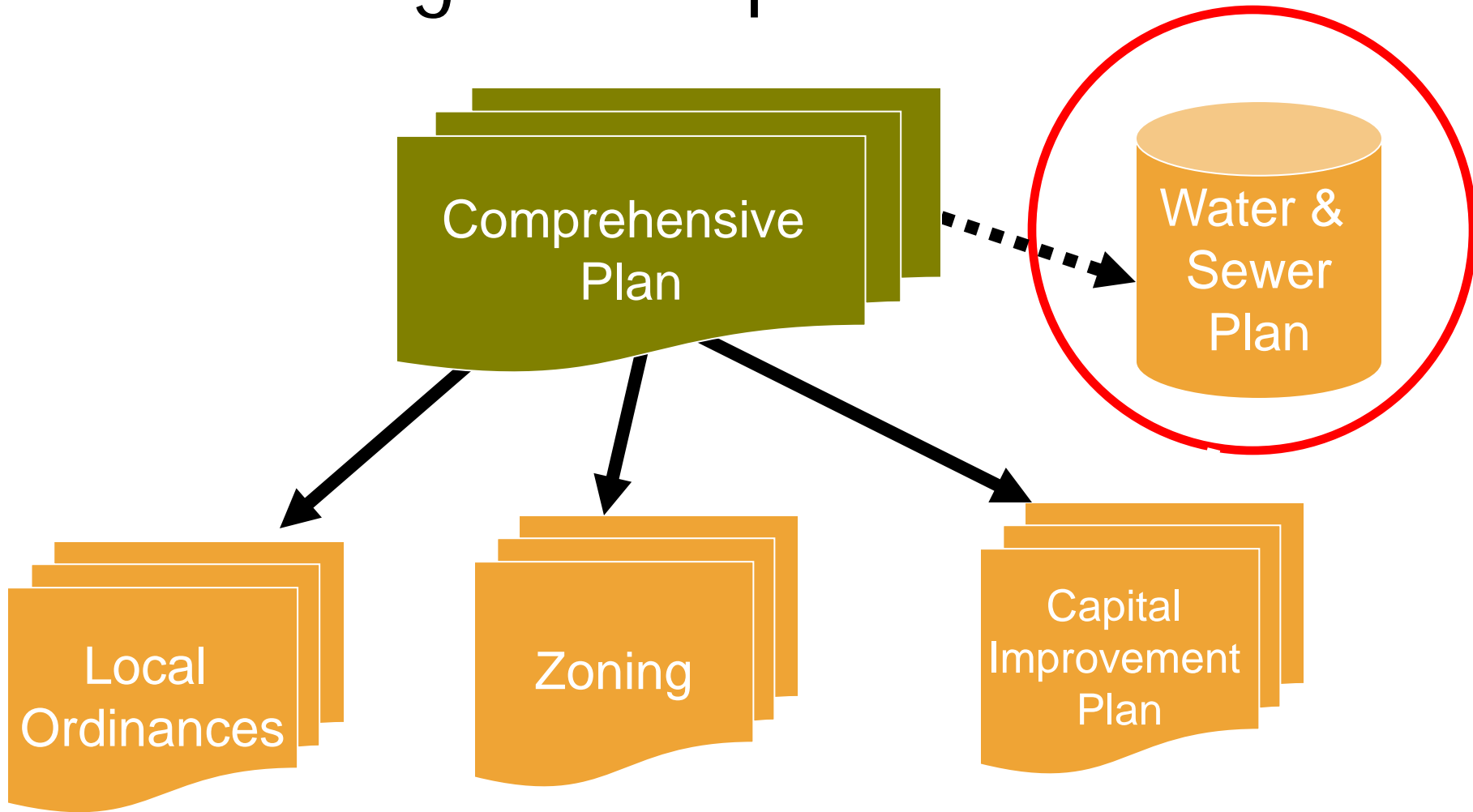
- **Sources of Funds**
 - General Funds
 - General Obligation Bonds
 - CDBG (Community Development Block Grants)
 - POS (Program Open Space)
 - State Waterway Improvement Fund
 - State Aid
 - Federal Aid
 - Developer Contributions



Capital Improvement Programs (CIP)

- **Process**
 - Inventory of Existing Facilities
 - Analysis of Previously Approved Projects
 - Solicit, compile and evaluate project requests
 - Capital Project Evaluation Criteria
 - Establish Project Priority
 - CIP Approval process
 - Monitoring approved projects

Planning and Implementation





Water and Sewerage Master Plan

- **Implementing tool of the Comp Plan**
 - Identifies areas to be served with public sewer and water
 - Identifies various timing categories for provision of W&S
 - Shows existing and planned capital facilities
 - To be kept current every 3 years and amended as needed
 - Governed by State law



Water and Sewerage Master Plan

- **Basis for issuing permits for water supply or wastewater handling facilities**
 - Guide land development approvals
 - Identify projects and costs necessary to maintain fiscally sustainable systems
 - Identify new service areas
 - indicate upgrades and expansions to water supply or wastewater treatment facilities



Water and Sewerage Master Plan

- **Incorporating Smart Growth**
 - Focus on serving areas that are within PFAs
- **When expanding, consider:**
 - Local comprehensive plan consistency
 - Realistic population projections
 - Infill development
 - Sufficient land to accommodate employment and commercial centers



Land Conservation Tools

- **Protective Zoning**
 - Conservation District Overlay Zoning
 - Mandatory clustering
- **Easement Programs**
 - Federal Conservation Reserve Enhancement Program easements for sensitive areas
 - National/ regional conservation organizations
 - MET and local land trusts

Land Conservation Tools

- Revolving funds
- Installment purchase agreements
- Development Right Control
 - Purchase of Development Rights (PDR)
 - Transfer of Development Rights (TDR)





Municipal Annexation

- Process of incorporating areas outside of a municipality into its current boundary
 - Important for Municipalities to be able to grow
 - Municipalities have exclusive authority over planning and zoning in annexed areas
 - Requires careful planning for municipal growth
 - Requires a specific Annexation Plan for the proposed area



Municipal Annexation

- **Process and Procedures are Clear**
 - Annexed areas must be contiguous to and adjoining the existing municipal boundary
 - May not be located within another incorporated municipality
 - Cannot create enclaves of unincorporated area
 - Annexation plan must meet statutory requirements



Municipal Annexation

- **Rules About Development in Newly Annexed Areas**
 - Prohibition on development within annexed area if substantially different than county zoning – unless waiver from County
 - For 5 years, density of newly annexed areas can't be significantly greater than permitted under county zoning



Development Rights & Responsibilities Agreements

- Passed by Legislature in 1995
 - Agreement made between a government and a developer with conditions under which the development may proceed for a specified time
 - Provide certainty and stability in land use regulation relating to a development project
 - Provide assurance to developers for long term projects
 - Valid for 5 years unless extended

Consistency

- **Consistency between the local comprehensive plan and certain decisions and ordinances is required by State law**
 - **Consistency requirement applies to both local governments and state government**



Consistency

- **Applies for Local Government in:**
 - Special exceptions (at the ordinance level in non-charter counties and municipalities);
 - Article 66B §§1.04 & 4.09 (all jurisdictions at the ordinance level);
 - The annexation section (Article 23A §19(o)(iii));
and
 - The provisions in the environment article relating to water & sewer plan amendments

Consistency

- **Applies to State Government in:**
 - The provisions in the environment article relating to water & sewer plan amendments
 - The provisions in the Critical Area law relating to growth allocation

Consistency

- **An action that will further, and not be contrary to, the Comprehensive Plan**
 - Policies
 - Timing of the implementation of the plan
 - Timing of development
 - Timing of rezoning
 - Development patterns
 - Land uses
 - Densities or intensities

Consistency

- To allow for mixed uses and bonus densities in PFAs, must be specifically consistent with
 - Policies
 - Timing of the implementation of the plan
 - Timing of development
 - Timing of rezoning
 - Development patterns



Planning Commission, Planning Board and Board of Appeals Education Course

Review Questions



Maryland Department of Planning

Which of the following is NOT a land conservation tool?

- A.) Mandatory clustering and protective zoning
- B.) Right to farm laws
- C.) Restrictive zoning
- D.) Installment purchase agreements

Which of the following is NOT a land conservation tool?

A.) Mandatory clustering and protective zoning

B.) Right to farm laws

C.) Restrictive zoning

D.) Installment purchase agreements

According to state law, the county water and sewer plan should be kept current :

A.) Every Year

B.) Every 3 years

C.) Every 6 years, like the Comprehensive Plan

D.) Whenever the county sees the need

According to state law, the county water and sewer plan should be kept current :

A.) Every Year

B.) Every 3 years

C.) Every 6 years, like the Comprehensive Plan

D.) Whenever the county sees the need

Funding for capital improvements can include which of the following:

A.) General funds

B.) General obligation funds

C.) Block grant (CDBG) funds

D.) All of the Above

Funding for capital improvements can include which of the following:

A.) General funds

B.) General obligation funds

C.) Block grant (CDBG) funds

D.) All of the Above

Unless amended or extended by the local approving body, how long do development rights and responsibilities agreements last?

- A.) They only last two years
- B.) Five years
- C.) Ten to twenty years
- D.) Forever

Unless amended or extended by the local approving body, how long do development rights and responsibilities agreements last?

A.) They only last two years

B.) Five years

C.) Ten to twenty years

D.) Forever

Which of the following is true about newly annexed areas?

- A.) Must be contiguous to the existing municipal boundary
- B.) Can't be within another incorporated municipality
- C.) Can't create unincorporated enclaves
- D.) All of the Above

Which of the following is true about newly annexed areas?

- A.) Must be contiguous to the existing municipal boundary
- B.) Can't be within another incorporated municipality
- C.) Can't create unincorporated enclaves
- D.) All of the Above**

Consistency refers to:

- A.) Required actions to implement local zoning
- B.) Reporting requirements for Comp Plan reviews
- C.) Actions that will further, and not be contrary to policies of the Comp Plan
- D.) Local support for a project

Consistency refers to:

- A.) Required actions to implement local zoning
- B.) Reporting requirements for Comp Plan reviews
- C.) Actions that will further, and not be contrary to policies of the Comp Plan**
- D.) Local support for a project

Planning Commission, Planning Board and Board of Appeals Education Course

Questions?



Maryland Department of Planning

Planning Commission, Planning Board and Board of Appeals Education Course

Law



Maryland Department of Planning

Legal Authority and Law

- Sources of land use law in the U.S.
 - US and Maryland Constitutions
 - State law





Reserved Powers

- **Police Power**
 - Governmental authority to regulate in order to protect public health, safety, and welfare
 - Police power belongs to the State of Maryland
 - General Assembly delegates police power to local governments
 - Basis for zoning and other land use regulations

Constitutional Protections

- 5th Amendment to the U.S. Constitution: “. . . nor shall any person be deprived of . . . property without due process of law; nor shall private property be taken without just compensation.”
 - Incorporates “due process” and “takings”

Substantive Due Process

- Government action must pass a three-fold test:
 - Be for a valid police power purpose
 - Have a rational connection between the goals of government action and the means used to achieve those goals
 - Not be confiscatory (ie. Not a “takings”)

Procedural Due Process

- Citizens have the right to:
 - Notice of pending government action
 - Public hearing
 - Cross examination
 - Creation of a record
 - A written determination
 - Appeal
- Type required varies with nature of the government action

Equal Protection

- **14th Amendment:**
 - “. . . nor shall any State deprive any person of property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”



Equal Protection

- **Requires**
 - Distinctions or classifications made in law or regulations between groups or individuals must give similar treatment to persons in similar situations
- **Differing classifications**
 - Permitted if they are rational, non-arbitrary, and reasonable in relation to the goals of the law or regulation

Equal Protection

- **Classifications are subject to strict scrutiny by the court and are unlikely to be upheld if based on:**
 - **Suspect classes (race, national origin, ancestry) or**
 - **Fundamental rights (First Amendment rights, right to vote, right to interstate travel, etc)**
- **Constitutional to place land into different zoning categories within jurisdictions**

Maryland Statutes

- Delegation of planning and zoning authority to local jurisdictions:
 - MD Code, Article 25A (charter counties)
 - MD Code, Article 66B (all jurisdictions for some sections, non-charter counties and municipalities)
 - MD Code, Article 28 (Prince George's and Montgomery counties)
 - Other planning-related state legislation

Maryland Statutes

- **Article 66B**
 - Enables jurisdictions not covered by Article 25A and Article 28 to implement planning, zoning and subdivision
 - Covers charter counties in specific areas such as required and optional elements for comprehensive plans
 - A section lists all of the sections in that Article that apply to charter counties

Court Rulings

- Is zoning a Constitutional use of police power?
 - *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926)
 - Zoning is a valid use of the police power and does not constitute a taking when it is not done in an arbitrary and capricious manner.



Court Rulings

- When is a regulation under the police power so onerous that a “regulatory taking” has occurred?
 - Supreme Court has said that a regulation that “goes too far” will be a taking -- *Pennsylvania Coal v. Mahon*, (1922)
 - taking occurs when a regulation removes all “economic value”, but that can be constitutional if allowed by the state’s common law of nuisance -- *Lucas v. SC Coastal Commission*, (1992)

Court Rulings

- Takings
 - *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, (2002)
 - Court ruled that a moratorium on development imposed in order to give a local government time to prepare a comprehensive plan is not a taking, per se.

Zoning

- **Basics**
 - A zoning ordinance consists of text and maps
 - Traditionally, ordinances relied on “Euclidean zones” -- strict separation of uses
 - Modern ordinances often allow some mixing of uses
 - The ordinance also regulates density, building height, and bulk of building on the land
 - Uses in a zone are “by right” or conditional (by special exception)

Zoning

- **Comprehensive Rezoning**
 - Legislative act
 - Generally occurs after a comprehensive plan update to implement the plan
- **Individual or “piecemeal” rezoning**
 - Quasi-judicial or quasi-legislative act
 - Can occur anytime



Zoning

- **Change or Mistake Rule**
 - Piecemeal or individual rezoning (in Euclidean or traditional zones) is governed by a “change-mistake” rule in Maryland
 - Zoning done on a piecemeal or individual basis can only be changed when there is:
 - a mistake in the zone; or
 - a change in the character of a neighborhood (but not a change that was envisioned in the comprehensive plan)



Zoning

- **Special Exceptions**
 - Granting of a specific use that would not be appropriate generally within a given zone
 - Certain conditions and criteria must be met by the applicant such as being compatible with the neighborhood
 - Conditions may be attached to the granting of a special exception

Law

- **Special Exception**
 - In non-charter counties and municipalities, must be consistent with the local comprehensive plan
 - In charter counties, generally defined in the charter or ordinance and the ordinance may or may not require consistency with the local comprehensive plan
 - Case law has interpreted the standards for granting a special exception

Law

- **Variations**
 - In non-charter counties and municipalities, variations are modifications of density, bulk or area requirements
 - These can be requested due to “conditions peculiar to the property” and may not be contrary to the public interest



Law

- **Variations**
 - The “peculiar conditions” cannot be the result of any actions taken by the applicant
 - They are granted in cases in which literal enforcement would result in either “unnecessary hardship or practical difficulty”
 - Variations in charter counties are generally defined in the charter or ordinance
 - Case law has interpreted the standards for granting variations



Law

- **Hearing Procedures**
 - Procedural aspects of hearings and decision-making are critical
 - Procedural due process requirements must be met
 - Administrative agencies are not bound by the rules applicable to judicial proceedings, but decisions must be based on “substantial evidence” presented at hearing

Law

- Appeals
 - Appeals are allowed from adverse final decisions
 - Non-charter counties/municipalities appeals procedure established in Article 66B
 - Charter counties appeals procedure in charter or ordinance

Law

- **Vesting**
 - A property owner is permitted to move forward with a development proposal even though a change in the applicable law would currently prevent such development if the development proposal is vested

Law

- To vest, a property owner must have:
 - Followed existing procedures and laws or representations of government (generally this means spending money to progress through the development process); and
 - Made changes on the property that can be discerned as a manifestation of the commencement of work that would give notice to the public

Planning Commission, Planning Board and Board of Appeals Education Course

Ethics



Maryland Department of Planning

Ethics

- Citizens have the right to expect fair dealings by officials holding positions of public trust
 - Not just an issue of impropriety, but also the *appearance* of impropriety
 - If you would be embarrassed to find your activity discussed in the press, don't do it
- Also, it's the law



Local Ethics Laws

- **§15-803 - Each county & municipal corporation must enact provisions to govern the public ethics of local officials relating to:**
 - Conflicts of interest
 - Financial disclosure
 - Lobbying





Local Ethics Laws

- **Local Law shall be similar to State Law**
 - Local ethics commission has responsibility to advise & make determinations under local provisions



Conflicts of Interest

- Officials/employees may not:
 - Participate in any matter that may have a direct financial impact on the official/employee, immediate family, or affiliated business entity
 - Hold any outside employment relationship that would impair impartiality or independence of judgment
 - Use the prestige of office for their own benefit *or* that of another



Conflicts of Interest

- **Officials/employees may not:**
 - Use confidential information acquired in official capacity for own benefit *or* that of another
- **Unless disclosed & exempted by the Commission:**
 - Represent any party for a contingent fee before any local body



Conflicts of Interest

- **Unless disclosed & exempted by the Commission:**
 - Hold or acquire an interest in a business entity that has, or is negotiating a contract with, the jurisdiction, or is regulated by their agency
 - Be employed by a business entity that has, or is negotiating a contract with, the jurisdiction
 - Represent any party for a contingent fee before any local body



Conflicts of Interest

- **Unless disclosed & exempted by the Commission:**
 - Solicit *any* gift or accept a gift greater than \$__ , from any person with (or negotiating) a contract with the jurisdiction, or who is regulated by their agency
 - Act as the paid representative of another in connection with any specific matter in which there was substantial participation as a local official, within 1 year of end of official service



“Ex Parte” Communications

- **Board of Appeals**
 - Hearings where testimony & evidence are presented and a record is created
 - While a matter is pending, members should NOT communicate, directly *or* indirectly with a party to the matter, or a party’s representative or attorney outside of the hearing
 - If communication does take place, it should be disclosed to all parties & the substance placed in the record



Recusal

- **When is it appropriate/necessary to recuse yourself?**
 - Example: You are a planning commissioner & your wife has a development project that is coming to the commission for site plan approval
 - You may not participate in any part of the site plan review/approval – you must **RECUSE** yourself from this agenda item
 - Merely disclosing that your spouse is the developer is not enough



Planning Commission, Planning Board and Board of Appeals Education Course

Review Questions



Maryland Department of Planning

In order to be eligible for vesting:

- A.) Construction must be complete
- B.) Changes on the property must be visibly discernable, thereby giving notice
- C.) A public notice must be printed in a local newspaper
- D.) The court must issue an order

In order to be eligible for vesting:

A.) Construction must be complete

B.) Changes on the property must be visibly discernable, thereby giving notice

C.) A public notice must be printed in a local newspaper

D.) The court must issue an order

Police power is:

- A.) Authority to regulate to protect public health, safety and welfare
- B.) The basis for zoning and other land use regulations
- C.) Delegated to Municipalities and Counties
- D.) All of the above

Police power is:

- A.) Authority to regulate to protect public health, safety and welfare
- B.) The basis for zoning and other land use regulations
- C.) Delegated to Municipalities and Counties
- D.) All of the above**

A regulatory taking occurs when:

- A.) A denial results in a variance
- B.) A regulation removes all economic value in a property
- C.) A use cannot be permitted under the current rules
- D.) When it is determined that a variance is needed

A regulatory taking occurs when:

A.) A denial results in a variance

B.) A regulation removes all economic value in a property

C.) A use cannot be permitted under the current rules

D.) When it is determined that a variance is needed

Municipalities and Counties must enact public officials ethics rules for the following:

- A.) Lobbying
- B.) Financial Disclosure
- C.) Conflicts of Interest
- D.) All of the Above

Municipalities and Counties must enact public officials ethics rules for the following:

A.) Lobbying

B.) Financial Disclosure

C.) Conflicts of Interest

D.) All of the Above

Ex Parte Communications should be:

- A.) Encouraged to gain additional information for decision-making
- B.) Disclosed to all parties and described in the record
- C.) Published in the newspaper
- D.) Kept secret from the public as part of executive privileges

Ex Parte Communications should be:

A.) Encouraged to gain additional information for decision-making

B.) Disclosed to all parties and described in the record

C.) Published in the newspaper

D.) Kept secret from the public as part of executive privileges

**Planning Commission, Planning
Board and Board of Appeals
Education Course**

Open Meetings Act



Maryland Department of Planning

“Public Body”

- **Public Bodies**
 - Most public bodies with formal legal creation
 - State law: Constitution, statute, rule, executive order
 - Local law: charter, ordinance, rule, executive order
 - Public body action: rule, resolution, bylaw
- **Planning Boards/Commissions and Boards of Appeals are public bodies subject to Act**



“Meeting”

- Meeting Must Involve:
 - Convening of a quorum
 - Consideration or transaction of public business
- Meetings Defined:
 - Conference calls, IM, Site visits, Retreats, Joint meetings, Majority presence at someone else’s meeting
 - Social or political gatherings are not covered

Topic of Discussion

- **Act applies when a public body is:**
 - Legislating or rulemaking
 - Otherwise making new policy, in any form
 - Approving, disapproving, or amending a contract
 - Approving, disapproving, or amending a budget
 - Considering whether to grant a license
 - Considering any zoning matter





Excluded from the Act

- **Does not usually apply when:**
 - **Conducting a proceeding subject to judicial review (quasi-judicial function)**
- **Licensing and zoning are always covered**



Notice of Meetings

- **Notice Should:**
 - Be made reasonably in advance
 - Include time, place, open/closed status
 - Be posted where people will reasonably look
 - Retained for at least a year
- **Other Information**
 - Agenda optional -- changes in announced agenda okay



Conducting Meetings

- **Accessible location**
 - Reasonable size, convenient for attendees
 - Open to people with disabilities (ADA compliance)
- **Public observation is required**
 - Public comment period not required
 - Cameras/tape recorders may not be barred



Holding Closed Session

- **Identifying a specific exception**
 - Exceptions to be construed narrowly
 - Stay within cited exception
 - When discussion within exception ends, go back to open session
- **Procedural requirements**
 - Public vote – must record
 - Closing a meeting requires a written statement with reason, legal citation, topics

Minutes

- **Open meeting minutes**
 - Duty of timely preparation
 - Content: item, action, votes
 - To be made available on request
 - Tape recording does not replace minutes
- **Closed session minutes**
 - Publicly available summary to be extracted
 - Sealed





Planning Commission, Planning Board and Board of Appeals Education Course

Review Questions



Maryland Department of Planning

The Open Meetings Act applies when a public body is considering:

- A.) Legislating or rulemaking
- B.) Otherwise making new policy, in any form
- C.) Approving, disapproving, or amending a budget
- D.) All of the above

The Open Meetings Act applies when a public body is considering:

- A.) Legislating or rulemaking
- B.) Otherwise making new policy, in any form
- C.) Approving, disapproving, or amending a budget
- D.) All of the above**

Open Meeting Minutes must be:

- A.) Published in the local newspaper
- B.) Made available upon request
- C.) Produced within a year of the close of the meeting
- D.) Available on the internet

Open Meeting Minutes must be:

A.) Published in the local newspaper

B.) Made available upon request

C.) Produced within a year of the close of the meeting

D.) Available on the internet



Planning Commission, Planning Board and Board of Appeals Education Course

Planning Commission Roles and Responsibilities



Maryland Department of Planning



Roles and Responsibilities

- **Role of the Planning Commission**
 - Determined by the local jurisdiction
 - Formal and informal roles
- **Responsibilities of the Planning Commission**
 - Craft the Comprehensive Plan
 - Recommend ordinances and regulations
 - Create and apply implementation tools
 - Implement 12 Visions



Developing the Comp Plan

- **Developing the Comp Plan**
 - Charged with helping the community achieve its potential and implement the vision
 - Present the plan for consideration by the legislative body
 - Soliciting public input throughout process
 - Coordinate 60 Day Review before public hearing
- **Responsible for 6 year review**



Advisory Role

- **In Non-Charter Counties and Municipalities**
 - Recommend zoning ordinances to legislative body
 - Recommend subdivision and development regulations
 - Recommend capital expenditures needed to implement Comp Plan
 - Recommend any other implementation tool that would be beneficial



Approval Role

- **In Non-Charter Counties and Municipalities**
 - Approval authority over the use of land for public uses
 - Approval authority for subdivisions and site plans
 - Can delegate this authority if rules are adopted within the municipality
- **In Charter Counties**
 - Approval/ Advisory roles determined by charter or ordinances

Meetings and Public Input

- **Meetings of the Planning Commission**
 - Work Sessions
 - Public Hearings
 - Ensure adequate opportunity for public comment
- **Rules of procedures not required for Planning Commissions, but helpful!**





Project Phases

Planned Buildings

Existing Structures

Project Boundaries

Relationship to Adjacent Properties

Major Roadways

North Arrow





Property Line

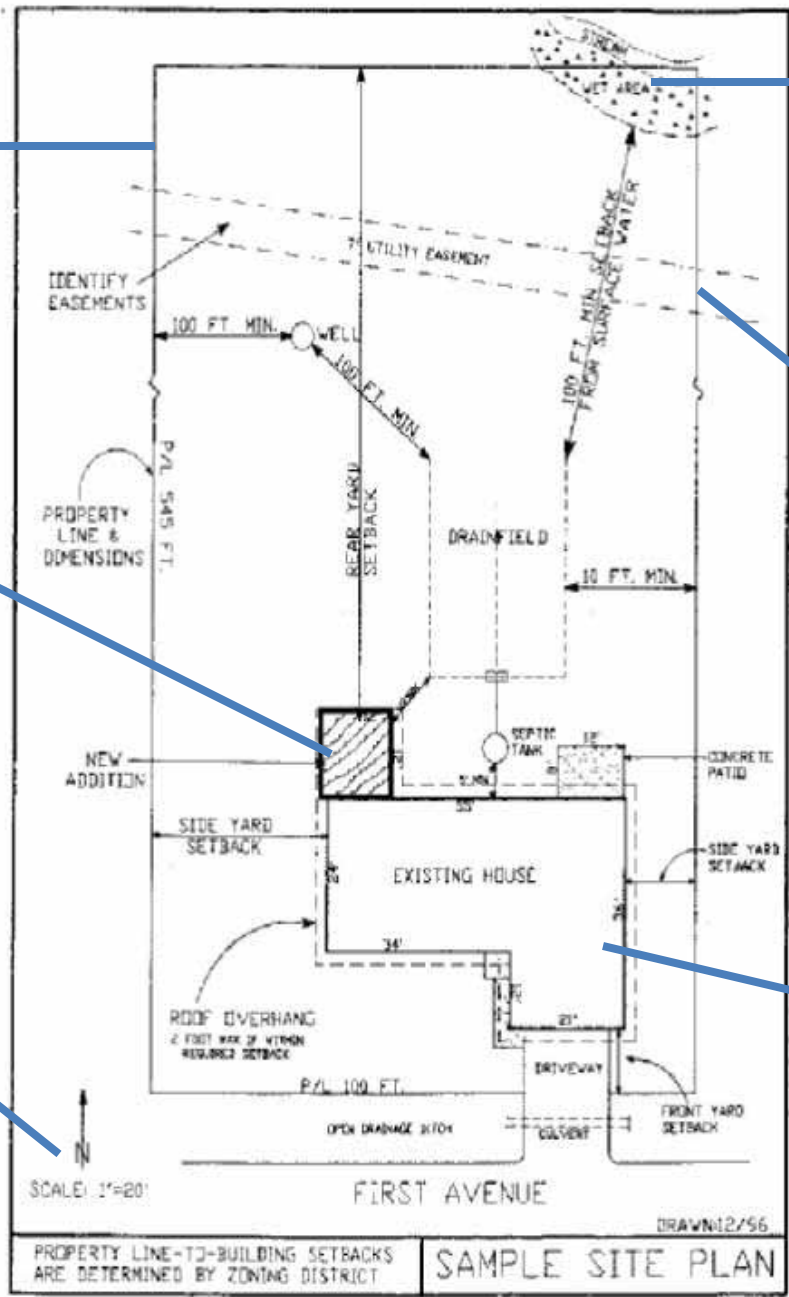
Sensitive Areas

New Additions

Easements

North Arrow and Scale

Existing Structures



PROPERTY LINE-TO-BUILDING SETBACKS ARE DETERMINED BY ZONING DISTRICT

SAMPLE SITE PLAN

DRAWN: 12/56

Planning Commission, Planning Board and Board of Appeals Education Course

Board of Appeals Roles and Responsibilities



Maryland Department of Planning



Roles and Responsibilities

- **General Role of the Board of Appeals**
 - The Board provides relief from the specifics of ordinances, where appropriate
- **General Responsibilities of the Board**
 - Hear and decide on appeals of decisions made about the enforcement of land use ordinances
 - Hear and decide on special exceptions
 - Authorize variances

Authority

- **Non-Charter Counties and Municipalities**
 - Required for non-charter counties and municipalities under Article 66B
- **Charter Counties**
 - Authorized for charter counties under Article 25A
 - Charter counties are not required to have a board of appeals, however all have established them

Membership

- **66B Boards**
 - Consists of at least three members
 - The terms of office are 3 years
 - Appointed by the local executive and confirmed by the local legislative body
- **25A Boards**
 - Number of members of a Board of Appeals is not specified
 - In some cases, the members are appointed by the local legislative body



66B Board Jurisdiction

- Hear and decide appeals where an **error in any order, requirement, decision, or determination made by an administrative officer in the enforcement of this article or any relevant adopted ordinance is alleged**
- Hear and decide **special exceptions** to the terms of an ordinance on which the board is required to pass under the ordinance
- Authorize on appeal in specific cases a **variance** from the terms of an ordinance.



25A Board Jurisdiction

- An application for a zoning **variation or exception** or **amendment of a zoning ordinance map**
- The issuance, renewal, denial, revocation, suspension, annulment, or modification of any **license, permit, approval, exemption, waiver, certificate, registration, or other form of permission** or of any adjudicatory order
- The assessment of any special benefit tax

Rules of Procedure

- **Acts in a “quasi-judicial” capacity**
 - Hear cases that may be appealed to the circuit court in the jurisdiction in which the board is located
 - Rules of procedure are different than those of a planning board or commission
 - Rules that spell out the procedure must be followed when hearing a case
 - All testimony must be under oath

Rules of Procedure

- **All proceedings of the Board are recorded**
 - Make a transcript of all proceedings, showing the vote of each member on each question or absence or failure to vote
 - Case in Circuit Court will not be heard new (de novo) but will be argued from the record created by the Board





Rules of Procedure

- Hearings are subject to the Maryland Open Meetings Act
- Only witnesses in the case can testify at a hearing
- Can conduct a closed session of the body for specified reasons
- Must deliberate and vote in the open on a case that has been heard in open session, generally directly after a case has been heard

Variations

- **Boards of Appeal hear requests for variance**
 - Planning commissions may make a recommendation regarding the variance to the Board
 - Some Article 25A Boards hear variances after decided administratively and appealed to the Board of Appeals
- **Boards make the final decision on variances**

Variations

- **Conditions of granting a variance**
 - Cases in which the applicant faces a hardship due to features or circumstances that are unique and not generally shared by other property owners in the same zoning district
 - Not self-imposed or self-created by the applicant
 - Variance must not confer special privileges that would be denied to other property owners in the same zoning district

Special Exceptions

- **Not Special/ Not an Exception**
 - Specifically allowed in the code, but only permitted under certain conditions



Special Exceptions

- **Article 66B Boards**
 - Must be “consistent” with the comprehensive plan
- **Article 25A Boards**
 - Consistency not required by law but may be through charter or local ordinance
 - Often decided by a hearing officer/zoning commissioner and appealed to the Board

Deliberation

- Cases can last for several days and are often scheduled over a period of weeks or months
 - Some Boards will schedule a later time to deliberate on a case
 - Board must give notice of that deliberation time and date
 - Deliberation and vote must be in open session

Deliberation

- **Prepare a written opinion of the board**
 - Outlines the decision in the case and reasons behind the decision
- **Present factual basis for the decision**
 - Application of the facts to the proper standard
 - Circuit court can properly evaluate the case if appealed



Deliberation

- **Don't Forget**
 - Quasi-judicial proceeding
 - Members should not discuss the case with anyone outside of the Board proceeding
- **“Ex-parte” communication could result in the case being overturned by a circuit court**



Planning Commission, Planning Board and Board of Appeals Education Course

Review Questions



Maryland Department of Planning

Subdivision regulations govern which of the following?

- A.) The allowable use of land
- B.) The division of a parcel of land
- C.) Protection of sensitive areas such as wetlands
- D.) The design of new construction

Subdivision regulations govern which of the following?

A.) The allowable use of land

B.) The division of a parcel of land

C.) Protection of sensitive areas such as wetlands

D.) The design of new construction

A Planning Commission does which of the following?

- A.) Adopts zoning ordinances
- B.) Approves building permits
- C.) Secures capital financing for infrastructure
- D.) Oversees development of the Comp Plan

A Planning Commission does which of the following?

A.) Adopts zoning ordinances

B.) Approves building permits

C.) Secures capital financing for infrastructure

D.) Oversees development of the Comp Plan

Planning Commission Meetings must be open to the public because:

- A.) Public input is necessary in the process
- B.) Transparency in decision-making is necessary
- C.) The Open Meetings Act requires it
- D.) All of the Above

Planning Commission Meetings must be open to the public because:

- A.) Public input is necessary in the process
- B.) Transparency in decision-making is necessary
- C.) The Open Meetings Act requires it
- D.) All of the Above**

Because it is a quasi-judicial hearing, all proceedings of the BOA:

A.) Are recorded

B.) Must have a transcript of the proceedings

C.) Record the vote or failure to vote of each member

D.) All of the above

Because it is a quasi-judicial hearing, all proceedings of the BOA:

A.) Are recorded

B.) Must have a transcript of the proceedings

C.) Record the vote or failure to vote of each member

D.) All of the above

**The number of Board of Appeals
Members is specified for:**

- A.) Article 66B Boards
- B.) Article 25A Boards
- C.) Article 43F Boards
- D.) Both A & B

The number of Board of Appeals Members is specified for:

A.) Article 66B Boards

B.) Article 25A Boards

C.) Article 43F Boards

D.) Both A & B

When testimony is given by a witness before a Board of Appeals:

- A.) They must bring photos or evidence
- B.) The witness must testify under oath
- C.) Must have standing in the case being heard
- D.) The witness cannot be related to anyone on the Board

When testimony is given by a witness before a Board of Appeals:

- A.) They must bring photos or evidence
- B.) The witness must testify under oath**
- C.) Must have standing in the case being heard
- D.) The witness cannot be related to anyone on the Board

Planning Commission, Planning Board and Board of Appeals Education Course

Questions?



Maryland Department of Planning

Planning Commission, Planning Board and Board of Appeals Education Course

In Closing



Maryland Department of Planning

CERTIFICATE of COMPLIANCE

The Maryland Department of Planning

•certifies that

•**Jane Doe**

•has successfully completed the

Planning Commission /Board Education Course

on November 3, 2010



MDP

Maryland Department of Planning

Steven Allan, AICP

Education Coordinator

A handwritten signature in blue ink that reads "Richard E. Hall".

Richard Eberhart Hall, AICP

Secretary, Maryland Department of Planning

Questions?



Maryland Department of Planning

www.planning.maryland.gov