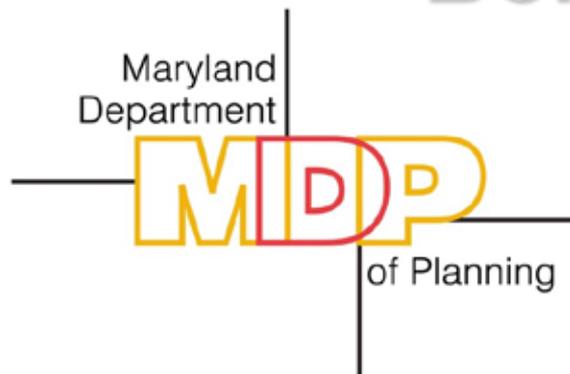


Planning Commission, Planning Board and Board of Appeals Education Course

Introduction Bob Elliott



Welcome

Thanks to the Maryland Department of Planning
– For helping to host this session

Thanks to the Maryland Association of Counties
– For providing this venue

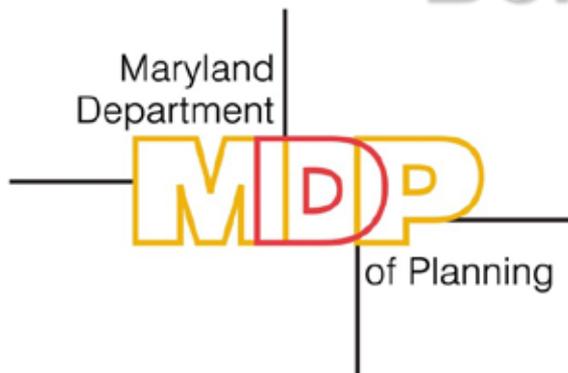
Welcome

Thanks to You!

- For volunteering to serve your communities as Planning Commissioners, Planning Board members, and Board of Appeals members

Planning Commission, Planning Board and Board of Appeals Education Course

Planning 101 Bob Elliott



What is Planning?

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



What Do Planners Do?

- Establish
- Document
- Explain
- Implement

Your Community's Vision for the Future

Planners Serves Many Masters

Federal – EPA, DNR, USDA

State – MDP, MDE, MDA

Local – Ordinances and codes

Constant Challenge to Blend and Meet all of these
Requirements

WHAT CAN WE IMPACT?

- Federal Laws – NOT MUCH
- State Laws – SOME, BUT NOT MUCH
- Local – A BUNCH

BUT....

Maryland Has Made This Easier for Us

MARYLAND LAWS

- Past Laws -
 - Article 25 A – Charter Counties.
 - Article 66 B – Non Charter Counties and Municipalities
 - Article 28 – Md National Capitol Parks and Planning
- Now –
 - Maryland Land Use Law
 - Division 1 – All Counties and Municipalities
 - Division 2 – MNCPP and Prince George’s and Montgomery Counties

WHY DO WE PLAN?



Trends and Growth Patterns

- **Development Patterns**
 - More than 1.7 million acres of land developed
 - 27 percent of the 6.2 million acres of land in the State
 - 650,000 acres developed in past 30 years
- **Transportation**
 - Marylanders drove more than 56 billion vehicle miles (2010)
 - 40 percent more than 1990
 - Outpaces population growth (19%) and lane-miles (8%)

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**
 - Housing choices and affordability have become more limited

Trends and Growth Patterns

- **Jobs and Economic Development**
 - 600,000 new jobs by 2035
 - Movement of jobs outside existing communities contributes to decline of older commercial areas
- **Projected Population and Household Growth to 2035**
 - 1 million people
 - 500,000 households



HOW DO YOU FIT INTO THIS?

- You are Not Expected To Be a Professional Planner
- You are Part of a Team

THE PLANNING TEAM

- Neighbors
- Planning Commissioners
- Board of Appeals Members
- Elected Officials
- Community Staff
- Professional Planners

What is your job as a Planning Commissioner?

- Voice of your Neighbors
- An ADVISOR to
 - Your Neighbors
 - Developers
 - Elected Officials

What is your job as a Board of Appeals Member?

- To interpret and provide binding decisions based on existing law

TWO SEPARATE BUT RELATED RESPONSIBILITIES

- Advise based on EXISTING LAW / CODE
- Develop and Revise the Comprehensive Plan

Comprehensive Plan

- Guides future growth, development and preservation for a community
 - Existing conditions
 - Analysis of issues
 - Recommendations
 - Implementation Strategies
 - Periodic review and update

COMPREHENSIVE PLAN

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

COMPREHENSIVE PLAN

7. Land Use
8. Community Facilities
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

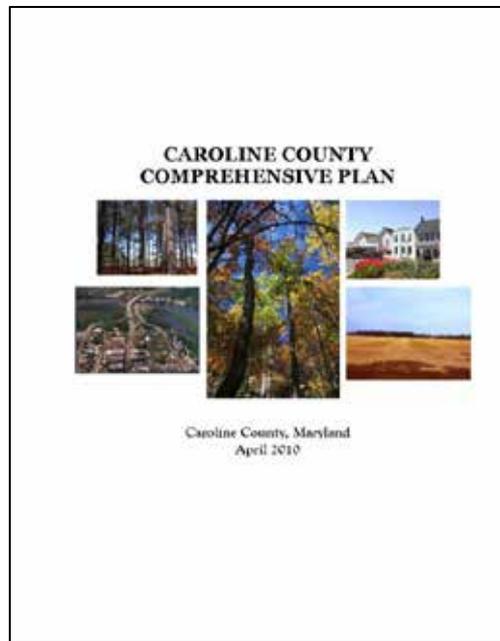
1. Community Renewal
2. Housing
3. Flood Control
4. Pollution Control
5. Conservation
6. Natural Resources
7. Priority Preservation Areas
8. General Local and Extent of Public Utilities
9. Workforce Housing

Developing a Comprehensive Plan

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

Developing a Comprehensive Plan

- Required to review every 10 years
 - Update if necessary

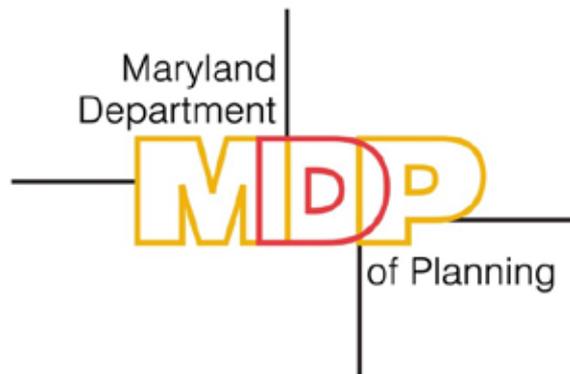


Coordination with Neighboring Jurisdictions

- Develop mutual goals and objectives
- Potential Coordination Issues
 - Municipal Growth and/or Annexation
 - Schools
 - Water Resources
 - Transportation
 - Water and Sewer Plans

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Review Questions



By 2035, Maryland's is expected to grow by:

A.) 1 million new residents

B.) 500,000 additional households

C.) 600,000 new jobs

D.) All of the Above

By 2035, Maryland's is expected to grow by:

A.) 1 million new residents

B.) 500,000 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?

- 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

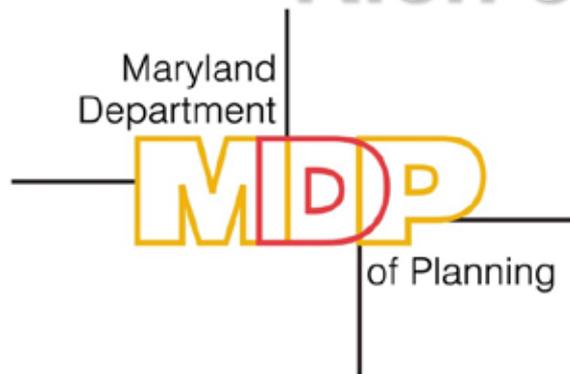
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C.) Every 10 years

D.) Every 20 years

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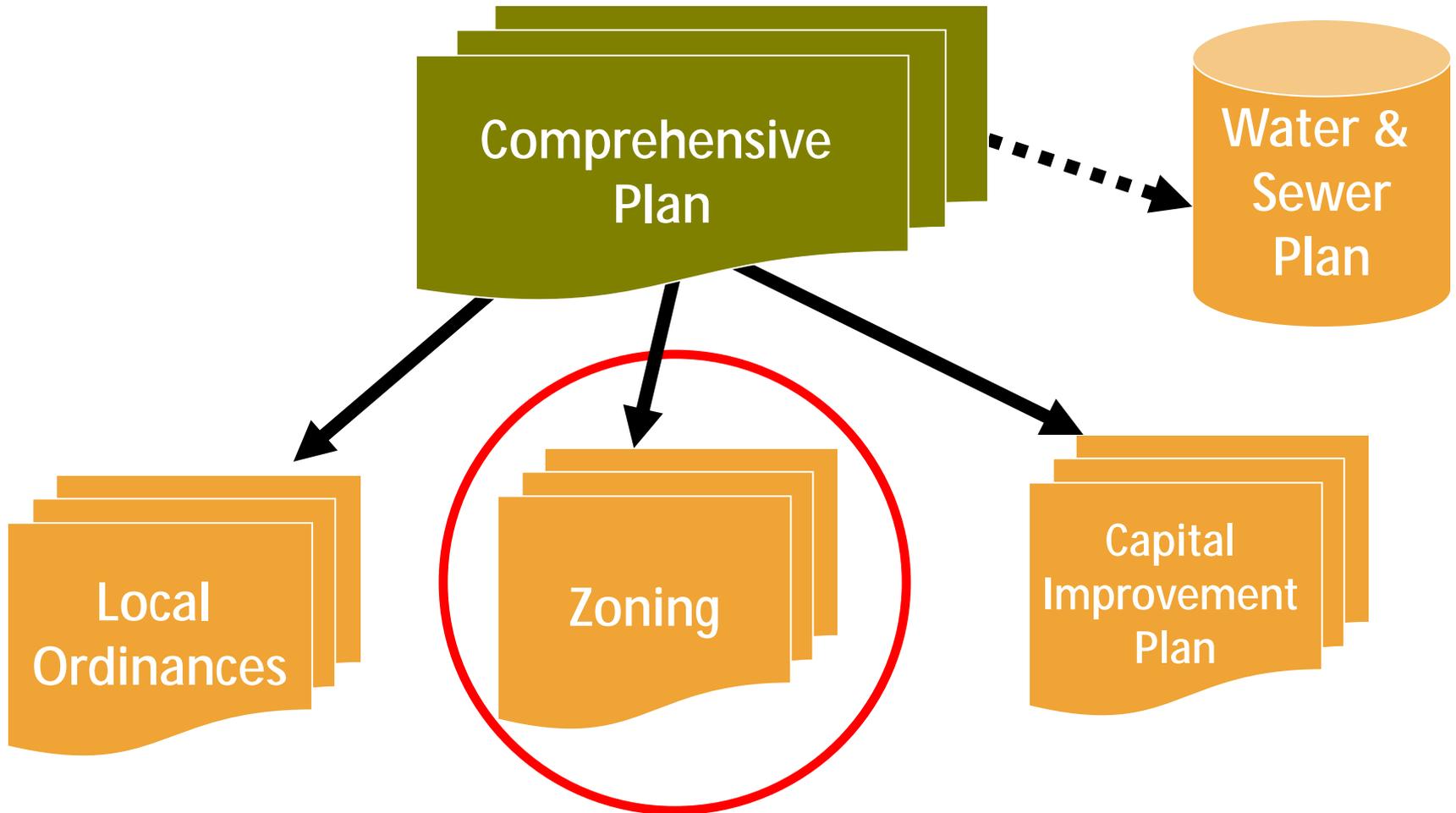
Planning 201 Rich Josephson



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



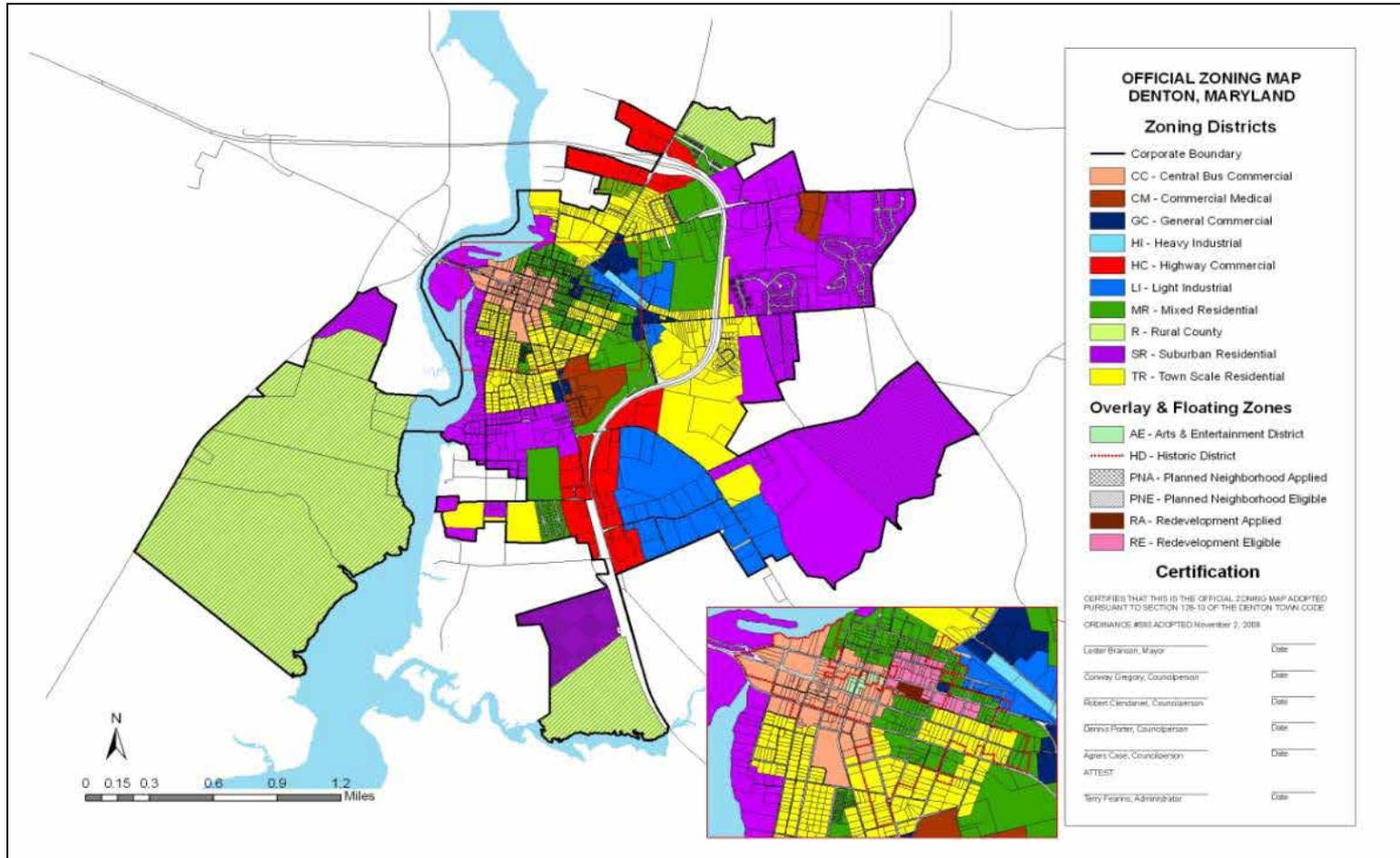
Zoning Regulations

- 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



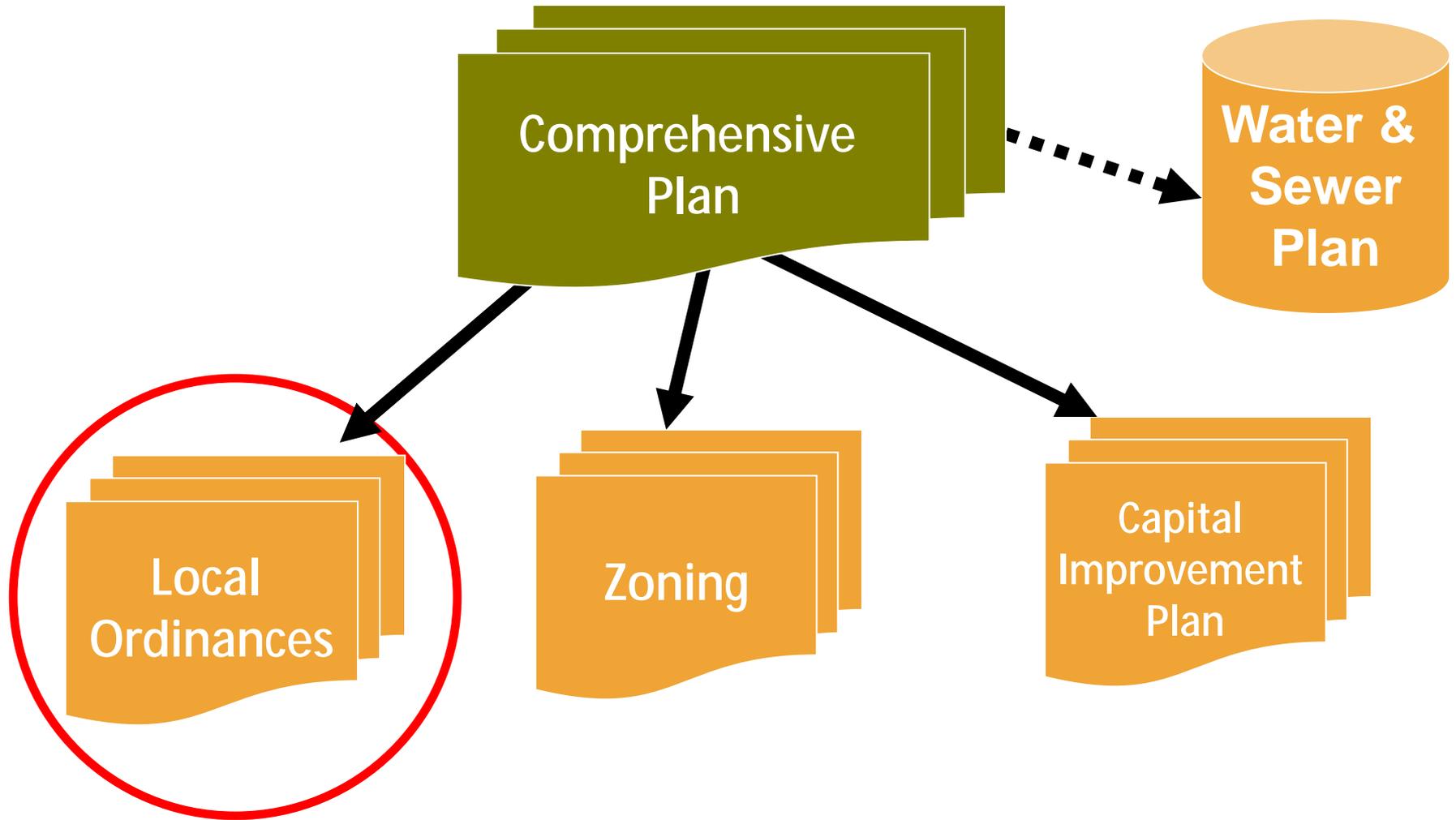
Subdivision Ordinances

- **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

APFOs

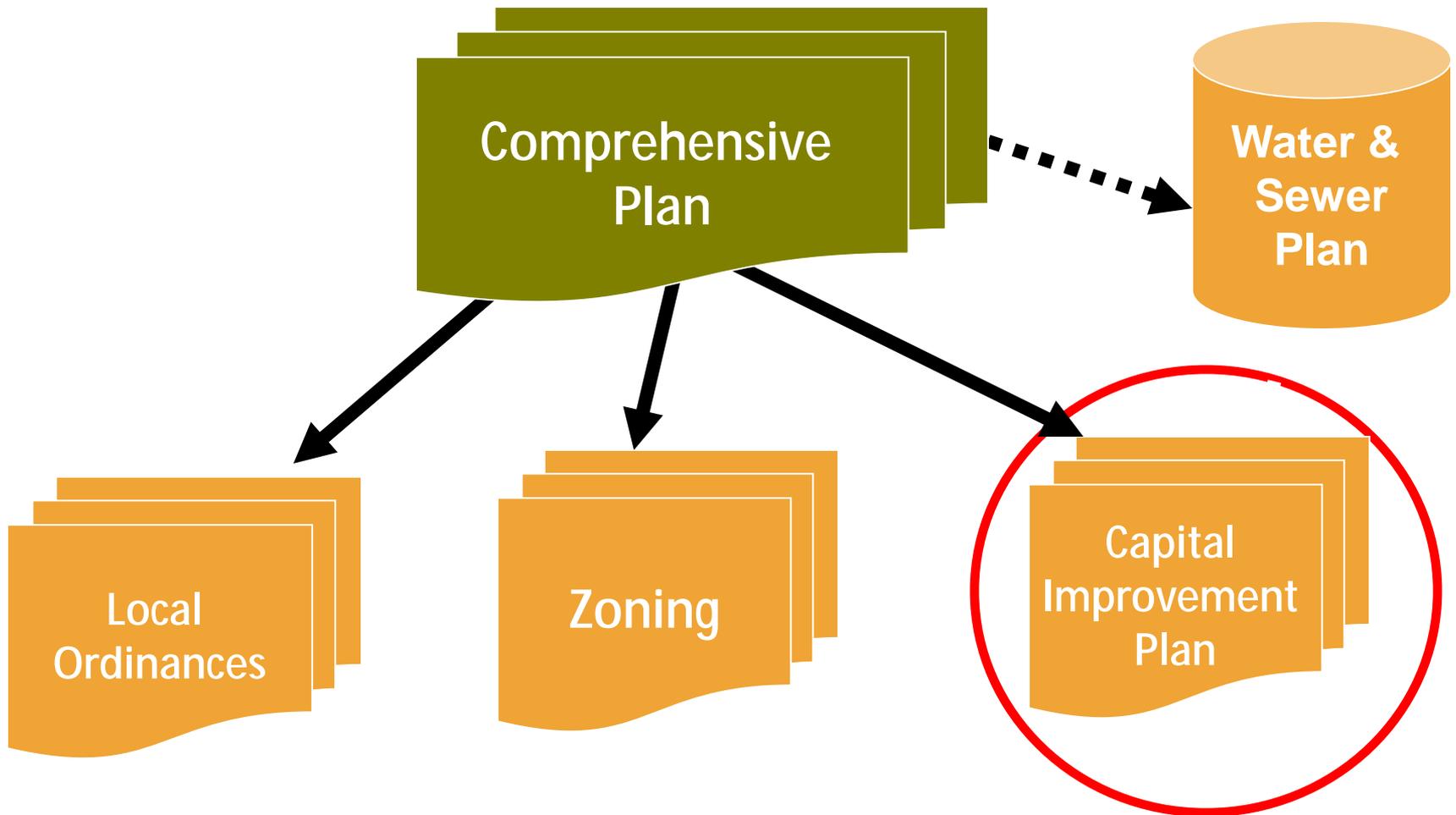
- Any jurisdiction can adopt APFOs
 - Development approval can be contingent on being able to provide service
 - Adequate facilities must be reasonably probable of fruition in the foreseeable future
 - Lack of standards can lead to invalidation of regulations



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 identify restrictions and remedies
 - Reports due July 1 every two years

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**

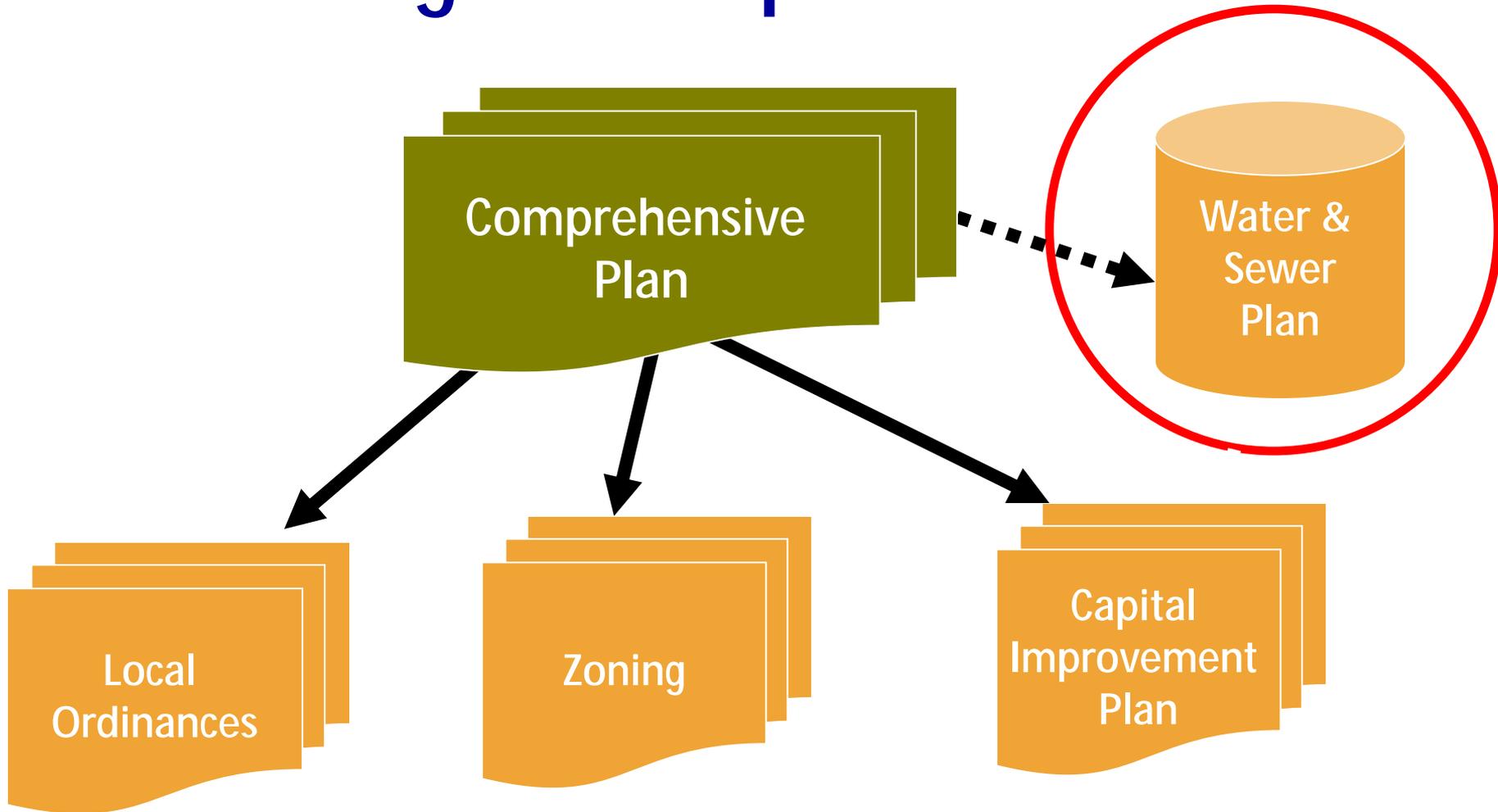
CIP

- 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 (Impact Fees, etc.)

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 (required)
 - Realistic population projections
 - Infill development
 - Sufficient land to accommodate employment and commercial centers

Sustainable Growth and Agricultural Preservation Act of 2012

- SB 236 (Septics Law)
- Growth Tiers designated by counties and municipalities
- Tiers govern new residential subdivisions
 - Tier I – existing sewer: major and minor subdivisions okay
 - Tier II – planned sewer: only minors on septic systems
 - Tier III – no sewer: majors on septic; controlling authority for shared systems
 - Tier IV – only minor subdivisions allowed

Sustainable Growth and Agricultural Preservation Act of 2012

- Tiers to be adopted by December 31, 2012
- Initial adoption allowed by administrative action
- Tiers incorporated into next update of comprehensive plan
- Changes to tiers requires amendment to comp plan
- Planning Commission has new role in tier adoption and subdivision approval (Tier III)

PlanMaryland

- New state plan for sustainable growth
- Became official State plan in December 2011
- Coordinates state agency delivery of services and resources to planning areas
- Collaboration with local governments to identify planning areas

PlanMaryland

- **Planning areas:**
 - Targeted Growth and Revitalization Areas
 - Established Communities
 - Future Growth Areas
 - Large Lot Development Areas
 - Rural Resource Areas
- **Preservation/Conservation Areas**

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
 - 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

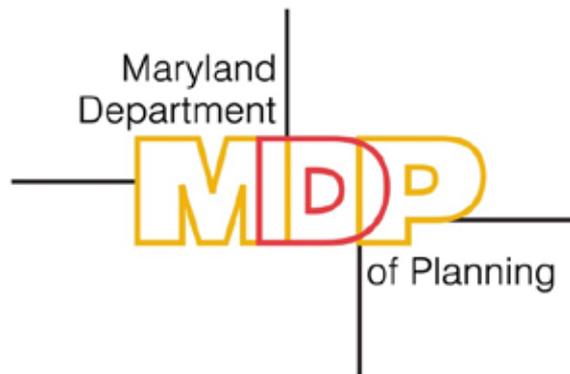
- Consistency between the local comprehensive plan and certain decisions and ordinances is required by State law
 - Consistency requirement applies to both local governments and state government

Consistency

- **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

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Review Questions



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 :

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C.) Every 6 years, like the Comprehensive Plan

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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?

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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**

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- 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

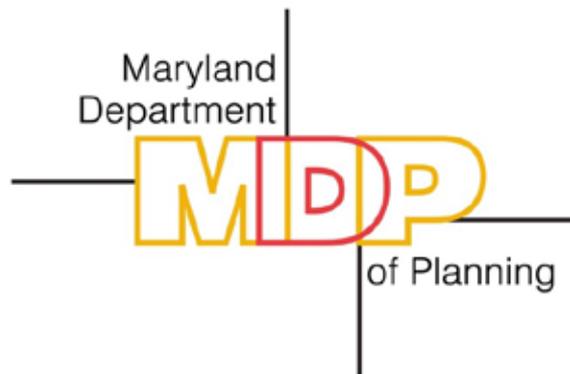
B.) Reporting requirements for Comp Plan reviews

C.) Actions that will further, and not be contrary to policies of the Comp Plan

D.) Local support for a project

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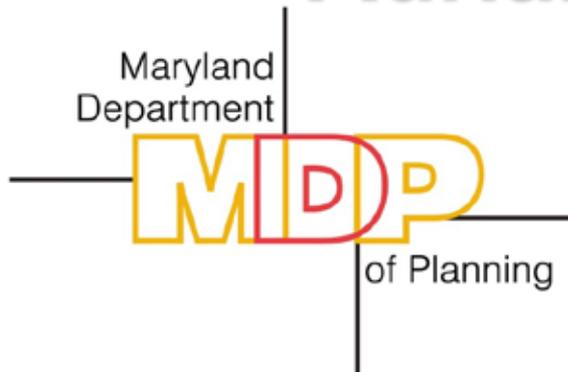
Questions?



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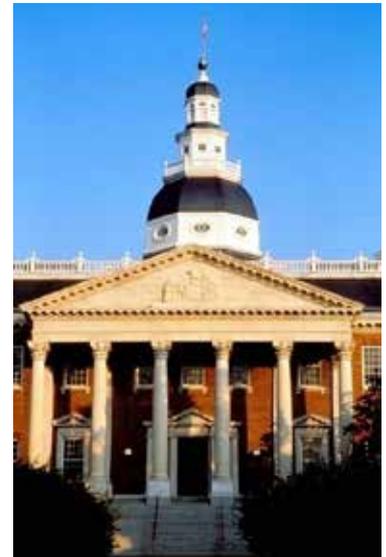
Law

Adrian Gardner



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)(soon to be Local Government Article)
 - Land Use Article (October 1, 2012)
 - Division I Replaces MD Code, Article 66B
 - Covers all jurisdictions for certain sections
 - Also covers non-charter counties and municipalities
 - Division II Replaces MD Code, Article 28
 - Prince George's and Montgomery counties
 - Other planning-related state legislation

Maryland Statutes

- Land Use Article Division I (October 1, 2012)
 - Enables jurisdictions not covered by Article 25A or Division II (formerly 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 – LU § 1-401

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.



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)

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

- **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 Land Use Art. § 4-306
 - 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

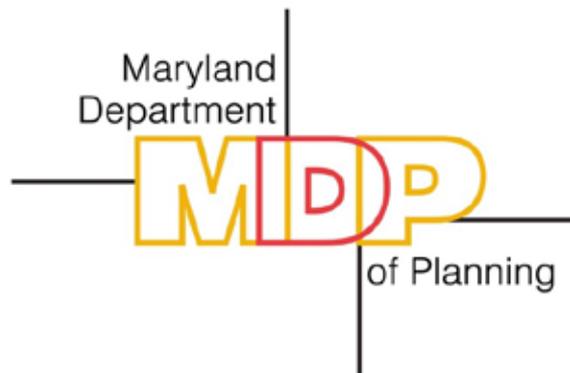
Law

- 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

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Ethics

Adrian Gardner



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 must be similar to the state ethics law for:**
 - Conflict of interest provisions;
 - Financial disclosure requirements;
 - Lobbying.

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

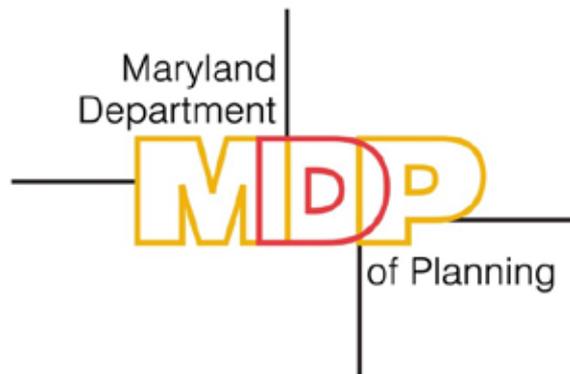
- Board of Appeals
 - Hearings where testimony & evidence are presented and a record is created
 - While a matter is pending, members should NOT communicate, directly *or* indirectly with a party to the matter, or a party’s representative or attorney outside of the hearing
 - If communication does take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

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Review Questions



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
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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:

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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

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A.) Lobbying

B.) Financial Disclosure

C.) Conflicts of Interest

D.) All of the Above

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- 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

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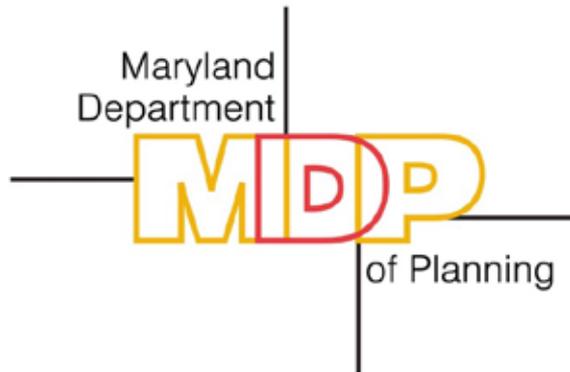
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Planning Commission, Planning Board and Board of Appeals Education Course

Planning Commission Roles and Responsibilities



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

New Roles

- **Per Sustainable Growth and Agricultural Preservation Act of 2012 (SB236)**
 - **Adoption of Growth Tiers**
 - Under SB236, some local jurisdictions might choose for their elected or appointed officials to adopt the Tiers. The decision will impact public hearing and public notice requirements

New Roles

- **Per Sustainable Growth and Agricultural Preservation Act of 2012**
 - If the Maryland Department of Planning comments on any of the Tiers adopted by a local jurisdiction the local legislative body or the planning board shall hold at least one public hearing on the comments
 - A “planning board” means a planning board established under Article 66B or a planning commission or board established under Article 25A or Article 28 of the Code (Article 66B, Section 1.05(A)).

New Roles

- **Per Sustainable Growth and Agricultural Preservation Act of 2012**
 - Public hearing to consider comments from MDP on the adopted Tiers:
 - hold at least one public hearing by the local legislative body or the planning board on comments received from MDP on the adopted Tiers
 - review the adopted Tiers in light of MDP's comments

New Roles

- Per Sustainable Growth and Agricultural Preservation Act of 2012
 - After the public hearing and consideration of MDP's comments:
 - the planning board must recommend to the local jurisdiction that either the Tiers or an area within the Tiers be changed or that the adopted Tiers remain unchanged
 - If the planning board recommends a change in the adopted Tiers, the planning board must provide the recommended mapped Tier changes to the local jurisdiction

New Roles

- **Per Sustainable Growth and Agricultural Preservation Act of 2012**
 - Amendments to adopted tiers must follow the same requirements as when tiers are initially adopted:
 - the local legislative body or planning board must hold at least one public hearing on comments received from MDP on the amended Tiers, review the adopted Tiers in light of MDP's comments, and make recommendation to maintain the maps or change them

New Roles

- **Per Sustainable Growth and Agricultural Preservation Act of 2012**
 - **Review of Major Subdivisions in Tier III Areas**
 - Major subdivisions in Tier III areas must be reviewed and recommended for approval by the local jurisdiction's planning board.
 - The planning board's review of a major subdivision in a Tier III area shall include the cost of providing local government services to the subdivision and the potential environmental issues or natural resources affected by the subdivision. The planning board shall conduct at least one public hearing.

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

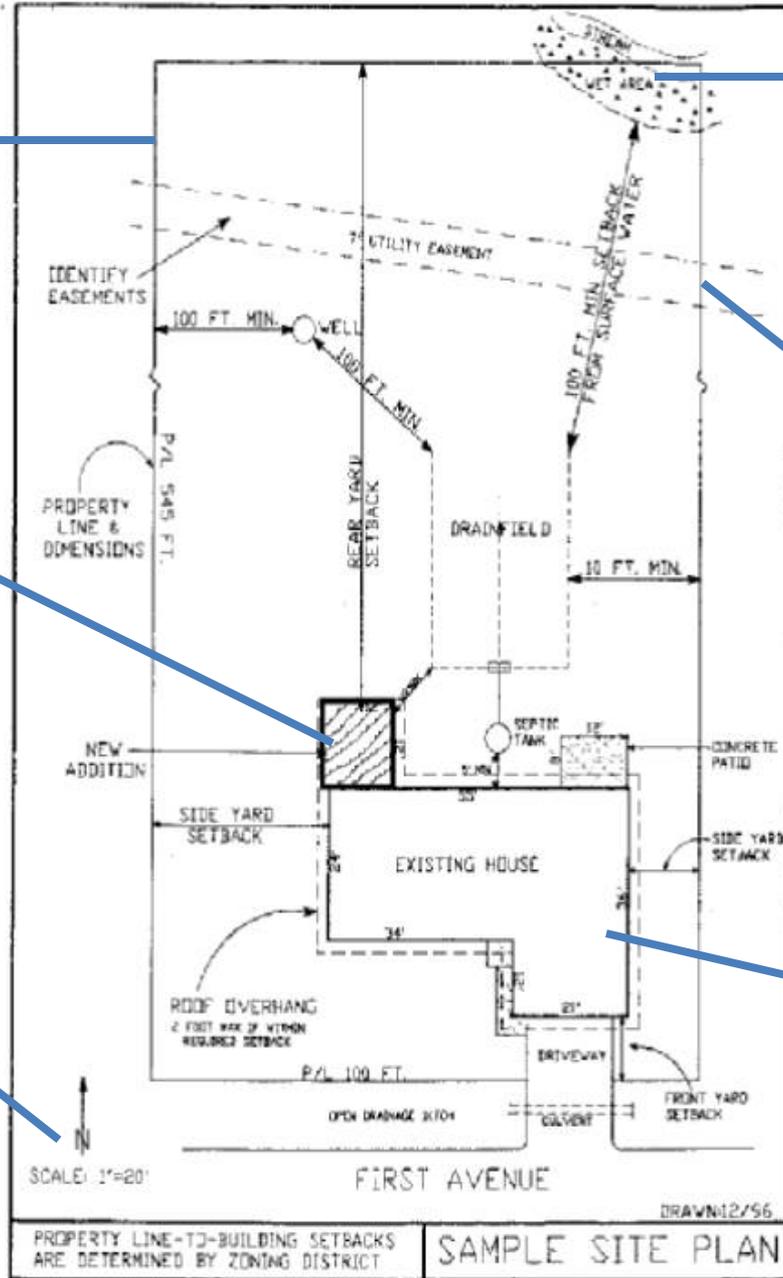
Sensitive Areas

New Additions

Easements

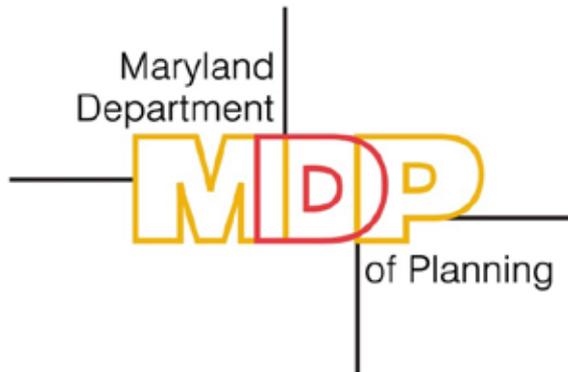
North Arrow and Scale

Existing Structures



Planning Commission, Planning Board and Board of Appeals Education Course

Board of Appeals Roles and Responsibilities John and Sandy Landbeck



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

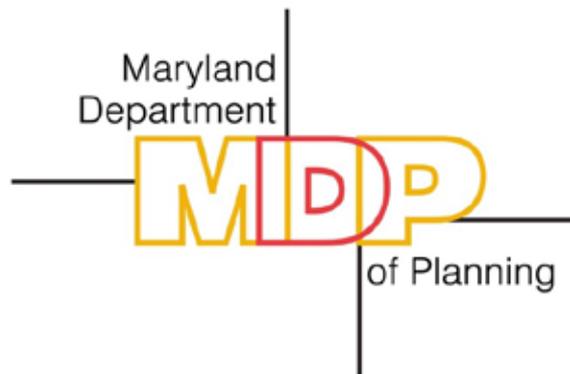
- Prepare a written opinion of the board
 - Outlines the decision in the case and reasons behind the decision
- Present factual basis for the decision
 - Application of the facts to the proper standard
 - Circuit court can properly evaluate the case if appealed

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



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

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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
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B.) Must have a transcript of the proceedings

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

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

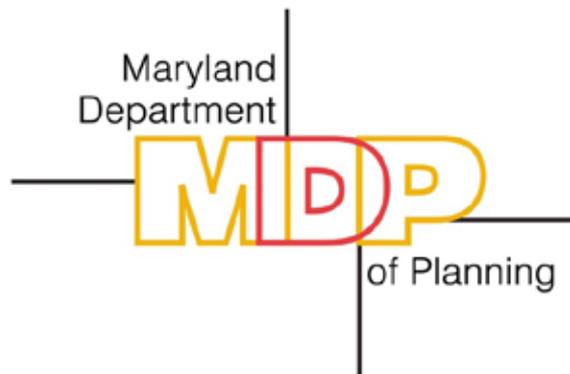
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Planning Commission, Planning Board and Board of Appeals Education Course

Questions?



Planning Commission, Planning Board and Board of Appeals Education Course

The End

