

Plenary Session
A Planning Commission's
Determination of Consistency with the
Comprehensive Plan

39th Annual MPCA Conference

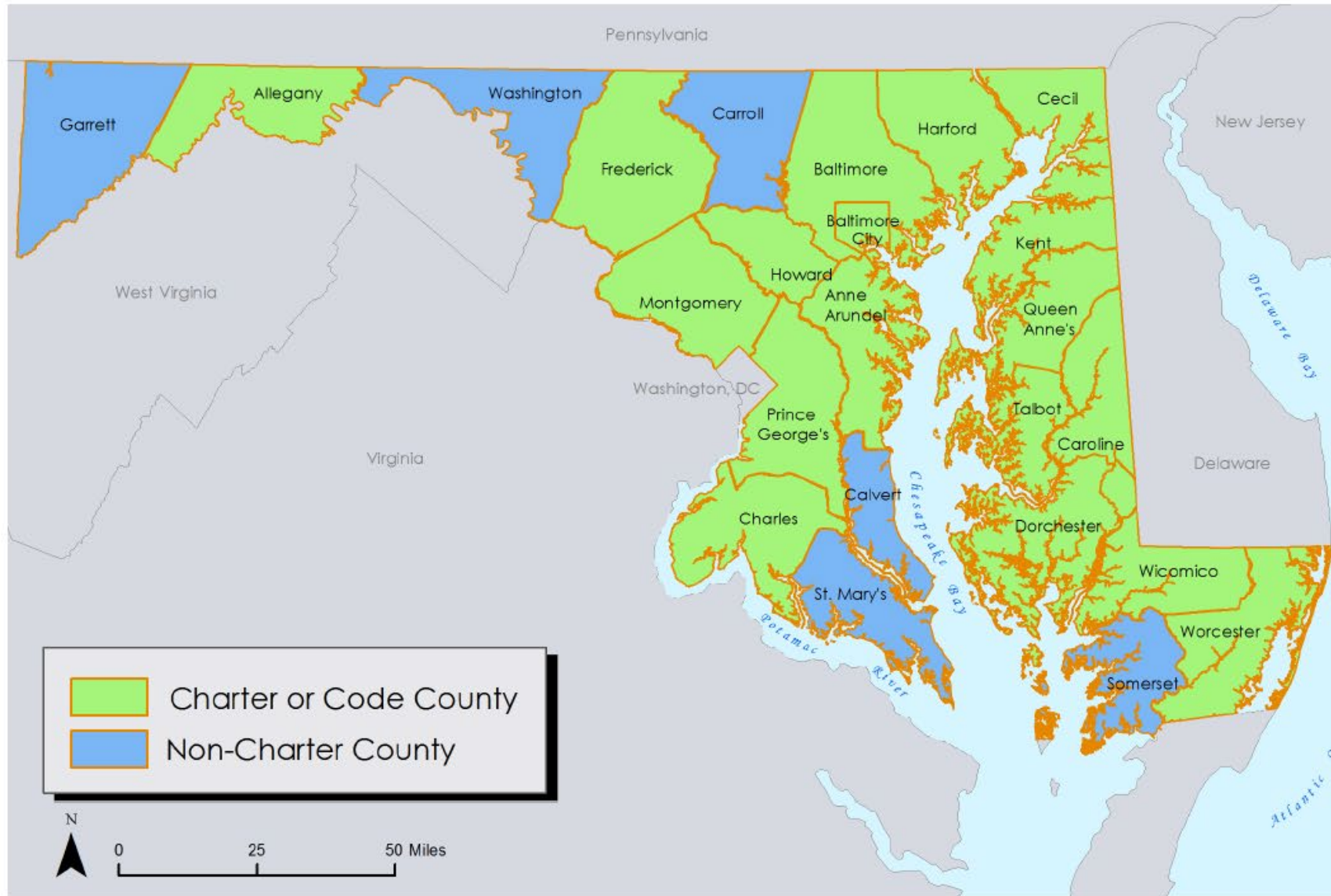
October 26, 2022

Plenary Session Panel

- **Moderator**, Lisa Ghezzi, Talbot County, Planning Commissioner
- **Panelists:**
 - Chris Drummond, Kent, Queen Anne's Dorchester counties, County Attorney
 - Keith Lackie, Lower Eastern Shore Regional Planner, MDP
 - Jill Baker, Planning Director, Washington County
 - Eric Soter, former Planning Director, Frederick County; other
 - Sharon Suarez, Frederick City Planner; former Planning Commissioner, Frederick County
 - Cynthia Unangst, Municipality Staff Planner, Middletown

Objectives — conference participants to develop a better understanding of:

- What consistency means at the State, County and municipality level, law and context?
- What types of matters require a determination of consistency
- The role of the Planning Commission in determining consistency; *approaches and resources for determining consistency*
- What it means to the County and State when consistency is determined



Kent, Queen Anne's, Dorchester counties,
County Attorney
Towns of Easton, Denton and Secretary
Town Attorney

**Chris Drummond,
Local and Municipal Attorney**

- What does it mean to reach a “Determination of Consistency”
- How has Consistency been applied?

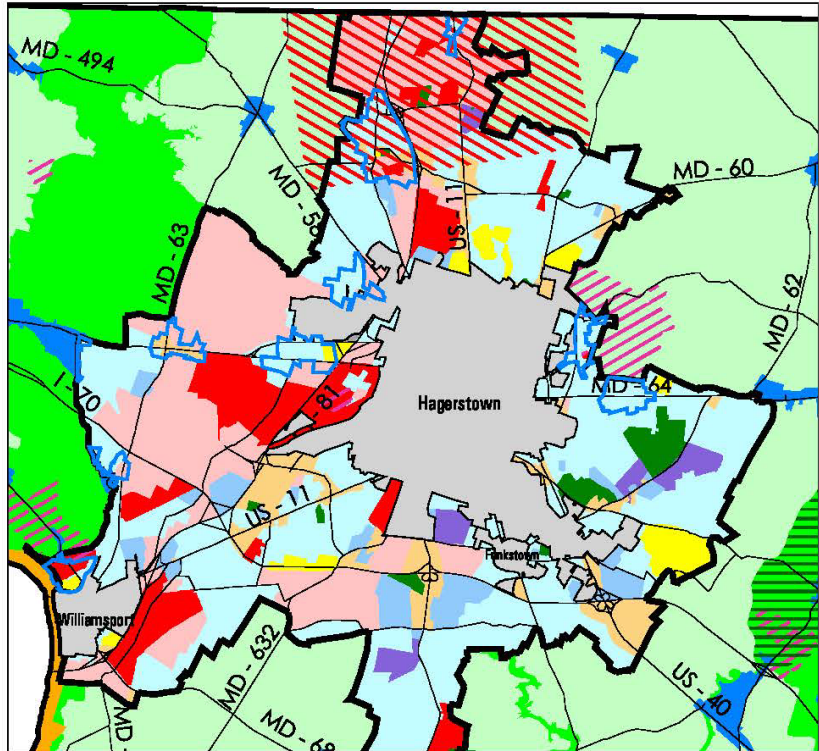
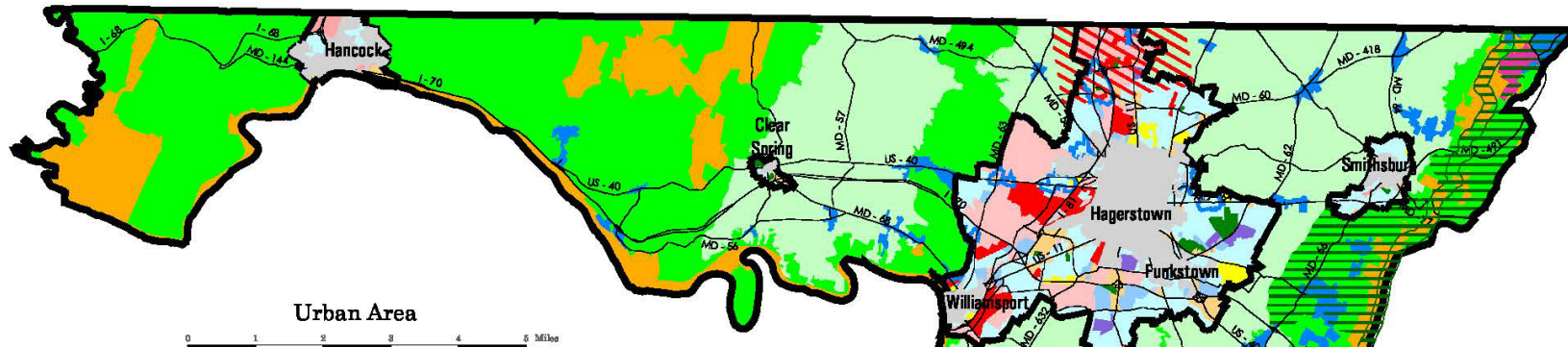
Washington County
Planning Director

Jill Baker, AICP

County Examples of Consistency Evaluation

- Rezoning
- Functional Planning
- Board of Zoning Appeal applications
- Annexation applications

Land Use Plan



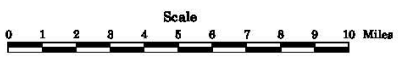
- Key**
- 2002 Growth Area Boundaries (Amended 7/12/2005)
 - Rural Villages (Urban) Overlay
 - Airport
 - Antietam
 - Special Planning Area
 - Landuse Categories**
 - Industrial
 - Industrial / Flex
 - Commercial
 - Mixed Use Developments
 - High Density Residential
 - Low Density Residential
 - Community Facilities
 - Urban Open Space
 - Municipalities
 - Special Economic Development Area
 - Rural Villages
 - Preservation
 - Environmental Conservation
 - Agriculture

Note : This map is prepared for the sole purpose of illustrating the Comprehensive Plan. It should not be used for other purposes. Information shown on this map was compiled from various original sources as listed and is subject to change as source data changes.

Q:\policy\compplan\landplan.apr

Data Sources :

- U. S. Census Bureau
- Natural Resources Conservation Service
- MD Department of Planning
- MD State Highway Administration
- Washington County Planning Dept



Adopted 8-27-2002
Amended 7-12-2005

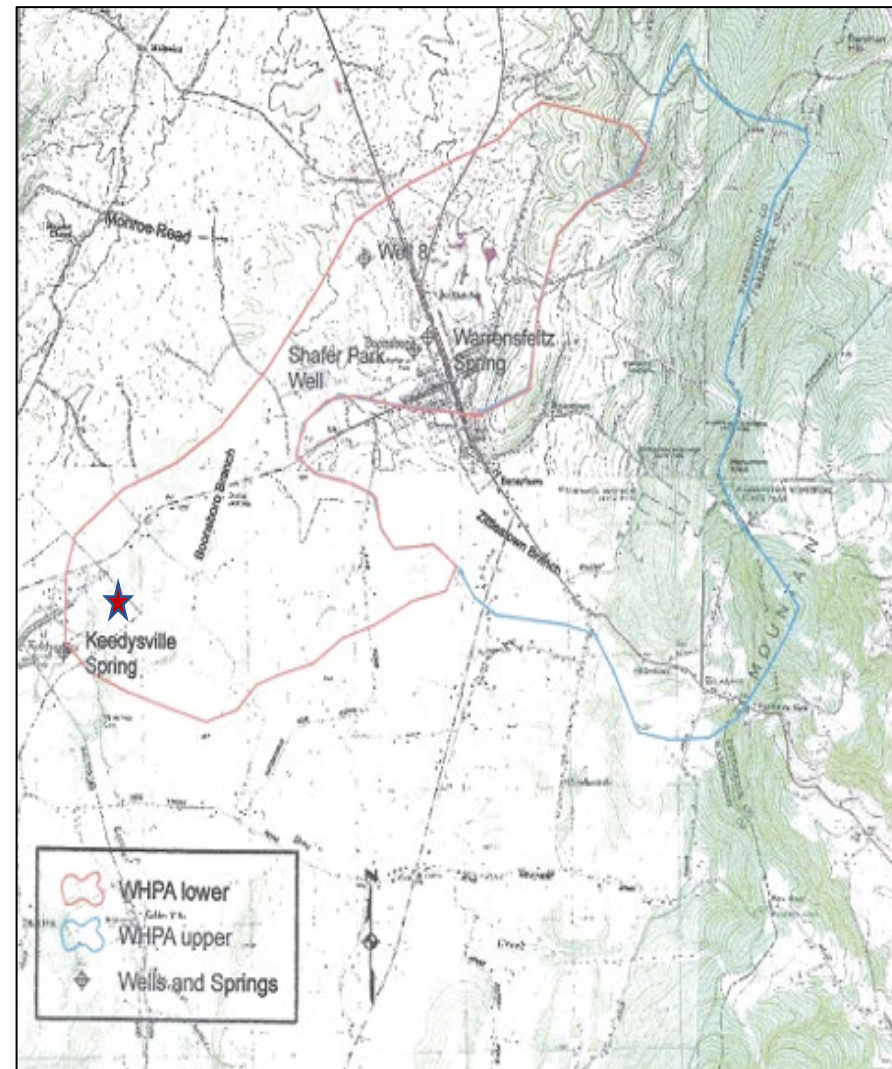


Map 51

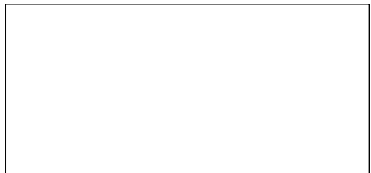
Comprehensive Plan for Washington County, Maryland 2002

Prepared by the Washington County Planning Department Geographic Information System

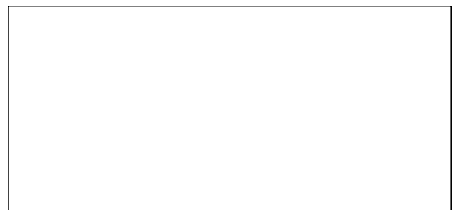
Water and Sewerage Plan



MDE Source Water Assessment



Land Use Plan



Town of Middletown
Staff Planner

Cindy K. Unangst, AICP

Kent, Queen Anne's, Dorchester counties,
County Attorney
Towns of Easton, Denton and Secretary
Town Attorney

**Chris Drummond,
Local and Municipal Attorney**

A Planning Commissioner's Two Primary Roles

- **Advisory**
- **Directive – determination, or not, of consistency**
 - **Environmental Code section 9-506(a)(ii)**

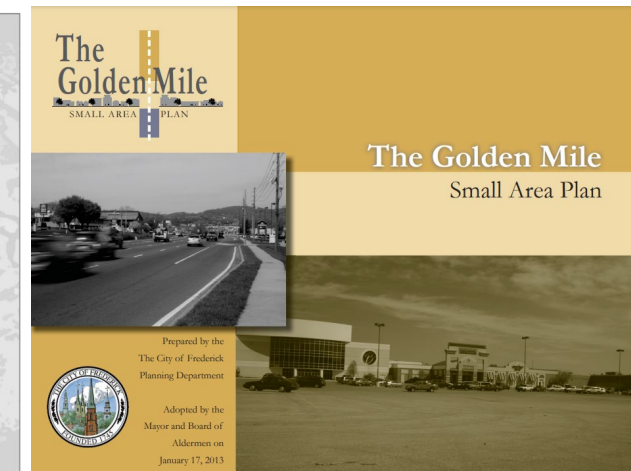
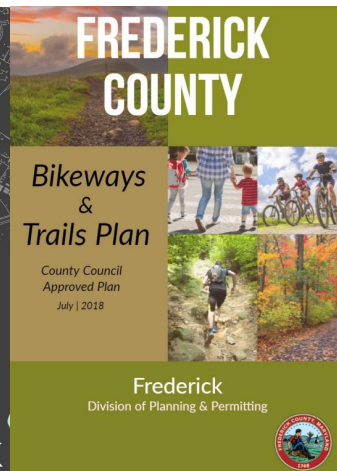
Frederick City Planner
Former Frederick County Planning Commissioner

Sharon K. Suarez, MPA, AICP



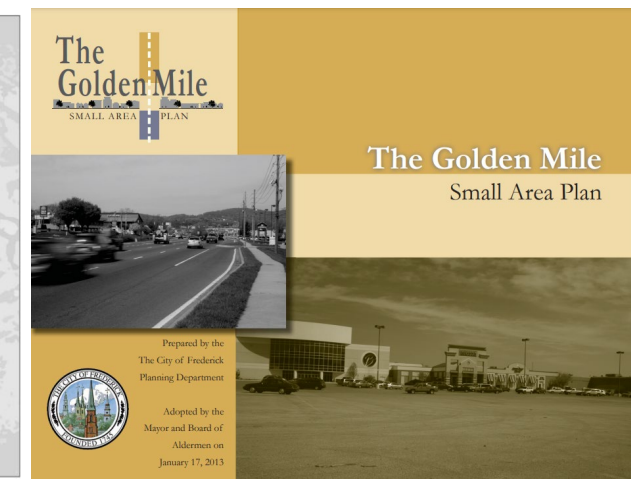
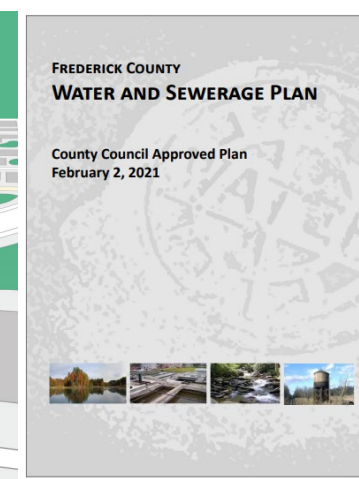
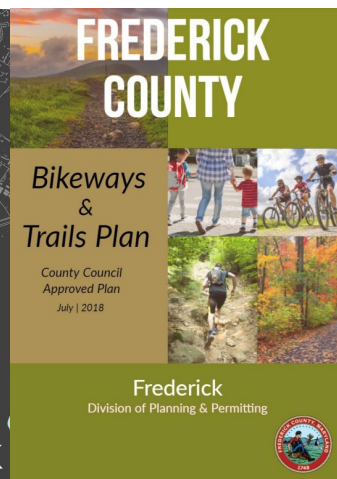
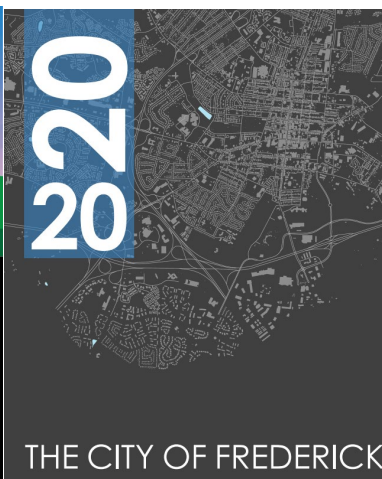
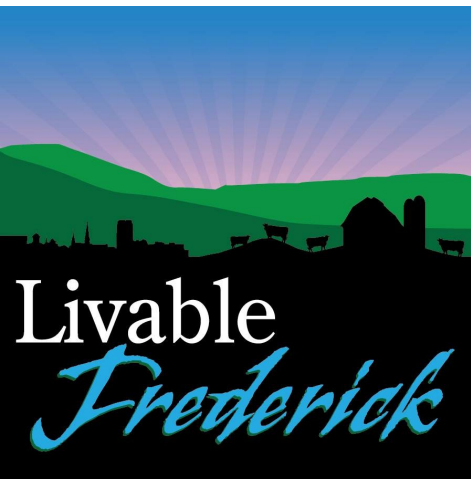
The impact of “lag” on Consistency

There is a normal lag between the
Comprehensive Plan
Small Area Plans,
Land Use Maps, and
Functional Plans.



Some common issues related to lag:

- Lag caused by learning curve or “buy-in” for commissioners who were not involved in the visioning, public participation, or drafting of the comp plan.
- Frustration of having to enforce the adopted comp plan while you are working on your new comp plan.





To reduce the lag that affects consistency, participate in the update of your comprehensive plan and update it frequently.

It's administrative -- you can work together with staff and the public during the comp plan process!



East Street Corridor Plan Charette. Photo from presentation to Mayor & Board, Oct. 19, 2022.

Lower Eastern Shore Regional Planner
including
Dorchester, Somerset, Talbot, Wicomico,
and Worcester counties

Keith Lackie

LAND USE ARTICLE: Title 1 (Definitions) Subtitle 3 (Consistency)

§ 1-301. "Action" defined

In this subtitle, "action" means:

- (1) the adoption of a local law or regulation concerning:
 - (i) a special exception under § 1-101(p) of this title (Definitions -- "Special exception"); or
 - (ii) plan implementation and review under § 1-417 of this title or § 3-303 (Periodic Review and Implementation) of this article;
- (2) a requirement under § 9-505(a)(1) of the Environment Article and § 4-415(c) of the Local Government Article (Municipal annexation); or
- (3) a required finding under §§ 9-506(a)(1) and 9-507(b)(2) of the Environment Article (Water and sewer plan review).

§ 1-303. Consistency -- General requirement.

Except as provided in § 1-304 of this subtitle, when a provision in a statute listed under § 1-302 of this subtitle requires an action to be "consistent with" or have "consistency with" a Comprehensive Plan, the term shall mean an action taken that will further, and not be contrary to, the following items in the plan:

- (1) policies;
- (2) timing of the implementation of the plan;
- (3) timing of development;
- (4) timing of rezoning;
- (5) development patterns;
- (6) land uses; and
- (7) densities or intensities.

§ 1-304. Consistency -- Priority funding area.

(a) Scope of section. -- This section applies to plan implementation and review under § 1-301(1)(ii) of this subtitle.

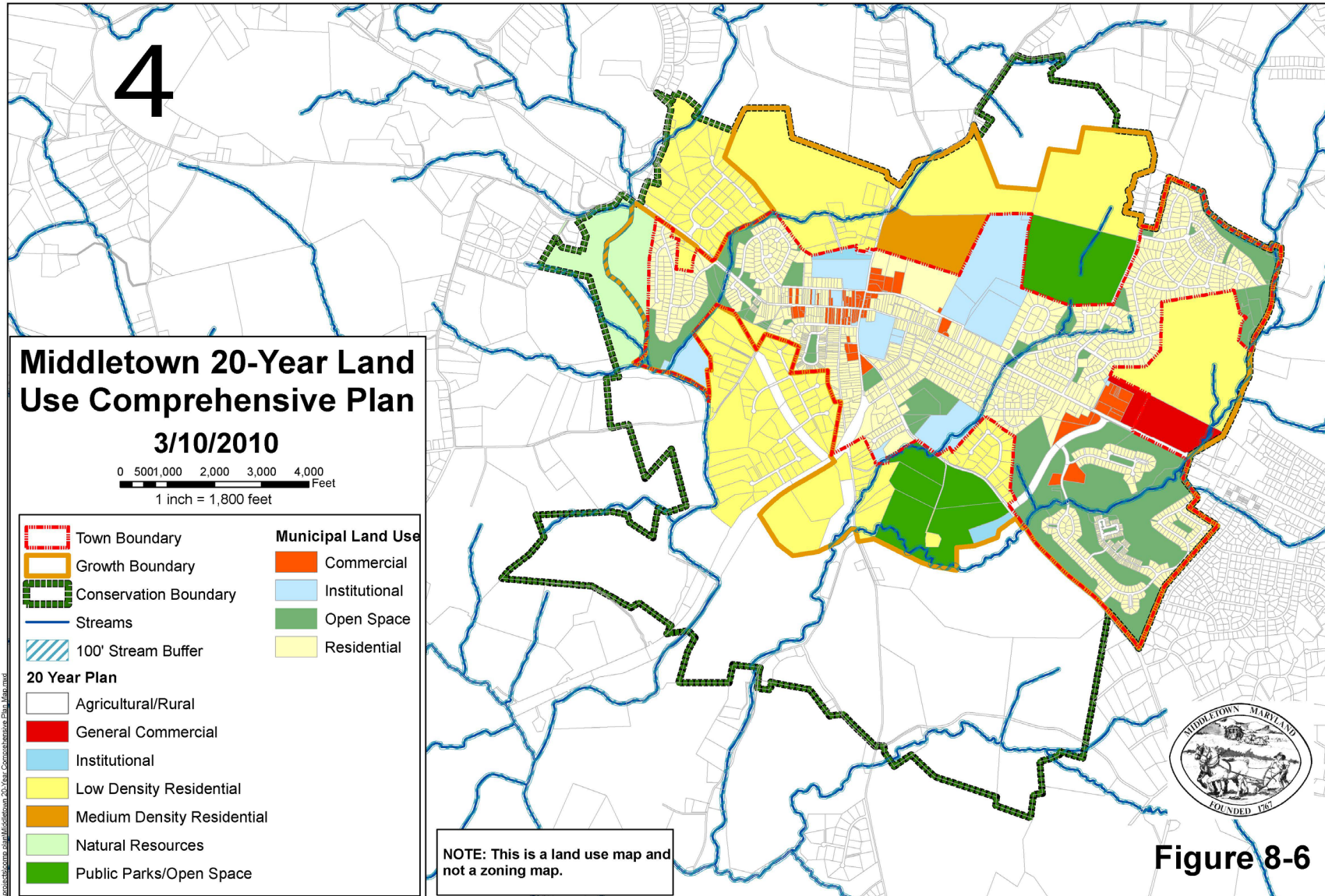
(b) Application. -- In a priority funding area, if § 1-417 of this title or § 3-303 of this article requires an action to be "consistent with" or have "consistency with" a Comprehensive Plan, the term shall mean an action taken that will further, and not be contrary to, the following items in the plan:

- (1) policies;
- (2) timing of the implementation of the plan;
- (3) timing of development;
- (4) timing of rezoning; and
- (5) development patterns.

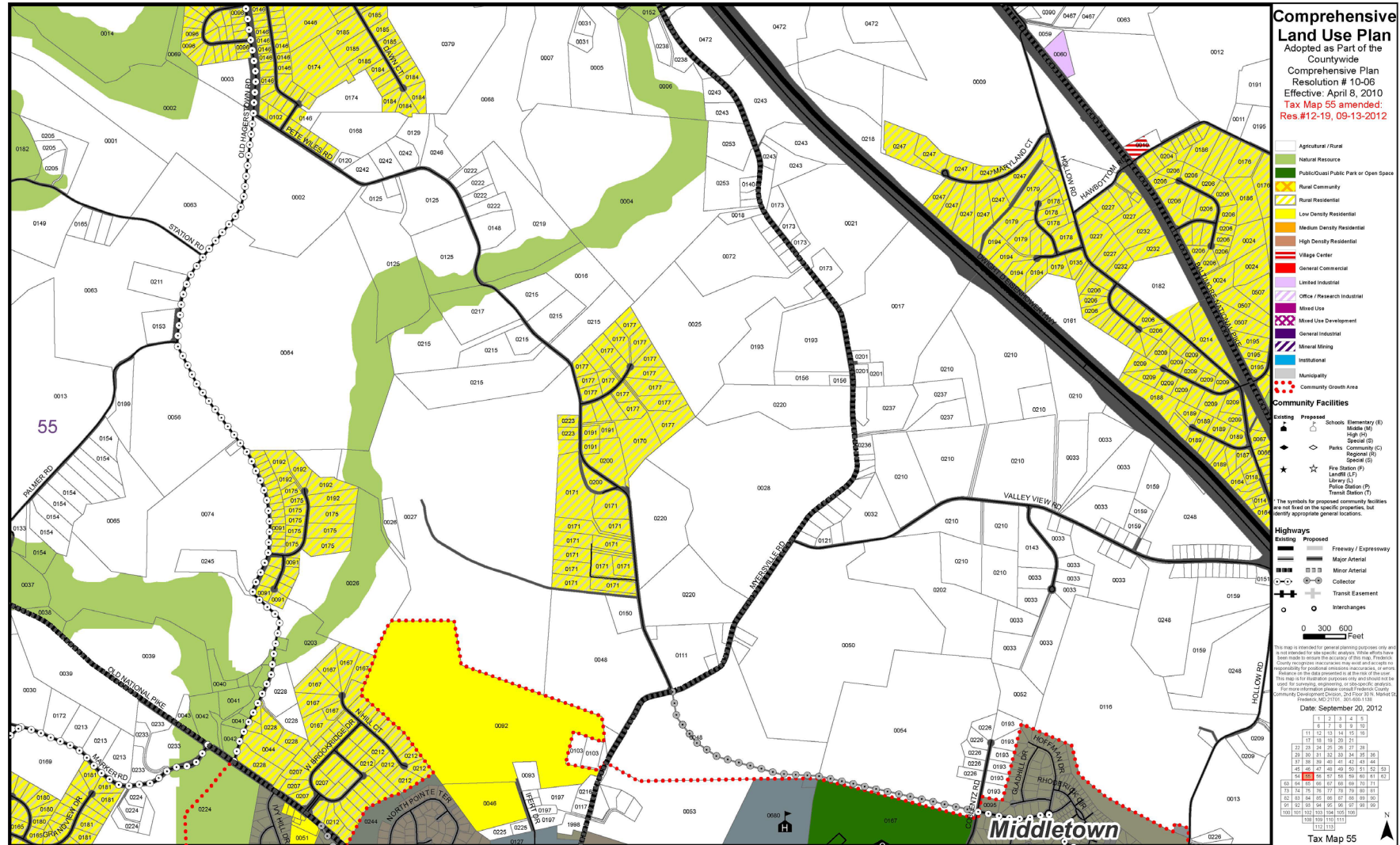
Town of Middletown
Staff Planner

Cindy K. Unangst, AICP

Town of Middletown – Growth Boundary

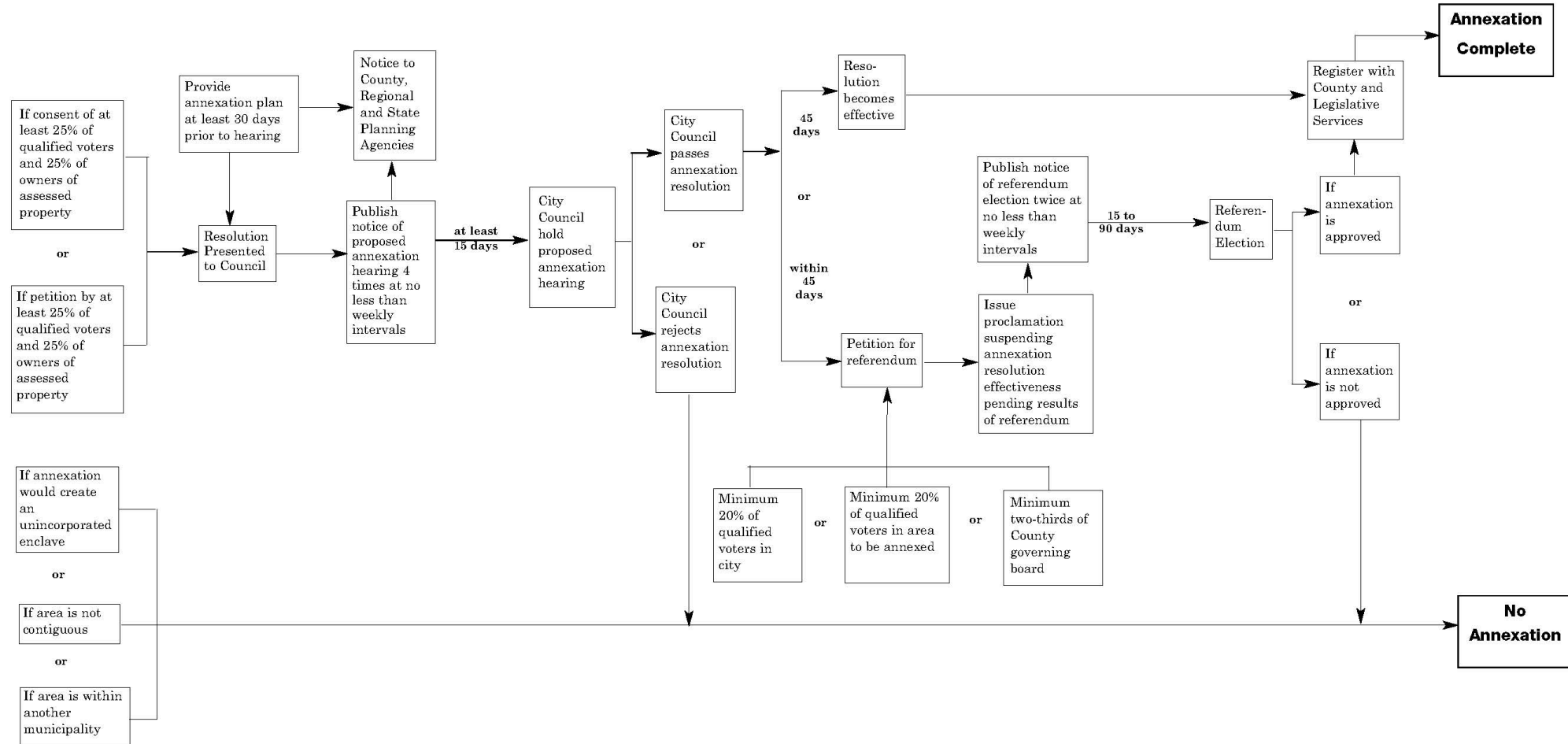


Frederick County Land Use Plan



Annexation Flow Chart

Maryland Municipal Annexation Procedures



Montgomery, Frederick, Anne Arundel,
Carroll, Baltimore counties
various roles

Eric E. Soter,
AICP/ECO-District AP,
Principal, Rodgers Consulting

**Demonstrating Consistency
in Development Applications**

Consistency with the County Comprehensive Plan

1 →

The concept of “consistency” as described in the Maryland Annotated Code Land Use Article § 1-303 states that “...when a provision in a statute listed under §1-302 of this subtitle requires an action to be “consistent with” or have “consistency with” a comprehensive plan, the term shall mean an action taken that will further, and not be contrary to, the following items in the plan: (1) policies; (2) timing of the implementation of the plan; (3) timing of development; (4) timing of rezoning; (5) development patterns; (6) land uses; and (7) densities or intensities.”

The issue of “consistency” relative to comprehensive planning in Maryland is multi-faceted. There are many types of consistency that are considered, related to local and state construction projects, local government land use regulation, local plan accord with state planning visions, intra-jurisdictional plans (within county), local development decisions, and interjurisdictional planning (outside county).

According to the Maryland Office of Planning Models and Guidelines publication Achieving Consistency Under the Planning Act of 1992 (Consistency Report), the method of examining consistency varies with the specific type of consistency being considered. However, some universal concepts are provided. These are related to: “1) clearly identifying what is supposed to be consistent with what; 2) identifying shared characteristics and looking for conflict, support, or neutrality; and 3) applying principles of logical coherence and reasonableness.”

2 →

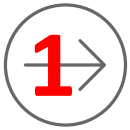
As a general rule of thumb, the following statement from the Consistency Report provides a guideline about determining consistency relative to land use regulations: “land use regulations and land use decisions should agree with and implement what the Plan recommends and advocates. A consistent regulation or decision may show clear support for the Plan. It may also be neutral – but it should never undermine the Plan.”

3 →

There will often be ambiguities when judging consistency. When faced with an area of difficult judgement, emphasis should be placed on clear contradictions, illogical connections, and notable disagreements. In the end, determining consistency with the comprehensive plan should not be a forum for reversing adopted policies, but rather should support development that results in an implementation, over time, of the comprehensive plan’s vision for the future. Additionally, consistency may not be binary. Sometimes development may possess both consistent and inconsistent aspects relative to the comprehensive plan. This may make the issue of consistency a question of degree. If the comprehensive plan were interpreted as a “literal, exact translation from Plan to land use law over the entire jurisdiction, undesirable results might occur.”

The Comprehensive Plan Map is a central tool in making determinations of consistency, and remains so with the adoption of the LFMP. Given that this plan introduces a new kind of map (the Thematic Plan Diagram), some clarification of the role of this map relative to determinations of consistency is warranted. The Thematic Plan map is aspirational and is intended to incorporate the themes, policy, and vision of the LFMP, without being property-specific. Its primary purpose is to inform future planning on specific issues, including growth area boundaries, land use designations, capital facilities, and zoning.

Frederick County LFMP – 2019 Page 18



The concept of “consistency” as described in the Maryland Annotated Code Land Use Article § 1-303 states that “...when a provision in a statute listed under §1-302 of this subtitle requires an action to be “consistent with” or have “consistency with” a comprehensive plan, the term shall mean an action taken that will further, and not be contrary to, the following items in the plan: (1) policies; (2) timing of the implementation of the plan; (3) timing of development; (4) timing of rezoning; (5) development patterns; (6) land uses; and (7) densities or intensities.”

- Policies
- Timing (of the Plan implementation, and the development)
- Development Patterns
- Land Uses
- Density/Intensity



As a general rule of thumb, the following statement from the Consistency Report provides a guideline about determining consistency relative to land use regulations: “land use regulations and land use decisions should agree with and implement what the Plan recommends and advocates. A consistent regulation or decision may show clear support for the Plan. It may also be neutral – but it should never undermine the Plan.”

- Statement of justification supporting...
- If neutral, acknowledge it and...
- Demonstrate how it **doesn't undermine** the Plan.



There will often be ambiguities when judging consistency. When faced with an area of difficult judgement, emphasis should be placed on clear contradictions, illogical connections, and notable disagreements. In the end, determining consistency with the comprehensive plan should not be a forum for reversing adopted policies, but rather should support development that results in an implementation, over time, of the comprehensive plan's vision for the future. Additionally, consistency may not be binary. Sometimes development may possess both

- Ensure no clear contradictions, illogical connections...
- Support development that results in implementation over time of the comprehensive plans vision.

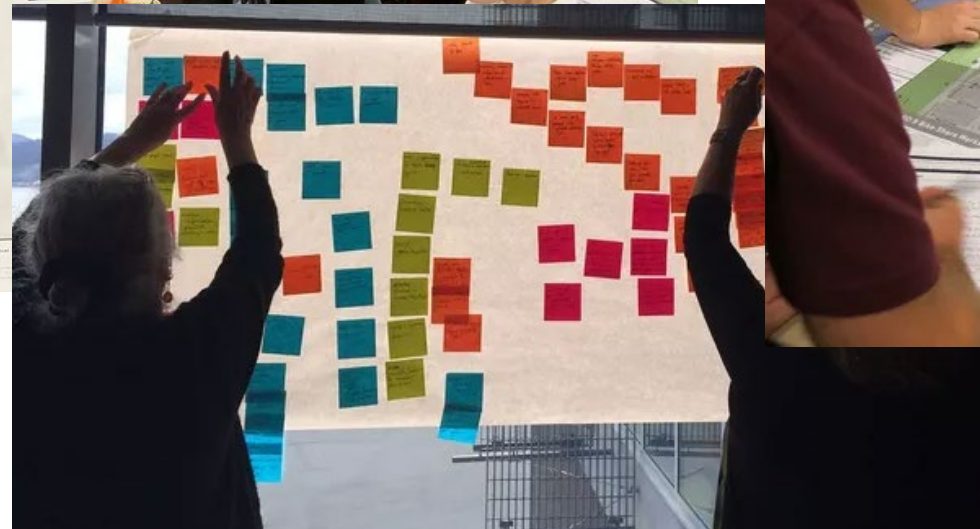
Frederick City Planner
Former Frederick County Planning Commissioner

Sharon K. Suarez, MPA, AICP

Public participation methods affect how we listen, who we listen to, and the facts we need to hear.



"Democracy Cafe - Youth In Action" by [fabola](#) is licensed under [CC BY-SA 2.0](#).

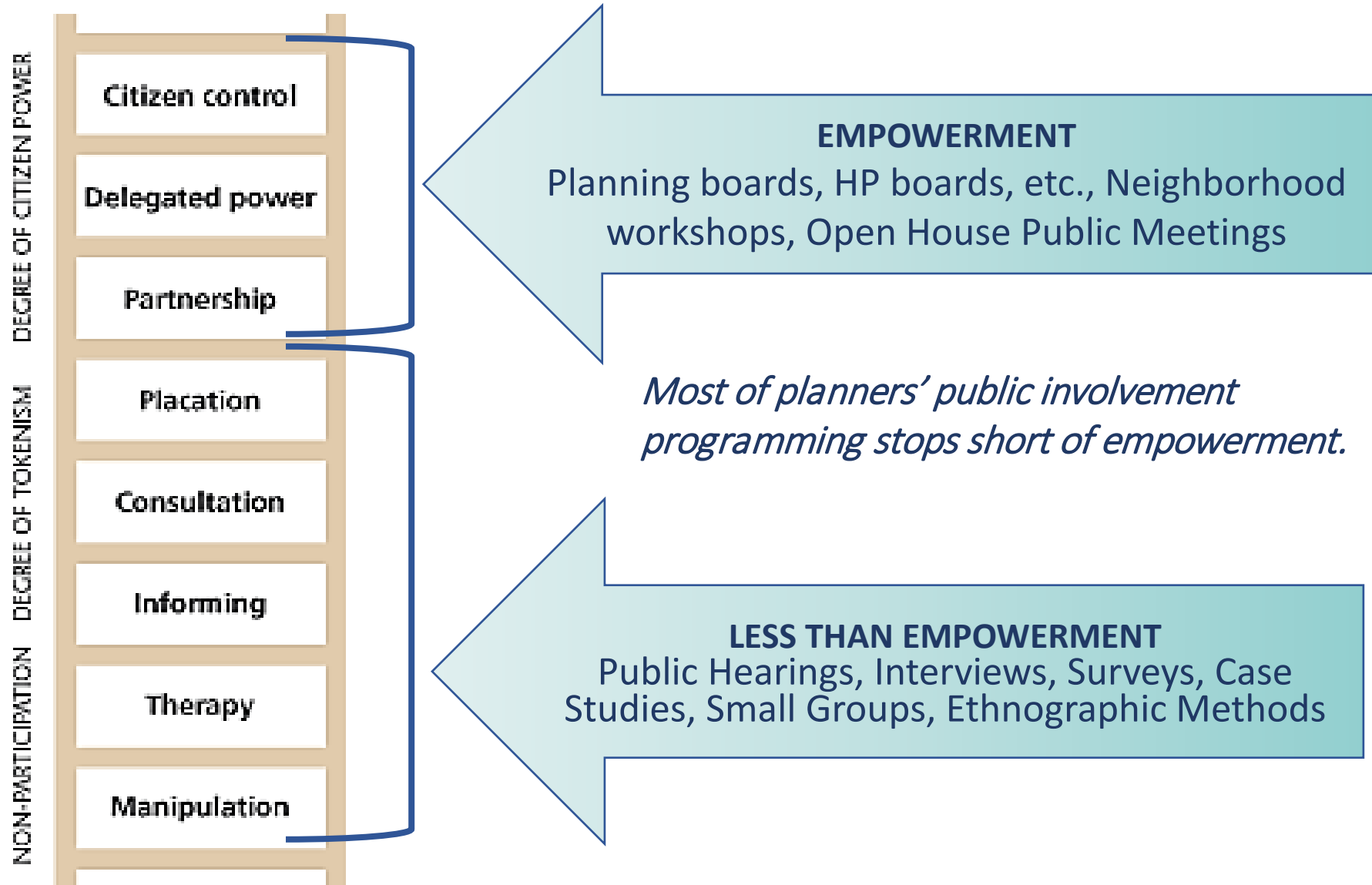


"Strategic planning workshop" by [Samuel Mann](#) is licensed under [CC BY 2.0](#).



"Bike Share Planning Workshop, Manhattan CB 9" by [NYCDOT](#) is licensed under [CC BY-NC-ND 2.0](#).

Arnstein's Ladder of Citizen Participation

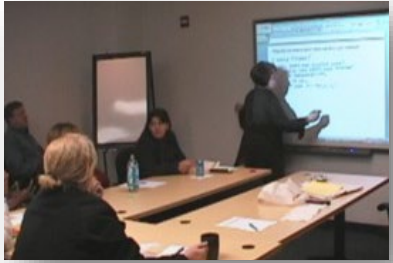


If all we offer is a soapbox...



*then it is unlikely that
we will hear
meeker voices.*

If we create venues with a variety of ways and times for the public to have input...



then we will see and hear many voices and opinions, and we will gain a variety of ideas that might otherwise not be shared with us.

Lower Eastern Shore Regional Planner
including
Dorchester, Somerset, Talbot, Wicomico,
and Worcester counties

Keith Lackie

ENVIRONMENT ARTICLE: Required Consistency Determinations (Local and State Roles)

§ 9-505. County Plans (Water and Sewer Master Plans and Solid Waste Management Plans)

Required contents. -- In addition to the other requirements of this subtitle, **each county plan shall:**

(1) **Provide for the orderly expansion and extension of the following systems in a manner consistent with all county and local Comprehensive Plans prepared under Title 1, Subtitle 4, Title 3, or Title 21 of the Land Use Article and § 10-324 of the Local Government Article:**

- (i) Community water supply systems and multiuse water supply systems;
- (ii) Community sewerage systems and multiuse sewerage systems; and
- (iii) Solid waste disposal systems and solid waste acceptance facilities;

Review by official planning agencies. --

(1) Except as provided in paragraphs (2) and (3) of this subsection, **before a county governing body may adopt a county plan or a revision or amendment to the county plan:**

- (ii) **The county planning agency shall certify that the plan, revision, or amendment is consistent with the county Comprehensive Plan prepared under Title 1, Subtitle 4, or Title 3 of the Land Use Article or § 10-324 of the Local Government Article.**

Required consultation by Department. -- Before the Department [MDE] approves or disapproves, in whole or in part, a proposed county plan or a proposed revision or amendment of a county plan, the Department shall submit the proposal:

- (2) **To the Department of Planning for advice on the consistency of the proposal with the local master plan and other appropriate matters**

Planning's principal role is to provide the MD Department of Environment (MDE) an advisory consistency/inconsistency determination of the proposed Environment Article "County Plan" under review, as it relates to the local government's Comprehensive Plan. More specifically, for a county-specific update/amendment Planning reviews the Land Use Element, Public Facilities Element, and Water Resources Elements of the county Comprehensive Plan. For a municipal -specific update/amendment, Planning's analysis considers the municipal Comprehensive Plan Elements (Land Use, Public Facilities, and Water Resources), however it may also consider the Municipal Growth Element.

[LOCAL GOVERNMENT > DIVISION II. MUNICIPALITIES > TITLE 4. IN GENERAL > SUBTITLE 4. ANNEXATION]

§ 4-415. Annexation Plan

(a) In general. -- In addition to, but not as part of, an annexation resolution, **the legislative body of the municipality shall adopt an annexation plan for the area to be annexed.**

(c) Annexations on or after October 1, 2009. -- Except as provided in subsection (e) of this section, for annexation that begins on or after October 1, 2009, **the annexation plan shall be consistent with the municipal growth element of the comprehensive plan of the municipality.**

PANELIST NOTE: Municipalities are required, elsewhere in the Local Government Article, to submit a complete annexation packet to the county (or counties) the municipality lies within, and to Planning at least 30-days prior to the required Public Hearing.

§ 4-416. Planning and Zoning Authority

PANELIST NOTE: Should the county determine an inconsistency in zoning, described in (a), below, the county has a right to delay the development of the property/properties (upon annexation), unless the development conforms to the densities or intensities of the county zoning (prior to annexation), unless the inconsistency is waived by the County (provision (b), below), which is commonly known as the 5-year Rule. While this process a zoning comparison, it is important to remember that the municipal and county zoning provisions are presumed to be consistent with the locally adopted comprehensive plan.

Considerations under the 5-year Rule (condensed from Local Government Article):

- (a) **Without the express approval of the county ...the county in which the municipality is located, for 5 years after an annexation by a municipality, the municipality may not allow development of the annexed land for land uses substantially different than the authorized use, or at a substantially higher density, not exceeding 50%, than could be granted for the proposed development,** in accordance with the zoning classification of the county applicable at the time of the annexation, **UNLESS;**
- (b) **The county grants a waiver to the density and use inconsistency provisions,** provided in (a), above.

Planning's

Planning's principal role is to provide the municipality and the county an analysis of the proposed annexation's apparent consistency/inconsistency with the municipal comprehensive plan, more specifically, consistency with the Municipal Growth Element (and Municipal Growth Areas Map). Planning also provides an analysis of an apparent zoning consistency/inconsistency, from both a residential density and allowable uses perspective between proposed (municipal) and existing (county) zoning, with an appropriate procedural recommendation regarding the 5-year Rule (Ultimately, Planning defers to the County's zoning consistency analysis and 5-year Rule position).

Planning will also provide the municipality additional information, such as post-annexation requirements of the MD Department of Legislative Services; US Census Bureau notification process; Water and Sewer Master Plan considerations; and Priority Funding Area eligibility & process; and other issues of State concern.

Kent, Queen Anne's, Dorchester counties,
County Attorney
Towns of Easton, Denton and Secretary
Town Attorney

**Chris Drummond,
Local and Municipal Attorney**

Planning Commission's Decision Results in:

- Go
- No Go
- Hold

Objectives – did we help you to understand?

- What consistency means at the State, County and municipality level, law and context
- What types of matters require a determination of consistency
- The role of the Planning Commission in determining consistency; *approaches and resources for determining consistency*
- What it means to the County and State when consistency is determined

Thank you!

- Jill Baker, Washington County
- Chris Drummond, Kent, Queen Anne's Dorchester counties
- Lisa Ghezzi, Talbot County
- Keith Lackie, State Planning
- Eric Soter, Frederick County, other
- Sharon Suarez, Frederick City & County
- Cynthia Unangst, Middletown