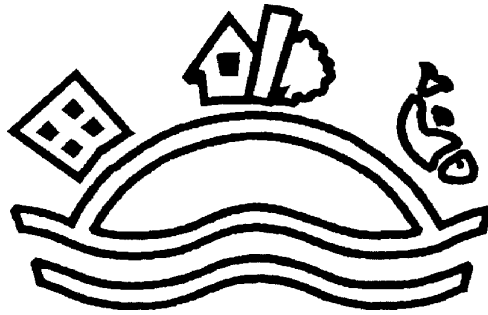


# Chapter 1

## Planning Process and Legislative Authority



## The Planning Process

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### Planning

**“Plan-ning** *n* (1748): the act or process of making or carrying out plans; *specif*: the establishment of goals, policies, and procedures for a social or economic unit <city ~> <business ~>”  
*Webster’s Ninth New Collegiate Dictionary*

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Planning is an opportunity for the citizens of a community to exert control over their destiny. Planning is a continuous process by which a community: (a) assesses its current situation, needs, problems, and resources; (b) determines desired future characteristics; (c) establishes public policies designed to achieve the desired future; and (d) uses established policies to influence the public and private decisions which create change. Such a process is intended to enable the community to anticipate needs and problems related to physical development and population growth in order that sufficient time may be available for development of appropriate responses. The planning process also serves to ensure rational allocation of scarce resources to satisfy the community’s priority needs and to avoid or minimize problems.

The comprehensive plan is the primary vehicle through which this process is conducted. A comprehensive plan generally consists of : (a) an inventory of available resources and analysis of existing conditions; (b) goals and objectives; (c) future plans; and (d) recommendations for implementation.

Some specific benefits which can be realized through the planning process include:

- Future-oriented, rather than reactive and crisis-oriented decision making;
- Fewer “crisis” situations requiring immediate attention or unanticipated public expenditures;
- Rational, consistent objectives for land use decisions;
- Reduced development costs for both public and private projects;
- Increased federal and state awareness of county needs, problems, and attitudes;
- Opportunity for communication between the public and the governing body; and
- Greater public assurance that Accomack County will remain a desirable place to live and work.

**Public Participation:** The Accomack County Planning Commission has tried to produce a plan which accurately represents the desires of the community. State code requires that the Planning Commission seek public participation in the form of a public hearing. This process allows for the public to comment on the finished draft plan prior to it being sent to the Board of Supervisors for approval. In recognition of the importance of public participation to the planning process, the Commission employed a method that reversed the conventional process, gathering considerable input from the public prior to writing the draft plan. This process was designed to produce a plan that would enjoy public support due to its basis on public opinion.

**Citizen Advisory Committees:** The Planning Commission formed three citi-

zen advisory committees to address comprehensive plan topics. Committees were formed for the topics of the environment, development, and community facilities and services. Committee membership was based on recommendations from the Planning Commission and staff. Each committee was asked to meet three times in order to compile a list of issues and concerns that they would like to see addressed in the Comprehensive Plan and provide the Planning Commission with a list of policy options concerning their topic of interest.

The development committee was the only group to complete their three meetings and provide recommendations to the Planning Commission. The development committee's recommendations are as follows:

#### General

- It should be acknowledged that Accomack County is a unique environment coveted by many elsewhere and should therefore be preserved.
- Recognizing that our water supply comes from a sole source aquifer, steps should be taken to protect water quality and quantity.

#### Agriculture

- Viable agricultural land should be protected from fragmentation by residential subdivisions.
- Farm labor housing should be located on a farm or in an agricultural district.
- Standards for the location of farm labor housing should be similar to those required for mobile home parks.

#### Central Sewer

- When planning for any central sewage system, careful consideration should be given to methods which will be used for effluent disposal.

#### Character/Historic Resources

- A survey of historic resources should be conducted for Accomack County.
- It is very important that the character of existing towns and villages be protected.
- The county should work with the incorporated towns to ensure that the density of development allowed around towns is in keeping with the pattern of development within the towns.
- The courts should be kept near their present location in the town of Accomac.
- When possible, all government services should be centrally located within the town of Accomac.

#### Development

- Greater care should be taken to provide for the separation of incompatible uses.
- Existing demand on water resources should be considered when determining allowable densities for development in an area.

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#### **The Planning Commission**

The Accomack County Planning Commission consists of nine members appointed by the Board of Supervisors. Each member serves a four year term. The primary purpose of the Planning Commission is to advise the Board of Supervisors on matters pertaining to land use planning and development. The Planning Commission is also responsible for subdivision and conditional use permit review.

The current Commissioners are:  
*Carter Davis, Jr., Chairman*  
*W.O. Goffigon, Vice-Chairman*  
*Nancy B. Conklin*  
*Russell Corbin*  
*Phillip Hickman*  
*Emory Hurst*  
*Bryan Turner*  
*Walter Rogers, Jr.*  
*Lester Williams*

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### Economic Development

- Consideration should be given to the impact businesses moving into the area will have on existing businesses.
- The county should encourage locally owned and operated businesses.
- Incentives should be provided for businesses to employ local residents.
- Eastern Shore Community College should be encouraged to provide job training for available jobs.

### Housing

- The minimum lot size in agricultural zones should be increased to 2 acres.
- Hard surface roads should be required in subdivisions.
- Mobile homes should be located in mobile home parks.
- The county should encourage state legislators to reconsider legislation which allows manufactured housing by right in agricultural zoning districts.

### Recreation

- The county should encourage the development of privately funded recreational facilities such as a YMCA which provide monitored youth activities.

### Solid Waste

- The county should use education, reward systems, and enforcement programs to discourage litter and encourage recycling.
- The Board of Supervisors should support bottle deposit legislation.
- Green boxes should be better monitored to discourage misuse.

### Transportation

- In planning issues involving Route 13, safety should be the primary concern.
- More traffic lights should be added to Route 13 to allow for safe crossing.
- In developed areas, such as Four Corners, parallel access lanes should be provided to decrease the number of direct access points to the highway.
- Steps should be taken to discourage the number of curb cuts directly entering and exiting the highway.
- Multiple access points to state roads should be required for large subdivisions.

***Newspaper Survey:*** A citizen survey was published on May 8th and May 11th, 1996 in the *Eastern Shore News*. The survey included 27 questions relating to topics such as protection of water resources, transportation, economic development, recreation, housing, solid waste, and historic resources. Questions were designed to measure citizens' level of concern about these issues. The Commission received 159 responses which were well distributed amongst the county's magisterial districts and age groups. The complete survey,



with questions and results, is included in Appendix A. Survey responses for which public opinion was clear (over 60% on one side of the issue) include the following:

*Please rank the following land use issues in order of importance, with 1 being the most important. (Totals given below represent respondents placing answer as one of top two choices)*

<u>22 (14%)</u>	Affordable housing
<u>55 (35%)</u>	Agricultural land preservation
<u>35 (22%)</u>	Economic development
<b><u>101 (64%)</u></b>	<b>Groundwater</b>
<u>31 (20%)</u>	Route 13 congestion
<u>57 (36%)</u>	Solid waste disposal
<u>4 ( 3%)</u>	Other

*How important is it to regulate how much groundwater a user can withdraw?*

<b><u>97 (61%)</u></b>	<b>very important</b>
<u>47 (30%)</u>	important
<u>8 ( 5%)</u>	not important
<u>5 ( 3%)</u>	don't know/no opinion
<u>2 ( 1%)</u>	didn't answer

*Do marsh lands need to be further protected?*

<b><u>100 (63%)</u></b>	<b>yes</b>
<u>43 (27%)</u>	no
<u>8 ( 5%)</u>	don't know/no opinion
<u>2 ( 1%)</u>	didn't answer

*Do you think that water quality in the Chesapeake Bay is being adequately protected?*

<u>24 (26%)</u>	yes
<b><u>96 (60%)</u></b>	<b>no</b>
<u>20 (13%)</u>	don't know/no opinion
<u>1 ( 1%)</u>	did not answer

*Is there a need for public recreational facilities in Accomack County?*

<b><u>106 (67%)</u></b>	<b>yes</b>
<u>23 (14%)</u>	no
<u>26 (16%)</u>	don't know/no opinion
<u>4 ( 3%)</u>	didn't answer

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### Survey Demographics

The Planning Commission received 159 responses to the newspaper survey. The average age of respondents was 56 years old with a range from 12 to 90. The average length of residency was 27 years with a residency range from 1 to 79 years.

#### Responses by District

Island	(4%)
Atlantic	(20%)
Metompkin	(15%)
Lee	(28%)
Pungoteague	(24%)

#### Responses by Age Group

Age	Responses
1 -19	1
20-29	4 ( 3%)
30-39	16 (10%)
40-49	26 (17%)
50-59	31 (20%)
60-69	43 (28%)
70-79	28 (18%)
80-89	4 ( 3%)
90-99	1

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***Should developers of new subdivisions be required to provide paved roads?***

<u>134 (84%)</u>	yes
<u>14 ( 9%)</u>	no
<u>9 ( 6%)</u>	don't know/no opinion
<u>2 ( 1%)</u>	didn't answer

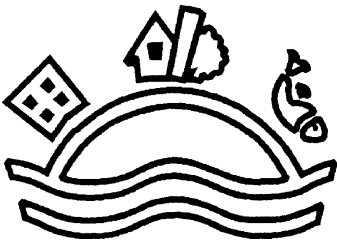
***Do agricultural lands need to be protected from division into residential subdivisions?***

<u>110 (69%)</u>	yes
<u>30 (19%)</u>	no
<u>17 (11%)</u>	don't know/ no opinion
<u>2 ( 1%)</u>	didn't answer

***Should there be restrictions on where a mobile home can be placed?***

<u>137 (86%)</u>	yes
<u>17 (11%)</u>	no
<u>2 ( 1%)</u>	don't know/no opinion
<u>2 ( 1%)</u>	didn't answer

***Public Forums:*** The basic purpose of the Public Forums was to allow citizens to define the kind of future they want for the county, particularly in regard to land use, development and conservation issues. The participants at the forums produced a clear expression of their preferred future for the county, called a "Vision Statement." This statement serves as the foundation for the goals and policies of the new Comprehensive Plan. Participants also created maps showing the preferred pattern of development in the County during the coming decades.



***Respecting the Past,  
Creating the Future***  
Accomack County Citizens  
Forums

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**Process of the Forums:** The Forums were publicized through a variety of methods including paid advertisements in the local newspaper, personal letters to key leaders and interest groups, press releases, public service announcements and stories in the local media.

The Forums were designed and conducted by Milton Herd, AICP, a professional planning facilitator. Mr. Herd organized the meetings so as to provide a large amount of input and deliberation among the citizen participants. This process allowed the citizens to discuss their various viewpoints and hopes for the future, and to identify points of general agreement.

Attendance at the Forums averaged more than 30 citizens. This is a good level of participation for these kinds of events, particularly when considering the summer schedules of residents, the population size of the county and the nature of long term planning efforts. Further, the participation was very broad in terms of

the various interest groups that were represented. These included farmers, agribusiness people, watermen, local businesses, minorities, government officials, major landowners, citizen activists, and environmentalists.

Highlights of Forum Results: Each of the three forums focused on a key topic of Accomack County's future. These were:

Agriculture (June 10, 1996)

Water Quality and the Seafood Industry (July 8, 1996)

Waterfront Development (July 29, 1996)

Two major products were produced by the participants at the Forums:

- A Vision Statement describing the preferred future of the County
- Maps showing the preferred pattern of future development in the County

For both of these products, there was a strong level of consensus among the diverse interests represented by the participants. Among the key points of broad general agreement that are contained either explicitly or implicitly in the Vision Statement are:

- Accomack County should place the highest priority on the protection of the local groundwater and surface water resources as the basis for the long term health of the County's economy and special quality of life;
- Citizens throughout the county should continue to work together cooperatively to reach decisions about land use and natural resource policies and regulations;
- Accomack County should work closely with Northampton County in gathering data, coordinating policies and implementing solutions for land use and environmental issues;



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*Forum participants developed "vision statements" which defined their preferred future for Accomack County and maps showing the preferred pattern of development.*

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- All of the major industries in the county should cooperate so that each can grow and prosper, including agriculture, forestry, aquaculture, seafood production and tourism;
- Best Management Practices (BMPs) should be used throughout the county for all types of land use activities;
- New development should be concentrated in existing population centers that are served by infrastructure and should avoid or minimize impact on the main groundwater recharge spine of the county;
- Land that is unsuitable for intense development should remain in a largely natural state;
- The county should update and closely follows its Comprehensive Plan, and should implement the plan through fair and effective zoning practices and well-planned public facilities and services.

## **A Vision for the Future of Accomack County**

(Vision Statement refined and affirmed by  
Forum participants, July 29, 1996)

### ***Agriculture:***

In the year 2020, Accomack County is still a quiet, rural community and remains the “vegetable garden” of Virginia.

The agricultural and forestry industries are economically strong and have achieved a highly diversified crop base, with effective use of advanced best management practices and minimum use of pesticides. Large corporate farm operations coexist with a healthy, viable community of smaller, family-owned farms.

Communication among agricultural and community leaders has led to improved understanding and cooperation among the various stakeholders in the county. Local citizens take pride in continuing to live and work together in harmony. The agricultural and non-agricultural interests have confronted their concerns, objectively examined the facts, and worked together to achieve effective measures to ensure a viable agricultural industry while still protecting other industries and the residential population at large.

The county makes use of a variety of fair, reasonable and effective tax and land management policies and regulations. This approach has resulted in fair taxation of all residents, including farm owners, and long term conservation of farmland, open space and the rural quality of the county.

Through this combination of measures, the agricultural industry employs a large proportion of the local population, is a major contributor to the economic base, avoids environmental degradation, is economically successful, and exists in harmony with surrounding land uses and the Eastern Shore community as a whole.

### ***Water Quality and the Seafood Industry:***

In the year 2020, surface and groundwater resources throughout Accomack County are plentiful and pristine. High-quality water supplies have been protected and supplies which had been degraded have been restored to an excellent level of purity.

Thousands of acres of shellfish beds have been reclaimed from condemnation and the shellfish and finfish industries are again thriving and growing. The aquaculture industry has grown to become one of the leading economic base industries in the county.

Local citizens, businesses, industries and leaders have all placed the highest priority on the protection of the local ground and surface water resources as the basis for the long term health of the county’s economy and special quality of life.

The impacts on water resources from all sources have been brought under control through a combination of fair, efficient and well-enforced regulations, public and private investments, and technical research.

All levels of government have coordinated their efforts to identify water quality needs and monitor land use activities. They have been given the financial resources and taken the necessary steps to identify problems and correct deficiencies.

The general public and all local industries have a good understanding of water resources and their relationship to land use activities. Information on groundwater resources is adequate and withdrawals are managed so as to ensure long term sustainability of both the quality and quantity of the aquifers.

The use of Best Management Practices is widespread throughout the county for all types of land use activities.

There is a high level of awareness and sensitivity among state agencies, farmers, industries and homeowners regarding water quality and the potential impacts of land use activities. Everyone in the county is careful to avoid releasing chemicals or nutrients into the natural water systems.

The county updates and closely follows its Comprehensive Plan, and implements the plan through fair and effective zoning practices and well-planned public facilities and services. Major proposed land uses are evaluated in terms of how they will affect water quality and seafood industries and the land use plans are revised as needed to minimize impacts. The county's planning strategies are based upon the local natural resources and tailored to each watershed.

All households in the county are served by adequate sewage treatment systems that do not degrade water resources.

New development is concentrated in existing population centers that are served by public facilities and avoid or minimize impact on the main groundwater recharge spine of the county.

Citizens throughout the county continue to work together cooperatively to reach decisions about land use and natural resource policies and regulations.

Accomack County maintains a close working relationship with Northampton County in gathering data, coordinating policies and implementing solutions.

### ***Waterfront Development:***

In the year 2020, waterfront development will be well-planned, with the seaside and bayside areas managed differently in recognition of their distinct natures.

Natural buffers have been preserved and Best Management Practices are in place. Incentives have been provided to inspire restricted/cluster development.

A viable mix of public and private uses has been achieved, all designed for the environment, with limited marina development.

Land that is unsuitable for intense development remains in a largely natural state.

## Visions

The preceding vision statement was produced at a series of public forums sponsored by the Planning Commission to obtain public input for revision of the Comprehensive Plan. Visioning is a process that allows a group or community to define their preferred future. In addition to the vision statements developed for the 1997 Comprehensive Plan revision, several groups have developed visions within the last few years that pertain to the Eastern Shore. Examples of regional, state-wide and local visions are given below.

**A Regional Vision:** In 1989, the Chesapeake Bay Commission's Year 2020 Panel created a vision for the Chesapeake Bay Region that includes:

- Development is concentrated in suitable areas.
- Sensitive areas are protected.
- Growth is directed to existing population centers in rural areas and resource areas are protected.
- Stewardship of the Bay and the land is a universal ethic.
- Conservation of resources, including a reduction in resource consumption, is practiced throughout the region.
- Funding mechanisms are in place to achieve all other visions.

**A State-Wide Vision:** In 1993, The Governor's Commission on Population Growth and Development presented 14 findings to articulate their view of population growth and development and to provide a framework for addressing the challenge of growth by identifying specific issues for the Commission to consider.

1. Growth can provide a variety of benefits but also has economic and environmental costs.
2. The consequences of growth without preparation and coordination are apparent and will worsen unless action is taken.
3. Current development patterns are significantly increasing the cost of providing infrastructure and services.
4. Sprawling development is often an inefficient use of natural resources and contributes to the loss of traditional resource based industries which are vital to the economy of the Commonwealth.
5. The benefits of growth are not shared equitably across the Commonwealth.
6. The health of urban areas is critical to the growth of Virginia. Currently, outlying suburban areas are growing at the expense of urban areas.
7. Long-term transportation planning is essential to foster efficient development patterns and to prevent resource waste and environmental degradation.
8. Housing prices in many localities are out of reach of low and moderate income families.
9. The loss of natural resources continues to threaten Virginia's economy



The Chesapeake Bay Program is a partnership between the EPA, Pennsylvania, Maryland, Virginia, and the District of Columbia for restoration of the Chesapeake Bay. The program was established in 1983 with the signing of the *Chesapeake Bay Agreement* which recognized the declining health of the Bay and the need for a plan to improve water quality and living resources of the Chesapeake Bay. In 1987 this group signed another agreement, committing to the establishment of measures that would protect water quality and habitat in the Bay. Virginia's Chesapeake Bay Preservation Act was the result of that agreement.

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and environment.

10. Private property interests must be protected consistent with the State's obligations to its citizens and future generations.
11. Local governments may need additional incentives and resources as well as powers to manage growth even though some may not be using all powers at their disposal.
12. Some growth related problems lend themselves to regional solutions.
13. The State needs to provide localities with mechanisms for achieving regional solutions.
14. The Commonwealth has a clear interest and responsibility to plan for its future.

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### Positive Aspects of Shore Life

The Countryside Exchange team asked workshop participants to identify positive aspects of the community that should be protected and retained. The following were identified:

*people, friendliness, low crime rate, safety, family orientation, tolerance to individuals, lifestyles, peace, tranquility, neighbor support, old values, sense of community, slow lifestyle, trust/knowning neighbors, good blend of stay heres, come heres, and come backs, history/roots, rural character, mother nature/ natural beauty, beautiful waters, 30 miles of beaches, living near the water, unique pocket of history/family, and church.*

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**An Eastern Shore Vision:** In the summer of 1994, land use professionals from the United States, the United Kingdom and Canada worked with Eastern Shore leaders and concerned citizens to identify the community's preferred future. The group held a workshop at which the following vision was developed:

“The Shore will have a strong local economy that will provide increased opportunities for employment for residents, both skilled and unskilled. This increased activity will be small or medium in scale and preserve and support the friendly quiet rural and small town character of the region. The new enterprises will be sustainable and avoid undue stress on the natural environment, particularly the limited supply of high quality fresh water in the deep aquifer. Development will emphasize particular strengths of the Eastern Shore such as the natural beauty, quiet friendly character and long history as well as adding value to local products such as seafood, farm and forest products.”

**Achieving the Vision:** The above vision statements are four different representations of preferred futures. Each was derived at different times, by different individuals, under different circumstances, using different processes, yet, each is surprisingly similar. In each case the participants envisioned for their future economic prosperity, good, safe living conditions, orderly development, a healthy environment, and fair and reasonable government.

The comprehensive plan is one tool for achieving that vision. Plans are a way of taking stock of the community and setting out a path to achieve goals, whether it be to protect the things we like or to improve conditions that are unacceptable. According to the Code of Virginia, the comprehensive plan is “made with the purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the territory which will, in accordance with present and probable future needs and resources best promote the health, safety, morals, order, convenience, prosperity and general welfare of the inhabitants.”

Planning is necessary if our visions are to be achieved. Planning is a cycli-



cal process that responds to the changing world, always grounded firmly in the community's vision for the future. It is easy, when there are no immediate threats apparent and few signs of change taking place, to dismiss long range planning as unnecessary, especially when more immediate needs and situations demand our attention. Change, however, is seldom readily apparent. Change occurs gradually and often goes unnoticed until it is too late to do anything about it and a community's prosperity, resources and way of life can slip through its fingers with little notice. Planning recognizes the need to constantly monitor the pulse of the community, forces citizens to look closely at what is happening around them and make decisions about their future, and empowers them with the resources to achieve their visions. Through the Comprehensive Plan and the process involved in creating it, citizens of Accomack County have an opportunity to shape their future.

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### What is a plan?

A Comprehensive Plan is an official document that is formally adopted by the Board of Supervisors. Goals and policies are established for guiding the long term land use and infrastructure changes in the county. The Code of Virginia requires that all local governments prepare a plan and review it every five years.

In Virginia, the Comprehensive Plan is a guide. The Plan is not an ordinance; it establishes broad policy framework for local regulations and public investments, but is not as narrow or binding as an ordinance.

State law requires that zoning ordinances and capital improvement programs be based on the Comprehensive Plan. Recent Virginia Supreme Court decisions have required that rezonings be in accordance with the Comprehensive Plan.

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## Enabling Authority

The Accomack County Comprehensive Plan was prepared in accordance with the following sections of the Code of Virginia.

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### The “Dillon Rule”

The Dillon Rule, put forth by Judge John F. Dillon in *Commentaries on the Law of Municipal Corporations* (1873), holds that the powers of local governments are limited to those expressly granted by the state. Under this rule, whenever doubt exists as to whether a locality has a certain power, the courts will rule against the locality. The result is that a locality must seek enabling legislation for every new program or ordinance it wishes to implement, if enabling authority does not already exist.

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**Section 15.1-446.1 Comprehensive plan to be prepared and adopted; scope and purpose.** - *The local commission shall prepare and recommend a comprehensive plan for the physical development of the territory within its jurisdiction.*

*Every governing body in this Commonwealth shall adopt a comprehensive plan for the territory under its jurisdiction by July 1, 1980.*

*In the preparation of a comprehensive plan the commission shall make careful and comprehensive surveys and studies of the existing conditions and trends of growth, and of the probable future requirements of its territory and inhabitants. The comprehensive plan shall be made with the purpose of guiding and accomplishing a coordinated, adjusted and harmonious development of the territory which will, in accordance with present and probable future needs and resources best promote the health, safety, morals, order, convenience, prosperity and general welfare of the inhabitants.*

*The comprehensive plan shall be general in nature, in that it shall designate the general or approximate location, character, and extent of each feature shown on the plan and shall indicate where existing lands or facilities are proposed to be extended, widened, removed, relocated, vacated, narrowed, abandoned, or changed in use as the case may be.*

*Such plan, with the accompanying maps, plats, charts, and descriptive matter, shall show the commission’s long-range recommendations for the general development of the territory covered by the plan, including the location of existing or proposed recycling centers. It may include, but need not be limited to:*

*1. The designation of areas for various types of public and private development and use, such as different kinds of residential, business, industrial, agricultural, conservation, recreation, public service, flood plain and drainage, and other areas;*

*2. The designation of a system of transportation facilities such as streets, roads, highways, parkways, railways, bridges, viaducts, waterways, airports, ports, terminals, and other like facilities;*

*3. The designation of a system of community service facilities such as parks, forests, schools, playgrounds, public buildings and institutions, hospitals, community centers, waterworks, sewage disposal or waste disposal areas, and the like;*

4. *The designation of historical areas and areas for urban renewal or other treatment;*

5. *The designation of areas for the implementation of reasonable ground-water protection measures; and*

6. *An official map, a capital improvements program, a subdivision ordinance, and a zoning ordinance and zoning district maps.*

**15.1-447. Surveys and studies to be made in preparation of plan; implementation of plan.** - (1) *In preparation of a comprehensive plan, the local commission shall survey and study such matters as the following:*

(a) *Use of land, preservation of agricultural and forestal land, production of food and fiber, characteristics and conditions of existing development, trends of growth or changes, natural resources, groundwater, surface water, geologic factors, population factors, employment and economic factors, existing public transportation facilities, the need for housing, and any other matters relating to the subject matter and general purposes of the comprehensive plan.*

(b) *Probable future economic and population growth of the territory and requirements therefor.*

(2) *The comprehensive plan shall recommend methods of implementation. Unless otherwise required by this chapter these may include but need not be limited to:*

- (a) *An official map;*
- (b) *A capital improvements program;*
- (c) *A subdivision ordinance; and*
- (d) *A zoning ordinance and zoning district maps.*

*The requirement for the local commission to survey and study production of food and fiber in the preparation of the comprehensive plan shall not affect any comprehensive plan adopted prior to January 1, 1981.*

**15.1-448. Notice and hearing on plan; recommendation by local commission to governing body.** - *Prior to the recommendation of a comprehensive plan or any part thereof, the local commission shall give notice and hold a public hearing on the plan, after notice as required by section 15.1-431. After such public hearing has been held the commission may approve, amend and approve, or disapprove the plan. Upon approval of the plan, the commission shall by resolution recommend the plan to the governing body.*

**15.1-449. Copy to be certified by governing body.** - *Upon recommendation of the comprehensive plan or a part thereof by the local commission, a*

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## Public Hearings



The public hearing process for adoption of plans and ordinances is specified by State Code. The Planning Commission may not recommend nor the Board of Supervisors adopt a Comprehensive Plan or amendments thereof, until a public hearing has been held. Notice of the public hearing must be published once a week for two successive weeks in a newspaper having general circulation in the county. The notice will specify the time and place of the hearing at which persons may appear and present their views. The Planning Commission and Board of Supervisors may hold a joint public hearing.

Following a public hearing, the Planning Commission may either approve, amend and approve, or disapprove the plan. If the plan is approved, the Commission recommends the plan to the Board of Supervisors. The Board of Supervisors then conducts a public hearing and either approves and adopts, amends and adopts, or disapproves the plan. If the plan is disapproved, it is returned to the Planning Commission for reconsideration, with written reasons for disapproval. The Commission has sixty days to reconsider the plan and resubmit it to the Board of Supervisors.

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*copy thereof shall be certified to the governing body.*

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### **The Presumption of Validity**

Legislative actions, i.e. a locality's law-making capacity, enjoy the *presumption of validity*. This means that, in a court of law, the party challenging the land use decision of a local governing body bears the burden of proving that the decision should be invalidated. The Virginia Supreme Court has stated the following rule about presumptive validity concerning a legislative land use decision: The original presumption of the validity of a legislative land use decision is in favor of the local governing body. However, when the private property owner opposing the decision can make a basic (*prima facie*) case that the action of the local governing body has been unreasonable (*arbitrary and capricious*), the burden of proof shifts to the local governing body. The local governing body must then show that the correctness of its decision is a least *fairly debatable* - at least that reasonable men can differ as to the correctness of the decision - before the court will allow the locality to prevail.

*Source: Zoning and Subdivision Law in Virginia, Stephen P. Robin.*

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**15.1-450. Adoption or disapproval of plan by governing body.** - *After certification of the plan or part thereof, the governing body after a public hearing with notice as required by section 15.1-431 shall proceed to a consideration of the plan or part thereof and shall approve and adopt, amend and adopt, or disapprove the same within ninety days after date of adoption of such resolution.*

**15.1-451. Return of plan to commission; resubmission.** - *If such governing body disapproved the plan, then it shall be returned to the local commission for its reconsideration, with a written statement of the reasons for its disapproval.*

*The commission shall have sixty days in which to reconsider the plan and resubmit it, with any changes, to the governing body.*

**15.1-452. Adoption of parts of plan.** - *As the work of preparing the comprehensive plan progresses, the local commission may, from time to time, recommend, and the governing body approve and adopt, parts thereof; any such part shall cover one or more major sections or divisions of the county or municipality or one or more functional matters.*

**15.1-453. Amendments.** - *After the adoption of a comprehensive plan, all amendment to it shall be recommended, approved and adopted, respectively, as required by section 15.1-431. If the governing body desires an amendment it may direct the local commission to prepare an amendment and submit it to public hearing within sixty days after formal written request by the governing body.*

**15.1-454. Plan to be reviewed at least once every five years.** - *At least once every five years the comprehensive plan shall be reviewed by the local commission to determine whether it is advisable to amend the plan.*

**15.1-455. Inclusion of incorporated towns in county plan; inclusion of adjacent unincorporated territory in municipal plan.** - *Any county plan may include planning of incorporated towns to the extent to which, in the county local commission's judgment, it is related to planning of the unincorporated territory of the county as a whole, provided, however, that the plan shall not be considered as a comprehensive plan for any incorporated town unless recommended by the town commission, if any, and adopted by the governing body of the town.*

*Any municipal plan may include the planning of adjacent unincorporated territory to the extent to which, in the municipal local commission's judgment, it is related to the planning of the incorporated territory of the municipality; provided, however, that the plan shall not be considered as*

*comprehensive plan for such unincorporated territory unless recommended by the county local commission, if any, and approved and adopted by the governing body of the county.*

**15.1-456. Legal status of plan.** - *(a) Whenever the local commission shall have recommended a comprehensive plan or part thereof for the county or municipality and such plan shall have been approved and adopted by the governing body, it shall control the general or approximate location, character and extent of each feature shown on the plan. Therefore, unless such feature is already shown on the adopted master plan or part thereof or is deemed so under subsection (d), no street or connection to any existing street, park or other public area, public building or public structure, public utility facility or public service corporation facility other than railroad facility, whether publicly or privately owned, shall be constructed, established or authorized, unless and until the general location or approximate location, character, and extent thereof has been submitted to and approved by the local commission as being substantially in accord with the adopted comprehensive plan or part thereof. In connection with any such determination the commission may, and at the direction of the governing body shall, hold a public hearing, after notice as required by section 15.1-431.*

*(b) The commission shall communicate its findings to the governing body, indicating its approval or disapproval with written reasons therefore. The governing body may overrule the action of the commission by a vote of a majority of the membership thereof. Failure of the commission to act within sixty days of such submission, unless such time shall be extended by the governing body, shall be deemed approval. The owner or owners or their agents may appeal the decision of the local commission to the governing body within ten days after the decision of the commission. The appeal shall be by written petition to the governing body setting forth the reasons for the appeal. The appeal shall be heard and determined within sixty days from its filing. A majority vote of the governing body shall overrule the commission.*

*(c) Widening, narrowing, extension, enlargement, vacation or change of use of streets or public areas shall likewise be submitted for approval, but paving, repair, reconstruction, improvement, drainage or similar work and normal service extensions of public utilities or public service corporations shall not require approval unless involving a change in location or extent of a street or public area.*

*(d) any public area, facility or use as set forth in subsection (a) which is identified within, but not the entire subject of, a submission under either section 15.1-475 for subdivision or section 15.1-491 (h) for development or both may be deemed a feature already shown on the adopted master plan, and therefore, excepted from the requirement for submittal to and approval by the commission or the governing body; provided that the governing body*

*has by ordinance or resolution defined standards governing the construction, establishing or authorization of such public area, facility or use or has approved it through acceptance of a proffer made pursuant to section 15.1-491 (a).*

*(e) No approval shall be required under this section of any application filed after January 1, 1988, with respect to the construction and operation of a water system under authority of section 15.1-875 by any city with a population of more than 260,000, and any denial of such an application prior to the effective to the effective date of this subsection shall be of no force or effect, provided, that the governing body may, in acting on any 15.1-875 application, consider whether the water system is in conflict with any specific provision of the comprehensive plan.*

**15.1-457. Duties of state agencies.** - *Every department, board, bureau, commission, or other agency of the Commonwealth of Virginia, which is responsible for the construction, operation, or maintenance of any public facility within the territory to be included within a comprehensive plan or any part thereof, or which is responsible for acquiring land for any public purpose, or disposing of such land, shall, upon request of the local commission having authority to prepare such plan, furnish reasonable information requested relative to the plans of such agency which may affect the comprehensive plan; and every such agency shall collaborate and cooperate with such commission, when requested, in the preparation of the comprehensive plan to the end that the plan will coordinate the interest and responsibilities of all concerned. Nothing herein shall be deemed, however, to abridge the authority of any such state agency regarding the facilities now or hereafter coming under its jurisdiction.*