Land Use Planning

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LAND USE PLANNING*

RONALD B. RAVIKOFF**

The author initially examines the traditional judicial treatment given master plans. Recent trends indicating a shift in the traditional view are explored and the author contends that Florida's Local Government Comprehensive Planning Act of 1975 is at the forefront of these new trends. After discussing in depth the Act's provisions, the author concludes that the success or failure of the Act rides on the courts' interpretations of the "consistency" provisions, and strongly advocates a broad interpretation.

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I. INTRODUCTION

The Florida Environmental Land and Water Management Act of 1972 created the Environmental Land Management Study Committee (ELMS Committee) to "study all facets of land resource management and land development regulation . . . and . . . recommend . . . new legislation." In response to this mandate the Committee studied the American Law Institute's Model Land Development Code, the statutes and cases of various other states, and consulted with various governmental entities.

One of the final proposals of the ELMS Committee was the "Local Government Comprehensive Planning Act." The Committee, through the Act, proposed to make significant changes in the law of planning and land use control in Florida. The Act was based on the philosophy that local government was not adequately providing for land use control under home rule, and therefore legislation was needed so that local government would not have a "no regulation" alternative.

It is interesting to note that the Committee rejected the concept of making the existing planning law mandatory, but rather decided "to replace the whole existing zoning system with a more effective and flexible system that not only regulates, but helps shape development." The result was a statute requiring a comprehensive planning process which necessitates the creation of a comprehensive plan. The scope of this comprehensive plan is defined in the statute.

In 1975, the Florida Legislature enacted the Local Government Comprehensive Planning Act of 1975. It should be noted that this
new mandatory planning legislation did not repeal the older optional planning legislation and that the two sections should not be confused. Specifically, the new Act provides that it shall govern where there is conflict with any other provision of law relating to authority to regulate the development of land.

This article will attempt to analyze Florida’s Local Government Comprehensive Planning Act. First, a historical background on the law concerning master plans in general will be discussed. Then, the recent trends in the legal status of comprehensive plans will be considered.

II. THE TRADITIONAL JUDICIAL VIEW OF THE COMPREHENSIVE PLAN

In recent years there has been a considerable amount of activity throughout the country both on the judicial and legislative fronts that has affected and will continue to affect the legal status of master plans. This activity has been particularly evident in Florida. Beginning in 1926 with the Standard Zoning Enabling Act (SSEA), virtually all state enabling legislation has require that zoning be done "in accordance with a comprehensive plan." However, there is a lack of clarity with respect to definitions. Such terms as "comprehensive plan," "master plan," "general plan," and "municipal plan" are all used interchangeably. For the purposes of historical discussion, it will be helpful to define certain terms.

A "comprehensive plan" is a plan which meets the statutory requirements in a particular state (usually equivalent to SSEA). It

12. For more complete discussions of how the master plan has been used in the land use control controversy, see Mandelker, The Role of the Local Comprehensive Plan in Land Use Regulation, 74 Mich. L. Rev. 900 (1976); Sullivan & Kressel, Twenty Years After—Renewed Significance of the Comprehensive Plan Requirement, 9 Urb. L. Ann. 33 (1975); Tarlock, Consistency with Adopted Land Use Plans as a Standard of Judicial Review: The Case Against, 9 Urb. L. Ann. 69 (1975).
is simply a legal concept that must be satisfied: most enabling legislation requires the zoning to be "in accord" with it. The "comprehensive plan" has been a changing concept. One of the aims of this section will be to examine the evolution of this concept.

A "master plan" is a separate document that historically has not constituted an ordinance and has represented a broad statement of policies, goals and objectives for the area it covers. It is a statement of intent, which is generally implemented through the land use regulatory devices, primarily zoning. It is generally synonymous with the "plan" referred to in the Standard City Planning Enabling Act. It should be noted that the courts originally tended to equate "comprehensive plan" with "zoning ordinance" whereas more recent trends have made the "comprehensive plan" equivalent to a "master plan."

A. Origins of the Problem: The Standard Enabling Acts

The problems arising from the interpretation of the comprehensive plan stem from the Standard Enabling Acts originally prepared by the Department of Commerce. The SZEA of 1926 empowered local governing bodies to adopt zoning regulations "in accordance with the comprehensive plan." In 1928, the Standard City Planning Enabling Act (SPEA) gave planning boards the power to adopt and carry out a document known alternatively as the "municipal plan," the "master plan," the "official plan," and the "city plan."

The primary question which arose under these acts concerned their interrelationship. Was the "plan" in the SPEA the prerequisite of zoning "in accordance with a comprehensive plan" as mandated by the SZEA? There is no indication in the acts themselves that this was to be the case, nor is there any judicial support for the logical conclusion that the two acts were meant to complement each other.17

15. SZEA, supra note 13, at § 3.
If the comprehensive plan was a prerequisite for the zoning ordinance, it certainly is a requirement that has been ignored. For the most part, zoning has precede planning in the time sequence of adoption in both of the enabling acts and as a historical fact on the local levels.\textsuperscript{18} This inverse relationship between planning and zoning was discussed in \textit{Kozesnik v. Montgomery Township},\textsuperscript{19} where the court found that to be "in accordance with a comprehensive plan" the zoning did not need to be related to a separate planning process. In discussing the time sequence, the court said:

Thus the historical development did not square with the orderly treatment of the problem which present wisdom would recommend. And doubtless the need for immediate measures led the Legislature to conclude that zoning shall not await the development of a master plan. Accordingly, as of October 15, 1954, while there were 371 zoning ordinances in our State, there were 320 planning boards and but 112 master plans.\textsuperscript{20}

The majority of courts have followed \textit{Kozesnik} and have concluded that the comprehensive plan against which the zoning ordinance was to be measured was something other than that produced under the SPEA. As a result, the courts looked to the comprehensiveness of the zoning ordinance itself rather than to some external standard found in a separate document in order to determine if the zoning ordinance was "in accordance with the comprehensive plan."\textsuperscript{21}

In an article\textsuperscript{22} which has had a major impact on this area of judicial thinking, Professor Charles M. Haar examined the plan requirement. He found that the SZEPA provided little authority for requiring a separate master plan as a precondition to zoning.\textsuperscript{22} He then reviewed the various judicial positions of the "plan" and con-

\textsuperscript{19} 24 N.J. 154, 131 A.2d 1 (1957).
\textsuperscript{20} \textit{Id.} at 165-66, 131 A.2d at 7. \textit{See also} Hyland v. Mayor of Morris, 130 N.J. Super. 471, 327 A.2d 675 (App. Div. 1947) which held that a rezoning was in accordance with a comprehensive plan even though the plan was not adopted until ten months after the rezoning.
\textsuperscript{21} City of Olean v. Conkling, 157 Misc. 63, 283 N.Y.S. 66 (Sup. Ct. 1935) (construing New York's enabling act which predated but was similar to SPEA); Coley v. Campbell, 126 Misc. 869, 215 N.Y.S. 679 (Sup. Ct. 1926).
\textsuperscript{22} Haar, \textit{In Accordance with a Comprehensive Plan}, 68 Harv. L. Rev. 1154 (1955).
\textsuperscript{23} \textit{Id.} at 1157.
cluded that the courts had misplaced their emphasis. The courts were trying to determine "whether the zoning ordinance is a comprehensive plan, not whether it is in accordance with a comprehensive plan. . . ." Haar contended that the comprehensive plan requirement should be read to create a second standard, one that could measure individual zoning ordinances against the goals of the master plan.

Haar's view of the statutory comprehensive plan as a type of broad guide in the form of a master plan, on which a variety of land use control devices should be based, is a minority position among the courts, although not among planners. This minority position is, however, one that is gaining ever increasing acceptance.

B. Judicial Treatment of "In Accordance with a Comprehensive Plan"

The majority view of the statutory comprehensive plan requirement is perhaps best found by again looking at Kozesnik v. Montgomery Township. This case, more than any other, stands for the proposition that zoning is a self-contained activity measured only against constitutional requirements. The plaintiffs had challenged a rezoning where no master plan had been adopted, thus contending that the rezoning could not be "in accordance with a comprehensive plan." In rejecting this argument the court made several findings upon which to base its conclusion. First, the planning enabling legislation, although authorizing the creation of a master plan, was only permissive and not mandatory. Second, the zoning enabling legislation, while containing the standard requirement of zoning in accordance with a comprehensive plan, did not make the plan the same as the optional master plan enunciated in the planning act.

24. Id. at 1173.
25. Id. at 1156.
28. See section III infra.
The court's conclusion was further supported by the fact that the zoning enabling legislation was adopted prior to the planning enabling legislation. Finally, the court did not find inherent within the meaning of the statutory "comprehensive plan" the requirement of a separate master plan document. The court felt that the requirement of the "comprehensive plan" approach was to prevent "capricious exercise of the legislative power resulting in haphazard or piecemeal zoning." Further, a "plan" connotes an integrated product of a rational process and 'comprehensive' requires something beyond a piecemeal approach.

Throughout the country the majority of the courts have adopted the same approach as the Kozesnik court. Thus, the general rule in the United States today is that the "comprehensive plan" required by the enabling legislation is to be found within the confines of the zoning ordinance itself.

The Florida courts have provided no divergences from the pattern noted above. As early as 1934, the Supreme Court of Florida, in *State ex rel. Henry v. City of Miami,* said in dicta that where the authorizing statute so intended, a city must enact "one comprehensive zoning ordinance covering the entire city." Thus, the court indicated that any requirement of comprehensiveness should be fulfilled within the zoning ordinance itself. The position has been consistently followed by later courts in Florida.

The judicial thinking in Florida on the planning required prior to zoning has been aptly summarized:

The procedural step of adopting a plan in the form of a formal document . . . need not necessarily precede the adoption

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30. Id. at 166, 131 A.2d at 7.
31. Id.
33. Id.
34. 117 Fla. 594, 158 So. 82 (1934).
35. Id. at 598, 158 So. at 83.
36. *City of Miami Beach v. Silver,* 67 So. 2d 646 (Fla. 1953); *Davis v. Sails,* 318 So. 2d 214 (Fla. 1st Dist. 1975); *Jefferson Nat'l Bank v. City of Miami Beach,* 267 So. 2d 100 (Fla. 3d Dist. 1972); *Town of Bellesir v. Moran,* 244 So. 2d 532 (Fla. 2d Dist. 1971); *City of St. Petersburg v. Aikin,* 208 So. 2d 268 (Fla. 2d Dist.), rev'd on other grounds, 217 So. 2d 315 (Fla. 1968); *Staninger v. Jacksonville Expwy. Auth.,* 182 So. 2d 483 (Fla. 1st Dist. 1966); *Town of Surfside v. Abelson,* 106 So. 2d 108 (Fla. 3d Dist. 1958).
of a zoning map and corresponding zoning district regulations. Instead, the requirement that zoning regulations be in conformity with a comprehensive plan relates to the necessity that they be comprehensive in character and take into consideration the lessening of congestion.

The requirement that zoning be in furtherance of a comprehensive plan thus means that a city must be zoned on a comprehensive basis.

Merely because zoning regulations are enacted following the adoption of a comprehensive planning report or subsequent to a review of the community's need and goals does not conclude the question of the validity of those zoning regulations. As an exercise of the police power, all zoning ordinances must be reasonable in their application.

In determining the validity of a zoning ordinance, therefore, it must be reviewed in the context of whether it is comprehensive in scope and implements a general community plan. It also must be reviewed to determine whether the general plan that it seeks to implement is reasonable and related to lawful exercise of the police power.37

It should be noted, however, that there have been recent indications of change in the lower courts. For example, in Ulrich v. Dade County,38 the circuit court for Dade County relied on the county comprehensive plan to uphold a zoning classification. In an unreported case,39 the same court held that a rezoning which deviated from the county master plan was invalid based solely on this deviation. It was held that the master plan should carry a presumption of correctness and should be followed unless there are compelling reasons to deviate from it. Finally, in Wald Corp. v. Metropolitan Dade County,40 the District Court of Appeal, Third District, in dicta, said that "Florida Statutes . . . authorize . . . comprehensive plans . . . [and] [z]oning changes may not be implemented where the proposed change will not conform to the comprehensive plan . . . ."41

39. Dade County Ass'n v. Dade County Bd. of County Comm'rs, No. 75-26308 (Dade County Cir. Ct. Dec. 3, 1975), appeal docketed, Florida 3d Dist. For a discussion of this case see Miami Herald, Dec. 4, 1975, at 1B, col. 4. The holding in Dade County Ass'n was recently followed in Castellano v. Crouse, No. 76-21377 (Dade County Cir. Ct. Sept. 7, 1976).
40. 338 So. 2d 863 (Fla. 3d Dist. 1976).
41. Id. at 868.
Although the Florida courts apparently have not recognized a requirement for planning prior to zoning, the legislature has. Prior to the adoption of the mandatory "Local Government Comprehensive Planning Act" which changed this entire area of law in Florida, the permissive statute governed. It provided that "[a]fter a comprehensive plan has been prepared and adopted . . . the governing body . . . may enact . . . a zoning ordinance . . . ." 42

C. Judicial Treatment of Master Plans

Upon establishing that a "master plan" was not the "comprehensive plan" required by the enabling legislation, the courts were still faced with the problem of what weight, if any, to accord the master plan. The following cases provide a representative sample of the posture taken by many state courts with regard to master plans.

In State ex rel. Bateman v. Zachritz, 44 the Supreme Court of Ohio provided an early basis for holding that there could be a valid delegation of the legislative power based on a master plan. The United States Engineers Office had submitted to the city manager of Cincinnati a flood protection plan for one of its suburbs. A resolution providing for cooperation in the project was introduced into the city council, and this resolution was submitted to the planning commission which disapproved it. The City charter provided:

Whenever the commission shall have made a plan of the city or any part thereof, no public [improvement], or part thereof, shall be constructed . . . unless . . . approved by the commission . . . and the council, by a vote of not less than two-thirds of its members shall have the power to overrule. . . . 45

The council voted on the resolution, the vote in favor being five to four, thus defeating the resolution. In upholding the defeat, the Ohio Supreme Court established that it was not unconstitutional to delegate legislative power to the planning commission based on a master plan requirement.

A more definite statement on the master plan's legal status was promulgated in Lordship Park Association v. Board of Zoning

44. 135 Ohio St. 580, 22 N.E.2d 84 (1939).
45. Id. at 582, 22 N.E.2d at 86.
The town had rejected a proposed subdivision even though it met the requirements of all the ordinances because it did not conform to the town's master plan. The Supreme Court of Connecticut found that before a master plan could be used as a land use control device, certain safeguards must be provided. Because the adoption of a town plan is based on the police power, the landowner's use of his property may only be restricted by the plan to the extent reasonably necessary to protect the public health, safety or welfare. Thus, the court outlined the traditional standard of a zoning ordinance and established that a master plan must meet these standards before it can function as a land use control device. The court further indicated that the plan was merely a set of goals which the town officials should use as a guide. It was not a tool which could operate to curtail the rights of a private property owner. The town was ordered to approve the subdivision.

The court's decision in *Lordship Park* dovetails quite nicely with the "comprehensive plan equals zoning ordinance" concept of *Kozesnik*. They both place the zoning ordinance as the primary device of land use control with little room for the master plan. *Kozesnik* says the plan is the ordinance, and *Lordship Park* holds that the plan must be the equivalent of an ordinance before it has any legal weight.

It has become apparent that historically the courts have had to wrestle with the distinction between and interrelationship of planning and zoning. While dealing with this problem, the Supreme Court of Ohio broadened the effects of the master plan. In *State ex rel. Kearns v. Ohio Power Co.*, the question confronting the court was whether a private utility company with eminent domain power and a regional service area beyond the municipality was bound by that municipality's master plan. The court found for the municipality, holding that a contrary result might ruin the entire planning scheme by allowing the power company to place its power lines in any way it pleased. In dicta, the court enunciated the traditional judicial view of planning and zoning.

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46. 137 Conn. 84, 75 A.2d 379 (1950).
47. *Id.* at 90, 75 A.2d at 381-82, citing *Town of Windsor v. Whitney*, 95 Conn. 357, 366, 11 A. 354 (1920).
48. *See* notes 29-33 *supra* and accompanying text.
Although they are sometimes used interchangeably, the terms “zoning” and “planning,” are not synonymous. Zoning is concerned chiefly with the use and regulation of buildings and structures, whereas planning is of broader scope and significance and embraces the systematic and orderly development of a community with particular regard for streets, parks, industrial and commercial undertakings, civic beauty and other kindred matters properly included within the police power.\(^5^0\)

The practical consideration which the courts have given master plans is well demonstrated in Timmerman v. City of New York.\(^5^1\) The issue involved was the proposed location of a sewage treatment plant which was slightly different from that shown on the master plan. The court found that the master plan was not intended or required to specify the exact and precise locations of each and every desirable item to be indicated in the plan. Rather, the master plan was to be considered as a “flexible fluid document”; particular improvements indicated on it were not to be confined to a specific location.

A case that perhaps typifies the traditional judicial position on master plans is Cochran v. Planning Board.\(^5^2\) A property owner had challenged a master plan’s designation of his property claiming it lowered the value of his land. Finding no controversy, the court dismissed the case. It was held that the adoption of a master plan has no legal consequences. “‘It would thus appear that even after the planning board has adopted a master plan, the governing body is free to ignore the recommendation of the planning board based on the master plan. . . .’”\(^5^3\) The court went on to find that the master plan was merely a declaration of policy and a disclosure of an intention which thereafter could be implemented.

Under the traditional view, the master plan was a document which was recognized as a proper basis for the delegation of legislative power but not a standard to be used in measuring legislative enactments. It was merely a statement of goals and policies which could be ignored virtually at will. When the municipality wished to,

\(^{50}\) Id. at 460, 127 N.E.2d at 399, citing 1 Yokley’s Zoning Law and Practice (2d ed.) 2, 3, § 1, Mills v. City of Baton Rouge, 210 La. 830, 839, 28 So. 2d 447, 451 (1946), and Mansfield & Swett, Inc., v. Town of West Orange, 120 N.J.L. 145, 149, 198 A. 225, 228 (1938).

\(^{51}\) 69 N.Y.2d 102 (1946).


\(^{53}\) Id. at 536, 210 A.2d at 104, quoting Cunningham, Controls of Land Use in New Jersey, 15 Rutgers L. Rev. 1, 19 (1960).
it could use it as a rational basis for a zoning ordinance and the courts would view the plan as somewhat persuasive. Thus, while the municipality might justify its actions based on an adopted plan, a private land owner could not attack the municipality because its actions were inconsistent with the same plan.

D. The Courts Seek a Rational Land Use Policy

After the courts became well settled into their “traditional” view of master plans, there developed a number of cases which tended to move away from that approach. These cases accord significant weight to the concept that the comprehensive plan requirement means a master plan. The cases hold that land regulation does need an overall policy framework. Thus, they require that there be a relationship between zoning and a land use policy. While this policy need not exist outside the zoning ordinance itself, an adopted separate plan is a preferred review standard.

In Eves v. Zoning Board of Adjustment, the township adopted a “flexible selective zoning” procedure (more commonly known as a floating zone), whereby all the requirements of a special industrial district zone were delineated in the ordinance, but no boundaries were set. Rather, the ordinance outlined a procedure to be used in submitting an application for this zoning on a particular tract of land. In overturning the ordinance, the court held that it was not within the scope of the enabling legislation which required that it be “in accordance with a comprehensive plan.” The court found that the development scheme would itself become the plan and thus the antithesis of zoning “in accordance with a comprehensive plan.” Since any zoning must be enacted in accordance with a plan, the court found that the plan must be in some formalized format at the time of the zoning. Here the town, according to the court, was confusing comprehensive planning with a comprehensive plan, indicating that the comprehensive plan was not to be found within the zoning ordinance.

In Udell v. Haas, the court was faced with the issue of the validity of the down-zoning of a commercial area to a residential use. The court denied the zone change primarily due to a failure to meet the statutory requirement that zoning be “in accordance with

54. 401 Pa. 211, 164 A.2d 7 (1960).
a comprehensive plan.” The court warned that “our courts must require local zoning authorities to pay more than mock obeisance to the statutory mandate that zoning be ‘in accordance with a comprehensive plan.” The court then went on to say that “difficulties involved in developing rational schemes of land use controls become insuperable when zoning or changes in zoning are followed rather than preceded by study and consideration.” The court strongly stated that the “comprehensive plan” requirement of the enabling legislation must be based on “the needs and goals of the community.”

Such a land use policy rationale for restricting the landowner’s use of his property is a change from the traditional police power rationale. This switch in rationale is further evidenced by the cases in various jurisdictions which require the use of a master plan to establish a policy rationale for the justification of zoning.

III. THE MASTER PLAN AS A COMPULSORY PREREQUISITE TO LAND USE REGULATION

A recent trend has emerged in both courts and legislatures which requires localities to adopt their land use controls within the framework of an existing master plan. This position has been taken in only a few jurisdictions, but it is believed that these decisions represent the “cutting edge” of judicial and legislative thought in this area.

In Fasano v. Board of County Commissioners, homeowners

56. Id. at 476, 235 N.E.2d at 905, 288 N.Y.S.2d at 899.
57. Id. at 470, 235 N.E.2d at 901, 288 N.Y.S.2d at 894.
58. Id. at 471, 235 N.E.2d at 901, 288 N.Y.S.2d at 895.
59. Id. at 476, 235 N.E.2d at 906, 288 N.Y.S.2d at 899.
60. See, e.g., Lordship Park Ass'n v. Board of Zoning Appeals, 137 Conn. 84, 75 A.2d 379 (1950).
61. City of Louisville v. Kavanaugh, 495 S.W.2d 502 (Ky. 1973) (based on an adopted master plan the court held a refusal to rezone was arbitrary); Aspen Hill Venture v. Montgomery County Council, 265 Md. 303, 289 A.2d 303 (1972); Raabe v. City of Walker, 383 Mich. 165, 174 N.W.2d 789 (1970) (rezoning prevented where a separate master plan had not yet been adopted and the Kozesnick approach that the zoning ordinance was the comprehensive plan rejected); Biske v. City of Troy, 381 Mich. 611, 166 N.W.2d 463 (1969), aff'd in part and rev'd in part, 6 Mich. App. 546, 149 N.W.2d 899 (1967) (an adopted separate master plan provides a preferred standard of review for zoning). But see, F.H. Uelner Precision Tools & Dies, Inc., v. City of Dubuque, 190 N.W.2d 465 (Iowa 1971) (if the zoning ordinance and master plan were inconsistent, the zoning ordinance controls); Duran Invs. v. Muhlenberg Township, 10 Pa. Commw. Ct. 143, 309 A.2d 450 (1973) (held that if the zoning ordinance requirements for a P.U.D. were met, it had to be granted even if contrary to the master plan).
opposed a zone change for mobile homes which had already been approved by the county commission. The master plan for the county showed this land to be designated as a single family residential use, and the planning commission had failed to support the change. The Supreme Court of Oregon, sitting en banc, held the zone change invalid. The court decided that the statutory mandate that zoning must be based on a comprehensive plan meant a separate master plan. After noting that the purpose of the zoning ordinance is to implement the master plan, the court pointed out that "both are intended to be parts of a single integrated procedure for land use control." The zoning ordinance gives effect to the principles and policy determinations embodied in the plan.

The court further stated that the "comprehensive plan" was a basic document geared to population, land use, and economic forecasts, all of which should be the basis for land use control devices. The court concluded:

We believe that the state legislature has conditioned the county's power to zone upon the prerequisite that the zoning attempt to further the general welfare of the community through consciousness, in a prospective sense, of the factors[63] mentioned above. In other words, except as noted later in this opinion, it must be proved that the change is in conformance with the comprehensive plan.[64]

The court's phraseology is significant here because the court is equating the principles of the master plan with the general health, safety, and welfare.

Shortly, after Fasano, the Supreme Court of Oregon was again faced with the question of the relationship between the master plan and zoning. In Baker v. City of Milwaukie,[65] a landowner was protesting the development of property adjacent to his. The development was at a density higher than that permitted by the master plan but in conformity with that permitted by the existing ordinance. The lower court found that there was no requirement that the zoning be in accordance with a plan, and that the existing master plan, adopted by resolution, could not be placed in a superior

63. Id. at 582, 507 P.2d at 27.
64. The court is referring to the statutory standards for a master plan.
65. 264 Or. at 583, 507 P.2d at 28.
position to a zoning regulation adopted by ordinance.

In reversing, the Supreme Court of Oregon examined the function of a master plan and found it similar to a "constitutional" document which provides a broad statement that is to be implemented by the local legislature. The court then gave the plan preference over prior zoning ordinances, pointing out that such a preference was necessary to prevent cities from adopting a plan and then relegating it to oblivion through continued use of the prior zoning regulations. The court noted that

[the adoption of the general plan is, in effect, the adoption of a policy, and in many respects, entirely new policy. The plan is of a permanent and general character, it is a declaration of public purpose and, as such, supposedly sets forth what kind of a city the community wants and, supposedly represents the judgment of the electors of the city with reference to the physical form and character the city is to assume.]

The court then imposed a duty on the city, upon its adoption of a master plan, to implement the plan through its zoning ordinances. The court summarized its position in language that will undoubtedly have a major influence in land use law.

In summary, we conclude that a comprehensive plan is the controlling land use planning instrument for a city. Upon passage of a comprehensive plan a city assumes a responsibility to effectuate that plan and conform prior conflicting zoning ordinances to it. We further hold that the zoning decisions of a city must be in accord with that plan and a zoning ordinance which allows a more intensive use than that prescribed in the plan must fail.

The holding in Baker was refined in Marracci v. City of Scappoose. This court interpreted Baker to stand not for the proposition of literal conformance between the land use decision and the comprehensive plan, but merely as requiring the plan to act as an outside limit. Thus, a locality can adopt regulations more stringent than those called for by the plan and still be in compliance.

A similar series of cases in Virginia is interesting because the courts do not adhere to the strong position taken by the Oregon

67. Id. at 513, 533 P.2d at 778, citing O'Loane v. O'Rourke, 231 Cal. App. 2d 774, 785, 42 Cal. Rptr. 283, 289 (1965).
68. Id. at 514, 533 P.2d at 779 (emphasis added).
70. Id. at —, 552 P.2d at 553.
courts, but rather seem to take the position adopted in Udell v. Haas.\textsuperscript{71} However, the actual effect of the cases is to place the master plan in a stronger position than Udell would.

In past years, Fairfax County, Virginia, has been trying to revise its planning and zoning structure while dealing with the problems which have resulted from being one of the fastest growing counties in the country.\textsuperscript{72} In an effort to control its burgeoning growth rate, the county adopted several "no growth" positions which resulted in litigation. Several of these deal with the functions of a master plan.

In Board of Supervisors v. Snell Construction Corp.,\textsuperscript{73} the Supreme Court of Virginia reversed a down-zoning that went below the density recommended by the master plan. The court found that state legislation, while not making the master plan a zoning ordinance, did make it a comprehensive guideline for zoning ordinances. The exact location of zone boundaries was to be determined through the zoning process, but in making a zoning judgment the governing body was required to consider the dictates of the master plan as well as existing property characteristics.

More recently, the Supreme Court of Virginia decided Board of Supervisors v. Allman,\textsuperscript{74} which involved a tract of land of over 300 acres outside Washington, D.C. near the "new town" of Reston. The plaintiff applied for a rezoning from single family homes to a planned development district of three dwelling units to the acre. It was denied by the county. Although the court's decision revolved primarily around development timing and the adequacy of public facilities in holding that the refusal to rezone was invalid, the court's comments about the master plan are noteworthy. The court stated what can be considered to be representative of the majority position in the courts. That is, the master plan does not have the status of a zoning ordinance.\textsuperscript{75} Rather, it is only advisory in nature and serves merely as a guide to a zoning body. However, the plan in existence at the time would have permitted the development sought. The court was able to use this factor along with the public

\textsuperscript{71} 21 N.Y.2d 463, 235 N.E.2d 897, 288 N.Y.S.2d 888 (1968); see text accompanying note 55 supra.

\textsuperscript{72} Hartzer, Comprehensive Plans Edge Zoning Ordinances as Legal Documents for Development, 10 AIP NEWSLETTER No. 9 at 6 (Sept. 1975).

\textsuperscript{73} 214 Va. 655, 202 S.E.2d 889 (1974).

\textsuperscript{74} 215 Va. 434, 211 S.E.2d 48, cert. denied 96 S. Ct. 300 (1975).

\textsuperscript{75} Id. at 441, 211 S.E.2d at 52.
facility argument and a finding of "inconsistent and discriminatory" action (due to rezonings on similar property in the area) to reach the conclusion that the refusal was not valid.

In a case decided the same day as Allman, the Supreme Court of Virginia demonstrated a further movement towards support of the master plan in zoning disputes. In City of Richmond v. Randall, a rezoning request was upheld on a parcel of land that was designated as a "transitional" use or zone in the master plan when the rezoning was found to be designed to implement the plan designation.

In an ironic reversal of positions from Allman, Fairfax County tried to use the master plan to support its denial of a rezoning in Board of Supervisors v. Williams. The plan had stated a policy of holding back development until the necessary facilities were available. However, the trial court's findings of fact showed: public facilities were or soon would be available; nearby properties similarly situated had been rezoned; existing zoning was unreasonable; and the denial of the rezoning was arbitrary and capricious. The Supreme Court of Virginia affirmed these findings and struck down the zoning and also any hope that the master plan would provide protection. The court pointed out that the Board used the density provisions of the plan to permit the development of some property but used the timing provisions to deny similar development of other property in the same area.

This holding is particularly interesting in light of the recent trend in exclusionary zoning cases which have struck down zoning ordinances enacted for exclusionary purposes. This decision indicates that although master plans may be given a new and expanded role in the land use regulatory system, the courts will not permit their use in place of a zoning ordinance as an exclusionary device.

Florida's adoption of the Local Government Comprehensive Planning Act of 1975 is yet another step in the ever growing trend requiring a rational planning basis for land use regulations. It is

77. 216 Va. 49, 216 S.E.2d 33 (1975).
78. Id. at —, 216 S.E.2d at 41.
suggested that this Act may be the most far reaching piece of legisla-
tion yet affecting the legal impact of master plans.

IV. THE LOCAL GOVERNMENT COMPREHENSIVE PLANNING ACT OF 1975

A. Background

The relationship of traditional land use controls (e.g., zoning) to land use planning is a concern that, in the past, has been left to the desires of local government. However, in addition to the recent judicial trends,\(^8\) there have been developments on the legislative front which indicate a marked shift away from solely local concern. This change can be explained by considering several influences. The planning process has been seen as a more important control tool because of the negative position taken by the courts on apparently arbitrary local decisions.\(^8\) There also has been a renewed concern for our environment and a realization that our existing system of controlling development is not working. Perhaps, most significantly, there has been a growing awareness that land use control must have a cohesive policy supporting it, and often this policy must be based upon a much larger geographical area than is covered by a local government.

Due to this impetus, in recent years, there has been a dramatic upsurge of innovative state legislation in land use control methods. This trend, characterized by one commentator as a “quiet revolu-
tion,”\(^8\) is based on the recognition that the solution to “problems such as pollution, destruction of fragile natural resources, the short-
tage of decent housing,” and many others is “simply beyond the capacity of local governments acting alone,” and can only be solved by state action.\(^8\)

Florida’s movement to joint this “quiet revolution” was spurred, as have been many such actions, by a crisis—the drought of 1971.\(^8\) The Governor called together experts for a conference on water management in South Florida. The conference called for the state to develop a comprehensive land and water policy.\(^8\) The re-

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80. See section III supra.
83. Id. at 3.
84. COLLEGE OF ARCHITECTURE, UNIVERSITY OF FLORIDA, AN ANALYSIS OF THE FLORIDA LOCAL GOVERNMENT COMPREHENSIVE PLANNING ACT OF 1975 (1975), at 7.
85. THE USE OF LAND, supra note 4, at 64.
Response by the Governor was to appoint a Task Force on Resource Management.\textsuperscript{46} In 1972 this Task Force presented a package of legislation\textsuperscript{87} whose key was a land management bill based on the model land development code of the American Law Institute.\textsuperscript{88} The key act was the Environmental Land and Water Management Act of 1972.\textsuperscript{89} A section of this Act established the Environmental Land Management Study Committee (ELMS Committee).\textsuperscript{90} The Committee was charged with the responsibility of studying the state's land resource management and land development regulations.\textsuperscript{91} One of the recommendations of the ELMS Committee, introduced in the 1974 Legislature, was the Local Government Comprehensive Planning Act.\textsuperscript{92} The Committee felt that only if local governments throughout the state were required to participate in the planning process could the policy goals be achieved.\textsuperscript{93} The Act was introduced in 1974 but died on the calendar. However, in 1975 a revised version was introduced and passed into law. The most significant difference in the 1975 Act was the absence of funding for local planning.\textsuperscript{94}

Generally speaking, the Act requires all municipalities and counties in Florida to prepare and adopt a comprehensive plan by July 1, 1979.\textsuperscript{95} The required comprehensive plan must contain certain "elements" or areas of coverage\textsuperscript{96} and be adopted under certain set procedures.\textsuperscript{97} Perhaps most significantly, the adopted plan has the legal status of law.\textsuperscript{98} These and other provisions of the Act are discussed in detail below.

\textsuperscript{86} COLLEGE OF ARCHITECTURE, supra note 84, at 7.
\textsuperscript{87} Rubino, Florida's Land Use Law, 46 State Gov't 172, 173 (1973).
\textsuperscript{88} ALI, supra note 4.
\textsuperscript{89} FLA. STAT. ch. 380 (1975); see Finnell, Saving Paradise: The Florida Environmental Land and Water Management Act of 1972, 1973 Urb. L. ANN. 103.
\textsuperscript{90} FLA. STAT. § 380.09 (1975). Nine of the committee members were appointed by the Governor, three by the President of the Senate, and three by the Speaker of the House of Representatives. See FLA. STAT. § 380.09(1) (1975).
\textsuperscript{91} FLA. STAT. § 380.09(2) (1975).
\textsuperscript{92} E. Bartley, LOCAL GOVERNMENT COMPREHENSIVE PLANNING ACT OF 1975: AN INFORMATIONAL SUMMARY (1975) at 4.
\textsuperscript{93} Id. at 3.
\textsuperscript{94} COLLEGE OF ARCHITECTURE, supra note 84, at 8.
\textsuperscript{95} FLA. STAT. § 163.3167(2) (1975).
\textsuperscript{96} FLA. STAT. § 163.3177 (1975).
\textsuperscript{97} FLA. STAT. §§ 163.3181, .3184 (1975).
\textsuperscript{98} FLA. STAT. § 163.3194 (1975).
B. Procedural Provisions of the Act

1. MANDATORY PLANNING

The Act requires each municipality and county in the state to adopt a comprehensive plan prior to July 1, 1979. The plan and the method of its adoption must conform to the Act’s requirements.

The Act imposes harsh penalties for failure to comply with this mandate. Any local body which fails to adopt a plan will have the comprehensive plan of its immediately superior unit of government imposed on it, thereby removing local control.

All local governments must have designated a “local planning agency,” and notified the Division of State Planning of the designation by July 1, 1976. The local agency is responsible for the preparation of the plan and for the holding of public hearings. This agency may be a local planning commission, the planning department of the local government, or a council of local governments.

Approximately 460 local government units fall under the provisions of the Act. Of these, thirteen municipalities received extensions for the designation of a local planning agency, five municipalities did not designate and two municipalities indicated that they would not participate. The responsibilities for the latter seven municipalities were taken over by their respective counties.

Various types of governmental bodies have been appointed as local planning agencies despite the wording of the Act. It has been reported that “city councils, county commissions, local planning or zoning boards, planning departments, new planning agencies on top of existing ones and . . . a single city commissioner” have all been designated as local planning agencies.

99. A recent move to extend this deadline by two years was killed in the Florida Legislature. IV AIP/FSU LEGISLATIVE REPORTING SERVICE No. 8 at 1 (April 22, 1976).
101. Id.
102. Fla. Stat. §§ 163.3167(4), .3167(5) (1975). The ability to enforce this provision is questionable, given the absence of funding, should there be wholesale disaffirmance of the Act by local governments.
106. See text accompanying note 104 supra.
One commentator has noted the "flexibility" that the Act provides regarding the type of entity that can be appointed as the local planning agency.\(^\text{108}\) It is suggested that no such flexibility exists. Rather the Act appears to manifest an intent to have a traditional planning agency act as the local planning agency, and certainly it should be one separate from the governing body. In describing the local planning agency, the Act indicates that the governing body must establish the local planning agency by ordinance,\(^\text{109}\) may prescribe funds for it,\(^\text{110}\) and must assign it responsibilities.\(^\text{111}\) The Act also provides different public hearing requirements for consideration of the proposed plan by the local planning agency and enactment of the plan by the governing body.\(^\text{112}\) It appears evident from the Act that there was a clear intent to have the plan prepared and proposed by some other body than the local governing body. Logic would dictate that to have the local planning agency be one and the same as the governing body would seriously limit the amount of unbiased and independent input into the plan. Such an action would politicize the plan and, in general, undermine the intent of the Act.

2. STATUS OF EXISTING COMPREHENSIVE PLANS

The Act allows an existing plan to maintain its current status until a new plan is adopted. However, existing plans will not suffice to meet the Act's goal and consequently, a new plan must be written and adopted. Nevertheless, the existing plan may provide the basis for a new comprehensive plan.\(^\text{113}\)

3. PUBLIC PARTICIPATION

The original act had a simple provision requiring the governing body to provide for public participation in the planning process.\(^\text{114}\) However, the enactment of a much more demanding provision indicates that the legislature apparently decided the original provision

\(^{108}\) Id.
\(^{112}\) See section IV, B, 5 infra.
was inadequate.\textsuperscript{115} Specifically, under the new provision the local
governments must "provide for broad dissemination of the pro-
posals and alternatives, opportunity for written comments, [and] 
public hearings after due public notice. . . ."\textsuperscript{116} In addition, where 
the proposal deals with less than five percent of the land area of the 
jurisdiction, each land owner affected must be notified by mail of 
any public hearing.\textsuperscript{117} When the proposal covers more than five per-
cent, a specific notice (its wording is incorporated in the legisla-
tion\textsuperscript{118}) must be publicized twice in a local paper.\textsuperscript{119} Both hearings 
must be held after 5 p.m. on a weekday. The first must be held 
approximately seven days after the first advertisement and the sec-
ond hearing about two weeks after the first hearing.\textsuperscript{120}

4. PUBLIC NOTICE

The local agency must hold hearings on the plan after due 
public notice. The Act specifies that due public notice means publi-
cation of a notice of the time, place, and purpose of the hearing at 
least twice in a newspaper of general circulation in the area. The 
first publication must be not less than fourteen days prior to the 
date of the hearing and the second to be at least five days prior to 
the date of the hearing.\textsuperscript{121}

Thus, there are two public notice requirements. The public 
notice requirements as outlined in the preceding paragraph, found

\begin{itemize}
\item \textsuperscript{115} 1976 Fla. Laws ch. 76-155 § 3 (amending Fla. Stat. § 163.3181 (1975)) (current
version at Fla. Stat. § 163.3181 (Supp. 1976)).
\item \textsuperscript{116} Fla. Stat. § 163.3181(2) (Supp. 1976).
\item \textsuperscript{117} Fla. Stat. § 163.3181(3)(a) (Supp. 1976).
\item \textsuperscript{118} Notice of Restriction on Land Use

The (name of local government unit) proposes to restrict the use of land 
within the area shown in the map in this advertisement. A public hearing on the 
increase will be held on (date and time) at (meeting place).

The advertisement shall also contain a geographic location map which clearly 
indicates the area covered by the proposed ordinance. The map shall include 
major street names as a means of identification of the area.

In lieu of publishing the advertisements set out in this paragraph, the local 
governmental unit may mail a notice to each person owning real property within 
the area covered by the ordinance. Such notice shall clearly explain the proposed 
ordinance and shall notify the person of the time, place, and location of both 
public hearings on the proposed ordinance.

\item \textsuperscript{119} Fla. Stat. § 163.3181(3)(b)(2), (3) (Supp. 1976).
\item \textsuperscript{120} Fla. Stat. § 163.3181(3)(b)(2) (Supp. 1976).
\item \textsuperscript{121} Fla. Stat. § 163.3164(16) (1975).
\end{itemize}
in Florida Statutes section 163.3164 (16), refer to meetings for “consideration of the proposed plan or amendments there by the local planning agency or by local governing body.” The notice by mail requirements outlined in the prior section on public participation apply “whenever a local governing body considers the enactment of an ordinance dealing with the land use element of a comprehensive plan.”

5. ADOPTION OF THE PLAN

The Act specifies the following steps which must be undertaken prior to the valid adoption of a new plan under the Act:

1. Sixty days prior to adoption of the plan by the governing body, the governing body must

   (a) send a copy of the plan to the Division of State Planning for written comment;
   (b) send a copy of the plan to the regional planning agency for written comment;
   (c) send a copy of the plan to the county planning department;
   (d) send copies of the plan to any other unit of government that requests it; and
   (e) make a finding that the local planning agency has held public hearings on the proposed plan, and that due public notice has been afforded.

2. The state must, within sixty days of receipt of the proposed plan, send its comments back to the governing body. If the Division of State Planning has any objections to the proposed plan, the governing body has four weeks in which to reply. The governing body cannot take any action on the proposed plan until two weeks after the transmittal of its reply. These written communications between the State and the local governing body must become a part of the public record when the plan is up for adoption.

122. FLA. STAT. § 163.3181(2) (Supp. 1976) (emphasis added).
123. FLA. STAT. § 163.3181(3) (Supp. 1976) (emphasis added).
124. FLA. STAT. § 163.3184 (1975).
125. FLA. STAT. § 163.3184(1)(a) (1975).
126. FLA. STAT. § 163.3184(1)(b) (1975).
127. FLA. STAT. § 163.3184(1)(c) (1975).
129. FLA. STAT. § 163.3184(1)(e) (1975).
130. FLA. STAT. § 163.3184(2) (1975).
As of the most recent reports, the Division of State Planning has received plans or portions of plans from twenty-five local governments.\textsuperscript{131}

The same procedure as outlined above applies to the county and regional planning agencies.\textsuperscript{132} The time periods for review by the state, regional, and county agencies run concurrently.\textsuperscript{133}

Upon completion of this process, the governing body may adopt the plan by not less than a majority vote. The relationship of this adoption requirement to existing adoption provisions was recently questioned. The Broward County charter provided that a land use plan adopted by the planning council must be enacted into law unless rejected by a \textit{unanimous} vote of the County Commission, thus directly conflicting with that provision of the Act which required a majority vote of the governing body. The Attorney General found that the Act controlled since the Act provides that when it conflicts with any other provision it shall control unless the other provisions are more stringent.\textsuperscript{134}

Copies of the adopted plan must be sent to the Division of State Planning, the regional planning agency, the county planning agency, and any other governmental unit requesting it.\textsuperscript{135}

It should be noted that there is no "veto" provided in the Act for the agencies to which submittal is required. The submission is solely for informational purposes. The local governing body must show in its minutes when adopting the plan or its elements that it has considered the comments from the various agencies. But the Act specifically states that the local body is not bound to accept such comments or recommendations.

This adoption procedure is mandatory and no "half-way" measures can be followed. The Attorney General found that comprehensive plans can be adopted only in conformance with the Act's provisions.\textsuperscript{136} No interim plans are authorized which would act as stopgaps until a full plan is adopted.

\textsuperscript{131} O'Connell, \textit{supra} note 105, at 9.
\textsuperscript{132} FLA. STAT. §§ 163.3184(3), .3184(4) (1975).
\textsuperscript{133} Id.
\textsuperscript{134} [1975] FLA. ATT'Y GEN. ANN. REP. 280, \textit{quoting} 1975 Fla. Laws ch. 75-257, § 17 (codified at FLA. STAT. § 163.3211 (1975)).
\textsuperscript{135} FLA. STAT. § 163.3184(7) (1975).
## Comprehensive Plan or Element Review and Adoption Process*

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<tr>
<th>Step</th>
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<td>1</td>
<td>LPA Review</td>
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<td></td>
<td>Public Notice(s)</td>
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<tr>
<td>2</td>
<td>Public Hearing(s)</td>
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<td>3</td>
<td>LPA Recommendation to the Local Governing Body</td>
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<tr>
<td>4</td>
<td>Local Governing Body Review</td>
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<tr>
<td>5</td>
<td>Transmit for Review &amp; Comment to:</td>
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<td>• State • County • Region • Other</td>
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<tr>
<td>6</td>
<td>Local Governing Body Response to Objections</td>
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<td>7</td>
<td>Waiting Period (only if objections)</td>
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<td>8</td>
<td>Adoption by Local Governing Body after due public notice &amp; public hearing</td>
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<tr>
<td>9</td>
<td>Transmit to:</td>
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<td></td>
<td>• State • County • Region • Other</td>
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</tbody>
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* * Source: DEP’T OF COMMUNITY AFFAIRS, A Local Official’s Guide to the Local Government Comprehensive Planning Act. *
6. AMENDMENT OF THE PLAN

Once a comprehensive plan has been adopted under the Act, it can only be amended in accordance with the Act’s requirements. Two types of amendments are specified by the Act—a comprehensive amendment and a specific amendment. A specific amendment is one which changes a use in the land use portion of the comprehensive plan, or changes a residential density on a land area provided that the total extent of the land affected by the change is less than five percent of the total land area covered by the plan.

All amendments that are not specific amendments are comprehensive amendments. A specific amendment may be made by the local governing body alone. A comprehensive amendment must follow the procedure used in adopting the original plan.

It should be noted that the section detailing amendment procedures appears unclear and seems limited to amendments to the land use portion of the plan. No mention is made of amendments to the various other sections of the plan.

7. UPDATE OF THE PLAN

The Act requires the local planning agency to prepare periodic reports on the comprehensive plan. These reports are to be sent to the governing body at least once every five years. The reports must evaluate the plan’s success or failure and discuss: (1) major problem areas within the community; (2) the condition of each element in the comprehensive plan at the time of its adoption and at the time of the report; (3) the comprehensive plan’s objectives as compared with the actual results at the time of the report; (4) the extent to which unanticipated and unforeseen problems and opportunities have occurred; and (5) suggested changes in the comprehensive plan.

This report must be submitted to the Division of State Planning, the county planning agency, and the regional planning agency.

138. See section IV, B, 5 supra.
### Major Planning Activities - Key Date and Timeframes*

<table>
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<tr>
<th>Date</th>
<th>Activity Description</th>
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<tbody>
<tr>
<td><strong>July 1, 1976 - Designation of the Local Planning Agency (LPA)</strong></td>
<td>The local governing body must designate an LPA unless a request for a one year extension has been granted by the state land planning agency (Division of State Planning, Department of Administration).</td>
</tr>
<tr>
<td><strong>July 1, 1977 - Final Date for Designation of LPA Under Extension Provisions</strong></td>
<td>Beyond this date, the responsibilities of the LPA are assumed by the next higher unit of government, i.e., the county is responsible for the LPA functions of a non-designating municipality. The Division of State Planning is responsible for the LPA functions of a non-designating county.</td>
</tr>
<tr>
<td><strong>July 1, 1979 - Adoption of Comprehensive Plan</strong></td>
<td>All units of local government must prepare and adopt a comprehensive plan by July 1, 1979.</td>
</tr>
<tr>
<td><strong>July 1, 1980 - Extension on Adoption of Comprehensive Plan</strong></td>
<td>The Division of State Planning may extend the deadline for comprehensive plan adoption by one year if due cause can be presented by the local governing body. A second one year extension may be authorized with a deadline of July 1, 1981.</td>
</tr>
<tr>
<td><strong>Five Years After Plan Adoption - Evaluation and Appraisal</strong></td>
<td>An evaluation and appraisal report by the LPA must be sent to the governing body. This report is to be transmitted to specified agencies (see section 6.4). Review and/or amendments of plans may occur at more frequent intervals.</td>
</tr>
<tr>
<td><strong>Incorporations After Effective Date of Act</strong></td>
<td>Any municipality which incorporates after the effective date of this Act (July 1, 1975) has three years to prepare and adopt a comprehensive plan. Such plan need not be adopted prior to July 1, 1979.</td>
</tr>
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* Source: Dep't of Community Affairs, A Local Official's Guide to the Local Government Comprehensive Planning Act.
C. Elements of a Plan Under the Act

Requirements imposed by the Act for all comprehensive plans fall generally into one of three groupings: mandatory general requirements, mandatory specific requirements, and optional specific requirements.

1. MANDATORY GENERAL REQUIREMENTS

The Act imposes the following five general requirements on all comprehensive plans.\(^{140}\)

First, the plan must be in such a format that it has adequate descriptive materials in either graphic or written form.\(^{141}\) However, it should be noted that no specific format is required by the Act. More traditional forms of planning usually placed great reliance on physical planning and design. Thus, frequently, the plan consisted of a map or series of maps. The Act, however, mandates a far wider range of planning areas than just physical land planning. In recognition of this the Act allows a high degree of flexibility in the format in which the plan may be presented.

Second, the various sections of the new plan must be coordinated with each other. The sections must be internally consistent as well as consistent with each other. In addition, the comprehensive plan must be economically feasible.\(^{142}\)

Third, the economic assumptions on which the plan is based must be set out in the plan. The sections of the plan dealing with capital improvements must be supported by a capital improvements program giving costs, priorities, and proposed funding sources.\(^{143}\) It is suggested that while this is a laudable goal, it is perhaps inappropriate to place the capital improvements program within the context of the comprehensive plan. Capital improvements programing is far too speculative an area to be placed within a plan that should require little amending within a five year period.\(^{144}\) This provision reflects an underlying policy inherent within the Act to create a highly specific document. This policy may be self-defeating. One leading commentator noted that "[a]bove all, the general plan must be distinguished from those specific and detailed documents which are intended to implement it, such as . . .

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\(^{142}\) Fla. Stat. § 163.3177(2) (1975).

\(^{143}\) Fla. Stat. § 163.3177(3) (1975).

the capital-improvements priority and financing programs.”\textsuperscript{145} Certainly, a requirement that local plans consider linkages among the plan elements and a capital facilities program is desirable, but to require the plan to contain “fiscal proposals relating . . . to estimated costs, priority ranking relative to other proposed capital expenditures, and proposed funding sources”\textsuperscript{146} creates excessive rigidity.

Fourth, the Act requires the new plan to be coordinated with the comprehensive plans of the state, the county, and adjacent municipalities. In order to meet this requirement the plan must include a specific policy statement indicating the relationship of the proposed development of the area to the comprehensive plans of the state, county, and adjacent municipalities.\textsuperscript{147} The Act creates “technical advisory committees” to be established within each county to help coordinate the comprehensive plans. Each unit of local government must appoint one person to the committee.\textsuperscript{148}

Finally, the new comprehensive plan must contain policy recommendations for its implementation.\textsuperscript{149}

2. MANDATORY SPECIFIC REQUIREMENTS

In addition to the mandatory general requirements, the following ten specific requirements must be included in the plan.\textsuperscript{150}

a. Land Use

The new comprehensive plan must include a section on future land use which will designate the general distribution, location, and extent of the uses of land for housing, business, industry, agriculture, recreation, conservation, education, public buildings and grounds, other public facilities, and other categories of public and private uses of land.\textsuperscript{151} This section of the plan is obviously the “key” section, as it is central to all the other elements. It also provides some repetition. For example, the recreation part of the land use plan certainly will repeat much of the material in the recreation element and of course the two elements must be closely coordinated. In addition, the future land use plan must include a

\textsuperscript{145} T. Kent, \textit{The Urban General Plan} 102 (1964).
\textsuperscript{146} Fla. Stat. § 163.3177(3) (1975).
\textsuperscript{147} Fla. Stat. § 163.3177(4) (1975).
\textsuperscript{149} Fla. Stat. § 163.3177(5) (1975).
\textsuperscript{150} Fla. Stat. § 163.3177(6)(a)-(j) (1975).
\textsuperscript{151} Fla. Stat. § 163.3177(6)(a) (1975).
statement of the standards to be followed in the control and distribution of population densities and building and structure densities. Such standards are obviously aimed at the problem of growth management. This is one area where it is possible that intergovernmental coordination will be difficult to achieve. It can be argued that the internal distribution of population densities within local jurisdictions is a problem that is best left to the municipality, while the establishment of density levels and growth rate in a regional pattern is a state matter. Likewise, while residential patterns might be left to local decisionmakers, perhaps the location of low-income housing is best left to regional or state decisionmakers. Thus, it is suggested that the legislators should have indicated the level of government that would deal with each issue. Alternatively, the legislature should have given guidance to planners who deal with problems which, though left for local government, raise issues of regional or statewide concern.

Another indication of the importance to be afforded this element of the plan can be found by examining other portions of the Act. The amendment provision specifically sets standards which vary according to the percentage of the land involved. The provisions of the Act dealing with legal status specifically refer to the effect of regulation on land affected by certain actions. Given that traditional comprehensive plans were only land use plans, this emphasis is not unexpected.

b. Traffic

The Act requires a traffic circulation plan which examines the types, locations, and extent of existing and proposed transportation arteries.

c. Public Utilities

The plan must include a general section on sanitary sewers, solid waste disposal, drainage facilities, and potable water. While this element may be comprised of a detailed engineering plan, it is not required. The provision of these services must be correlated to

152. Id.
154. See section IV, B, 6 supra.
156. See section IV, D, infra.
the principles and guidelines for future land use. This correlation is certainly necessary. It has been widely recognized that the extension of public utilities is as effective a land use control device as the more traditional zoning.

d. Conservation

The Act requires a plan to have a section on conservation for the development, utilization, and protection of natural resources such as air, water, soils, beaches, wildlife, etc. This is not one of the traditional elements found in comprehensive plans and is certainly a commendable response to present environmental concerns.

e. Recreation

The Act requires a recreation section giving a system of public and private sites for recreation. The sites would include both natural and man-made facilities.

Certainly, recreation planning is both a traditional and a necessary part of the comprehensive planning process. Yet one questions the need for this section, which apparently limits itself to recreation site designation, when the exact same thing should be done in the land use element.

f. Housing

The plan must include a section on housing. This section must deal with establishing standards, plans, and principles to be followed in providing housing for existing residents and the anticipated population growth of the area. In addition, the plan must deal with the elimination of substandard dwellings, the improvement of existing housing, the provision of adequate sites for future housing, the provision for relocation housing, the identification of

housing for purposes of conservation, rehabilitation, or replacement, and the formulation of housing implementation programs. Obviously, not all of these requirements apply to all municipalities.

The importance of this provision cannot be overemphasized. A difficulty with growth control and environmental protection policies is that local governments, sometimes inadvertently and sometimes not, can use these policies and programs to exclude housing for low-income groups. The judiciary is becoming increasingly sensitive to the need for local land use controls to accommodate housing for all income groups. This section of the Act will hopefully force local governments to concern themselves with the housing issue, both to meet housing needs and to ensure judicial approval of land use controls aimed at environmental protection and growth management.

g. Coastal Protection

Those units of local government lying in a coastal zone as defined by the Coastal Zone Management Act of 1972 must adopt a protection section in their comprehensive plan.

h. Intergovernmental Coordination

The Act requires a section on intergovernmental coordination. This section must show the relationship between the adopted comprehensive plan and the plans of the state, the region, the county, adjacent municipalities, and those units of local government which provide services but which do not have regulatory authority over the use of the land. The section must also state the principles and guidelines to be used in accomplishing this intergovernmental coordination.

The intended relationship between this section and mandatory general requirement of coordination appears unclear.

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166. Id.
172. See section IV, C, 1, supra for a discussion of mandatory general coordination requirements.
LAND USE PLANNING

i. Electrical Utilities

The plan must contain a section in conformance with the ten year site plan\textsuperscript{173} of the Florida Electrical Power Siting Act.\textsuperscript{174}

j. Mass Transit, Aviation and Ports

The optional specific requirements listed below dealing with mass transit, aviation and ports are required for governmental units with a population of more than 50,000 persons.\textsuperscript{175}

3. OPTIONAL SPECIFIC REQUIREMENTS

The following types of sections \textit{may} be included in the new comprehensive plan adopted under the Act.\textsuperscript{176} The plan may provide for

a. mass transit systems and their attendant fiscal considerations;\textsuperscript{177}
b. port and aviation facilities;\textsuperscript{178}
c. a nonautomotive circulation plan to include bicycle paths, trails, riding facilities, etc., to be coordinated with the recreation section and the circulation section;\textsuperscript{179}
d. an off-street parking plan;\textsuperscript{180}
e. a public services and facilities plan to cover areas not included in the mandatory section (solid waste, potable water, drainage, and sewers);\textsuperscript{181}
f. a public building plan to include civic and community centers, public schools, hospitals, libraries, police and fire stations, etc.;\textsuperscript{182}
g. a community design plan;\textsuperscript{183}
h. a community redevelopment plan;\textsuperscript{184}

\textsuperscript{173} FLA. STAT. § 163.3177(6)(i) (1975).
\textsuperscript{174} FLA. STAT. § 403.501-15 (1975).
\textsuperscript{175} FLA. STAT. § 163.3177(6)(j) (1975).
\textsuperscript{176} FLA. STAT. § 163.3177(7)(a)-(1) (1975).
\textsuperscript{177} FLA. STAT. § 163.3177(7)(a) (1975).
\textsuperscript{178} FLA. STAT. § 163.3177(7)(b) (1975).
\textsuperscript{179} FLA. STAT. § 163.3177(7)(c) (1975).
\textsuperscript{180} FLA. STAT. § 163.3177(7)(d) (1975).
\textsuperscript{181} FLA. STAT. § 163.3177(7)(e) (1975).
\textsuperscript{182} FLA. STAT. § 163.3177(7)(f) (1975).
\textsuperscript{183} FLA. STAT. § 163.3177(7)(g) (1975).
\textsuperscript{184} FLA. STAT. § 163.3177(7)(h) (1975).

This section would show how it is proposed to establish coordination with governmental units, such as school boards or hospital authorities, having public development and service responsibilities, capabilities, and potential, but do not have land development regulatory authority.

\textsuperscript{185} FLA. STAT. § 163.3177(7)(i) (1975).
slums and blighted areas;184
i. a safety plan for protection from fire, hurricane, or other cata-
strophe to include evacuation routes, water supply, minimum road widths, clearances around structures, etc.;185
j. a historical and scenic preservation plan;186
k. an economic plan setting forth principles and guidelines for the commercial and industrial development, if any, and the em-
ployment and manpower utilization within the area;187
l. any other element which is peculiar to the area concerned.188

An interesting conflict may arguably arise under these optional requirements. As indicated earlier, if a local government fails to adopt a comprehensive plan, the plan of the next higher level of government is imposed on it. What if a county, for example, adopts an optional element such as a community design plan? No such element is adopted by the municipalities within the county since it is not required. Is the county's design plan imposed on the municipalities? Since it can logically be argued that the imposition for nonadoption applies only to those mandated plan elements, the design plan would probably not be imposed. Yet a strict reading of the Act might lead to a contrary interpretation.

It will be recalled that both the mandatory and optional specific requirements are covered by the five mandatory general requirements. Thus, each of the above sections would also be required to include the fiscal realities of each proposal. Each section must also describe how the proposal will be coordinated with the proposals of other municipalities and higher levels of government.

Finally, it is necessary to comment on the drafting of section 163.3177 which lists the various elements of a comprehensive plan. It appears that everything and anything was thrown into this section. There appears to be an extraordinary amount of potential duplication between the various sections (e.g., recreation land use—recreation plan; housing—community redevelopment; conservation—coastal protection; two sections on intergovernmental coordination; public building land use—public building plan; etc.). It

187. Fla. Stat. § 163.3177(7)(k) (1975). It may also detail the type of commercial and industrial development sought.
is suggested that the purposes of this act would be better served by a tighter drafting which would have facilitated understanding by local governments that have to live with it.

4. DATA

Since the comprehensive plan now becomes the primary land use control tool, its restrictions on land presumably must be formed on a rational basis, as is any exercise of the police power. Thus, the plan requires all sections to be based on appropriate data from studies, surveys and supporting documents. Though this data base need not be part of the plan, it must be available for public inspection. 189

D. Legal Status of a Plan Adopted Under the Act

The Act is vague in setting forth the mandated implementing techniques to be applied to the plan once adopted. It merely states that the plan shall be implemented in part by appropriate local regulation 190 as defined in another portion of the Act. 191 Yet when this cross reference is made, the definition refers only to "land development regulations" such as zoning subdivision and building codes. 192 Thus, it would appear the Act gives direction only for the implementation of the land use element of the plan and not to the many other areas required.

The Act significantly changes the effect on governmental agencies. Under the Act all development by government agencies is now subject to the same requirements as development by private developers. 193 This provision follows the recent trend away from holding government agencies immune from municipal zoning. 194

The most significant portion of the Act is the section which defines the legal status of a comprehensive plan adopted under the

192. Id.
194. See Hillsborough Ass'n for Retarded Citizens v. City of Temple Terrace, 332 So. 2d 610 (Fla. 1976), noted in 31 U. MIAMI L. REV. 191 (1976); Parkway Towers Condominium Ass'n v. Metropolitan Dade County, 295 So. 2d 295 (Fla. 1974); Orange County v. City of Apopka, 299 So. 2d 652 (Fla. 4th Dist. 1974).
Act.\textsuperscript{195} The Act requires that, once a plan has been adopted under it, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by the plan must be consistent with the plan. In addition, once the plan is adopted by the governing body, no land development regulation\textsuperscript{196} or land development code can be adopted until it has been sent to the local planning agency for review of its relationship with the adopted comprehensive plan.\textsuperscript{197} Further, the Act directs a court, when reviewing a governmental action or regulation, to consider its reasonableness in the light of the adopted comprehensive plan.\textsuperscript{198}

This consistency requirement does, however, have one limitation. Nothing in the Act can limit or modify the rights of a person to complete a development authorized as a development of regional impact under chapter 380 of the Florida Statutes.\textsuperscript{199} In construing this provision, the Attorney General has held that the Act and chapter 380 (the Florida Environmental Land and Water Act of 1972) “must be read together in their objectives of guiding development and growth and the protection of private property interests as well as protecting environmental quality.”\textsuperscript{200} Thus, a local government cannot adopt a comprehensive plan under the Act which would amend a previously issued development order.

It is suggested that the consistency provision will prove to be a major area of litigation in the future. It does not appear that “consistent with” is defined in the Act. Unfortunately, official state pronouncements provide little insight. The Division of State Planning says that “consistent” means “in agreement or harmony; in accord; compatible.”\textsuperscript{201} The Department of Community Affairs is less helpful. It states that the methods by which consistency can be determined “will vary.”\textsuperscript{202}

\textsuperscript{195} FLA. STAT. § 163.3194 (1975).
\textsuperscript{196} “Land Development regulations” is defined as “zoning, subdivision, building and construction, or other regulations controlling the development of land.” FLA. STAT. § 163.3194(2)(b) (1975).
\textsuperscript{197} FLA. STAT. § 163.3194(2)(a) (1975).
\textsuperscript{198} FLA. STAT. § 163.3194(3)(a) (1975).
\textsuperscript{199} FLA. STAT. § 163.3167(10) (1975).
\textsuperscript{201} Division of State Planning, Questions and Answers/Positions Pertaining to the Local Government Comprehensive Planning Act 33 (unpublished paper, January 15, 1976).
\textsuperscript{202} DEPARTMENT OF COMMUNITY AFFAIRS, A LOCAL OFFICIAL’S GUIDE TO THE LOCAL GOVERNMENT COMPREHENSIVE PLANNING ACT 6-6 (Sept. 1976).
Perhaps a reasonable interpretation of this consistency requirement would be that development orders or regulations be consistent with the general plan when the use or standard in the development order or regulations is one that tends to further the policies of the comprehensive plan.

Another area which this writer finds confusing is posed by the question “What must be consistent with what?” It is worthwhile to repeat the pertinent sections.

After a comprehensive plan or element or portion thereof has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted. All land development regulations enacted or amended shall be consistent with the adopted comprehensive plan or element or portion thereof.

For purposes of this subsection, “land development regulations” or “regulations for the development of land” include any local government zoning, subdivision, building and construction, or other regulations controlling the development of land. The various types of local government regulations or laws dealing with the development of land within a jurisdiction may be combined in their totality in a single document known as the “land development code” of the jurisdiction.

The thrust of the sections appears to be aimed at the land use element of the plan. However, just as zoning and subdivision affect the use of land, so does an economic policy, an environmental policy, or a capital improvements policy. Also to be considered is another portion of the Act which states that “[i]t is the intent of this Act that the comprehensive plan set general guidelines and principles concerning its purposes and contents and that this act shall be construed broadly to accomplish its stated purposes and objectives.”

It is contended that if the above three emphasized portions of the Act are read together, the plan becomes the sine qua non of any action, the scope of which is within the Act. This result is reached

203. FLA. STAT. § 163.3194(1) (1975) (emphasis added).
204. FLA. STAT. § 163.3194(2)(b) (1975) (emphasis added).
205. FLA. STAT. § 163.3194(3)(b) (1975) (emphasis added).
if "development regulations" is "construed broadly" as any regulation or action which directly or indirectly affects land. Given this interpretation, the Act becomes all encompassing.

V. Conclusion

It has been suggested that a plan adopted under the Act "is not intended as a blueprint for the future, but rather is to be 'a reference point for agreed upon policy to guide day to day governmental decisions.'" But can this really be the case under the Act? In a hearing in Broward County on the proposed land use element plan, the thrust of the entire hearing was not on the overall policies of the plan, nor on whether growth should be generally limited in one area or encouraged in another, nor on developing a coherent approach to guiding development within the county. Rather, the thrust of the hearing was on arguments that can only be described as narrow—why "my piece is designated as six units to the acre and not fifteen units to the acre." It is suggested that this response by property owners was entirely rational as they perceived the plan not as a "reference point" but rather as a new tier of land use regulations to be superimposed on the already burdensome maze of regulations to which they were presently subject. This reaction aptly demonstrates the negative effects on the planning process when comprehensive planning is replaced by piecemeal land use designation. There is an important distinction between the two, and it was not observed in Broward County. Rational planning analysis must precede specific designations.

However, an argument can be made that the intent of the Act is not to create a "second tier of zoning." The Act's section which was described above indicates that the Act's intent was to be construed broadly, and thus could be extended to more than just direct land development decisions. It also provides that the plan "set general guidelines and principles." Thus, it can be argued that the plan is not to act as a new land use regulation. However, the question still remains as to how specific and detailed adherence

207. Hearing on the Broward County Master Plan, Broward County Courthouse, August 21, 1976; see Miami Herald, Broward Section, Aug. 21, 1976 at 1BR, col. 4.
208. FLA. STAT. § 163.3194(3)(b) (1975); see text accompanying note 205 supra.
209. FLA. STAT. § 163.3194(3)(b) (1975).
to the plan must be before the proposed action is "consistent" with it.

Logic and accepted planning principles would dictate an approach similar to that found in the Oregon decisions:210 That the plan becomes the primary standard of review in order to test the reasonableness of the action in question. A more narrow interpretation which would require strict compliance with the plan would, in effect, create a "new zoning." This would result in the destruction of the usefulness of the plan as a broad policy instrument.

It is suggested that in order for planning in general, and the plan specifically to become an effective device for guiding growth patterns, land development decisions should be considered "consistent" with the comprehensive plan when the uses contemplated under the decision are compatible with the overall goals and objectives of the plan. This position is advocated since it permits the comprehensive plan to reflect the goals and objectives of the local municipality and at the same time preserves a certain amount of flexibility by allowing growth to proceed as the community's needs change. This important purpose of a comprehensive plan is destroyed if development decisions were considered consistent with a comprehensive plan only when they meet the specific uses provided for in the plan.

A potential problem arises if this latter, strict position is adopted. Under the Act, amendments of less than five percent of the land area of the jurisdiction can be implemented by the governing body alone. If it were necessary to amend the plan each time a rezoning is enacted or variance granted, then the result will be no applications of over five percent. Rather, there will be numerous "specific amendments" that will seriously undermine the integrity of the plan. The purpose of the Act—to create a legal relationship between development decisions and regulations and comprehensive planning—will be destroyed.

Prior to its adoption, several commentators looked forward to the Act's arrival with great anticipation.211 It promised to rationalize local decisionmaking and would make "[t]he planning program

210. See text accompanying notes 62-70 supra.
The fulfillment of these promises is at best doubtful, but certainly impossible, if the courts are not careful in their approach to the consistency requirement. Making the comprehensive plan a land use control device destroys the premise that the plan should be an official public document adopted by a local government as a guide to policy decisions about its community.

If the consistency requirement were interpreted too narrowly, the legal relationship between the comprehensive plan and the implementing regulation will cause the existing planning process to suffer. When planning has a precise legal status, it is burdened by political and special interests. If the comprehensive plan is to be equated with zoning and other implementing regulations, pressures will be applied to the planning process which will produce a plan of the lowest common denominator in a political environment.

The Local Government Planning Act represents a major effort to rationalize the planning process in Florida. Unfortunately, it is plagued with ambiguous drafting, unanswered questions and an enormous potential to produce litigation. It probably never would have been necessary if zoning had originally been enacted “in accordance with a comprehensive plan.”

212. FLA. STAT. § 163.3191(1) (1975). The argument that planning should be an ongoing “process” rather than aim to produce an “end-state” plan is not a new one. See, e.g., M. Branch, City Planning and Aerial Information 18 (1971).

213. It is interesting to note that the Act was originally not funded. V AIP/FSU LEGISLATIVE REPORTING SERVICE No. 3 at 1 (Dec. 14, 1976). Funds were not provided until the 1977 session of the legislature.