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May 15, 2008

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RE: *Terrapin Run* Decision: Are Comprehensive Plans Binding? (MASGP 08-007-03)

This product was prepared by the National Sea Grant Law Center under award number NA06OAR4170078 from the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the authors and do not necessarily reflect the views of NOAA or the U.S. Department of Commerce.

Dear Vicky,

Below is the summary of research regarding the questions you posed to the National Sea Grant Law Center regarding a recent Maryland case, *Trail v. Terrapin Run*.¹ As we understand it, you are interested in whether local governments must comply with their comprehensive plans when making zoning decisions. The following information is intended as advisory research only and does not constitute legal representation of Maryland Sea Grant or its constituents. It represents our interpretations of the relevant laws and cases.

Comprehensive Plans – In General

A comprehensive plan is a guide that recommends area development and proposed future land use.² Zoning, on the other hand, is a regulatory tool used to implement a plan for the future development of an area. “Nearly all of the states, through their enabling acts, require that zoning be done in accordance with a comprehensive plan.”³ There are disagreements, however, about what “in accordance” means. In a majority of jurisdictions, a comprehensive plan serves as a policy statement intended to advise the

¹ 2008 Md. LEXIS 112 (Md. 2008).

² *Duke Street LTD. Partnership v. Board of County Com'rs of Calvert County*, 112 Md. App. 37, (1996).

³ Anderson's Am. Law. Zoning § 5:2 (4th ed.)

government agencies making zoning decisions and does not operate as a legally controlling zoning law.⁴

Maryland

Before a local government may exercise zoning power, it must develop a Master or Comprehensive Plan.⁵ Assumption of this power is entirely voluntary. Local governments are not required by law to adopt a comprehensive plan. If a local government does wish to exercise zoning authority, any regulation adopted by a local legislative body shall be adopted:

1. In accordance with the plan;
2. With reasonable consideration for, among other things, the character of the district and its suitability for particular uses; and
3. With a view to conserving the value of buildings and encouraging orderly development and the most appropriate use of land.⁶

In 1992, the Maryland Legislature passed the Economic Growth, Resource Protection, and Planning Act. The Act requires local governments to incorporate seven statutory visions, such as protection of sensitive areas, into their comprehensive plan and ensure implementation through the adoption of zoning, subdivision, and other land use ordinances and regulations “that are consistent with the comprehensive plan.”⁷

Trail v. Terrapin Run

In 2005, the Board of Appeals of Allegany County, Maryland (Board) granted the developers of Terrapin Run, a 935-acre planned residential community, a special exemption which authorized development in an area of Allegany County zoned “A” for agriculture, forestry, and mining, and “C” for conservation purposes. Article 66B, § 1.00(k) defines a special exception as:

a grant of a specific use that would not be appropriate generally or without restriction and shall be based upon a finding that certain conditions governing special exceptions as detailed in the zoning ordinance exist, that the use conforms to the plan and is compatible with the existing neighborhood.

The Board of Appeals of Allegany County approved the special exception, as well as the retail portion of the development and the wastewater treatment plant, despite several residents’ arguments that the development did not comply with the county’s comprehensive plan. Project opponents focused on the size of the development and argued that it was inappropriate for a rural area.⁸ In making its decision, the board used an “in harmony with” standard, meaning that they examined whether the development would be in harmony with the plan. The “in harmony with” standard “has long been the standard

⁴ Laura Hunter Dietz, et. al. “Legal effect of adopting comprehensive plan” 83 Am. Jur. 2d Zoning and Planning § 22.

⁵ Md. Ann. Code art. 66B, § 1.03

⁶ MD Code, Art. 66B, § 4.03(a).

⁷ *Id.* § 1.03(e).

⁸ Timothy Wheeler, *Court Limits Master Plan: Growth Controls not Binding, Judges Say*, THE BALTIMORE SUN, March 12, 2008.

utilized in Maryland land use administrative practice.”⁹ The Board found that there was no evidence that the development would have an adverse effect on the surrounding area.

The residents appealed the Board’s decision to the Circuit Court for Allegany County claiming the board erred in granting a special exception without issuing a finding that the project “conformed” to the plan. The circuit court agreed. The court ruled that the board should determine whether the project was “consistent with” the plan, as opposed to “in harmony with.” The court based its decision on the language of the Allegany County Zoning Ordinance, which states as its purpose “[T]o ensure that these uses are consistent with the policies and recommendations of the Allegany County Comprehensive Plan ...”¹⁰

The Board appealed. The Court of Special Appeals of Maryland reversed the trial court’s decision, holding that the terms “in harmony with” and “consistent with” varied only semantically. The court further noted that a comprehensive plan was a guide, not a strict regulatory device.”¹¹ Now it was the residents’ turn to appeal.

On appeal, the Court of Appeals of Maryland considered one question, “May a board of appeals deriving zoning authority under Article 66B grant a special exception, in the absence of an affirmative finding that the proposed use conforms to the jurisdiction’s comprehensive plan?”¹² Its answer was yes. First, the court first agreed with the Court of Special Appeals’ decision that “nothing within the zoning code or the comprehensive plan itself acts to elevate the plan beyond a mere guide.”¹³ Maryland appellate courts have repeatedly held that “... Master Plans, Comprehensive Plans, and the like, are advisory, guides only, and not normally mandatory insofar as rezonings, special exceptions, conditional uses and the like are concerned.”¹⁴ Plans are “continually subject to modification in light of actual land use development and serve as a guide rather than a strait jacket.”¹⁵

Neither does state law require absolute conformity with the plan. Maryland has the authority to do so, but its intent to do so “must be proven from specific language and/or the intent of the Legislature in enacting statutes.”¹⁶ Prior to 1970, 66B, § 7 stated “said board of zoning appeals may ... make special exceptions to the terms of the ordinance *in harmony with* its general purpose and in accordance with general or specific rules therein contained.” In 1970, the statute was revised and the definition of “special exception” cited above was added. Was the legislature trying to use the word “conform” to make local plans more binding? The court concluded that the use of the word conform in 1970 was not intended “to modify or restrict the use of the traditional ‘in harmony with’ standard that had previously prevailed.”¹⁷ “It is clear to the court ... that the use of the words “conform” and “visions” were never intended by the Legislature to impose absolute requirements on local governments in their practices involving their local land use programs.”¹⁸

⁹ *Trail v. Terrapin Run, LLC*, 2008 Md. LEXIS 112 at *3 (Md. 2008).

¹⁰ *Id.* at 13-14.

¹¹ *Id.*

¹² *Id.* at 1.

¹³ *Id.* at 16-17, citing *Trail v. Terrapin Run, LLC.*, 174Md. App. 43, 50-57 (2007).

¹⁴ *Id.*

¹⁵ *Id.* at 21.

¹⁶ *Id.* at 20.

¹⁷ *Id.* at 79.

¹⁸ *Id.* at 80.

The Board was therefore not required to comply with the comprehensive plan. If local officials would like to ensure compliance with the county's comprehensive plan in the future, they may do so by adopting the plan as a zoning ordinance.

Three judges dissented from the majority opinion in *Terrapin Run*. The dissent argued that the Legislature did intend to make local plans more binding when it replaced "in harmony with" with "conform" in 1970. Because the dissenting judges did not view these terms as synonymous, they would have reversed the decision of the Court of Special Appeals and remanded the case to the Board of Zoning Appeals for application of a "conformance standard" to the special exception decision.

States Requiring Consistency with Comprehensive Plans

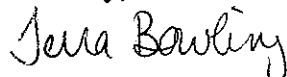
Some jurisdictions have crafted their enabling statutes or municipal provisions to require that zoning decisions comply with the comprehensive plan. For instance, in Florida the Local Government Comprehensive Planning and Land Development Regulation Act requires all of its counties and municipalities to adopt local government comprehensive plans in conformity with the Act.¹⁹ Fla. Stat. Ann. §163.3194(1)(a) requires "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."

California also requires zoning ordinances to be consistent with local comprehensive plans. A zoning ordinance is considered consistent with a general plan only if the local government has officially adopted the plan and "the various land uses authorized by the ordinance are compatible with the objectives, policies, general land uses, and programs specified in the plan."²⁰

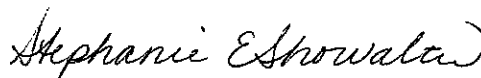
Oregon requires each city and county to prepare and adopt comprehensive plans which are consistent with statewide planning goals.²¹ Once the plan has been approved by the Oregon Land Conservation and Development Commission, land use decisions must be made "in compliance with" the plan and any implementing regulations.

I hope you find this letter helpful. Please let us know if you have further questions. Thank you for bringing you questions to the National Sea Grant Law Center.

Sincerely,



Terra Bowling
Research Counsel



Stephanie Showalter
Director

¹⁹ FLA. STAT. § 163.3167.

²⁰ CAL. GOV'T CODE § 65860(a).

²¹ OREGON REV. STAT. § 197.175.