

V. Plans

The starting point for the establishment of land use regulations is a certain type of plan. This plan must provide guidance for land use in a local jurisdiction. In the United States, this “plan” is typically called the comprehensive plan, but it is sometimes also called a general plan or a master plan. The North Dakota Attorney General’s office has opined that local jurisdictions in North Dakota must have a comprehensive plan in place as a basis for zoning.¹² North Dakota enabling legislation refers specifically to at least three “plan” types.

- First, there is the comprehensive plan. The comprehensive plan is most consistently thought of as the “plan.” Counties, townships, and cities should all use comprehensive plans as a basis for zoning regulations.¹³
- Second, there is the master plan. The master plan is specifically noted in connection with the regulation of subdivisions by cities.
- A third plan mentioned in the enabling legislation is the “street plan.” It is also mentioned in connection with the regulation of subdivisions by cities.

While there may be some ambiguity about the role of certain plans referenced in the NDCC, it is essential that all land use regulation stem from a systematic rational basis typically embodied in a plan which has been properly adopted by a local governing body.

The historical development of planning in North Dakota helps to explain why there are different plan references and terms in the enabling legislation. The City planning statute for plan development is the oldest of planning statutes in North Dakota. NDCC 40-48-02 was written in 1929 and amended in 1943. The relevant planning statute for Counties was written in 1943 with amendments in 1955, 1957, and 1981. The relevant planning statute for Townships was also written in 1943 and amended in 1953, 1957, and 1981. NDCC 40-47-03 pertaining to City zoning was also amended in 1981 to include requirements for comprehensive plans. However, NDCC 40-48-02 was never amended to include requirements pertaining to comprehensive plans.

Historically¹⁴, according to William I. Goodman in his book Principles and Practice of Urban Planning in the late 1920’s consultants were generally employed by planning commissions to prepare a “Master Plan” which was anticipated to include sections on streets, transit and transportation, parks and recreation, civic appearance, and zoning (Goodman, 1968 pg. 24). When one looks at NDCC 40-48-02 the components of the plan relate to the planning of the day. In the 1960’s, T. J. Kent, Jr. was a leading proponent of the comprehensive planning concept in what he termed “The General Plan” which was the “official statement of a municipal legislative body which sets forth its major policies concerning desirable future physical development” (Goodman, pg. 349). It wasn’t until this time in history that we see plans being comprehensive in nature, or for that matter taking on the term “Comprehensive Plan”. It is no surprise that the latest amendments to the city planning statute in 1943 do not relate to comprehensive plans, because there

was no such thing at that time. On the other hand, the county and township planning statutes through more recent amendments have kept up to date on terminology.

Goodman also makes comments on comprehensive plans which he states are official public documents adopted by the local governing body and serve as policy guides to decisions about the physical development of the community. The plans provide for the manner in which government leaders want the community to develop over a 20-30 year period (Goodman, pg.349). Goodman indicates that the term “general plan” and “comprehensive plan” are used interchangeably, and the term “city plan” is also used by communities. However, the term “master plan” was no longer respected by planners because of the misuse in the past to describe plans which were not general and comprehensive, i.e. “master street plan” or “master park plan” (Goodman, pg. 349). Goodman goes on to explain the aspects of a plan being comprehensive, general and long range. The comprehensive aspect would mean that the plan encompasses all geographical parts of the community and all functional elements with regards to physical development. The general aspect relates to policies and proposals without specific locations or detailed regulations. The long-range aspect goes beyond the pressing current issues to the perspective of problems and possibilities 20 to 30 years in the future (Goodman, pg. 349).

In addition to the previously referenced plan types, there is a fourth type of plan often used in community development called the strategic plan. It is important to note the distinction between comprehensive plans and strategic plans. Typically, strategic plans are not comprehensive in nature, and may not have a land use component. Strategic plans tend to be more short term and to focus on a narrow set of issues such as economic development or housing or downtown redevelopment. Strategic plans do not serve the function of a comprehensive plan which is capable of serving as the basis for land use regulation. Comprehensive plans must always have a land use component that specifies policies about land use and development within the jurisdiction.

A. Description and Contents

The NDCC describes a comprehensive plan as “a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control.”¹⁵

Beyond this brief description, the NDCC does not identify specific elements which must be included in the comprehensive plan. Plans may vary widely with respect to the topic areas addressed. They may also vary in the approach to the content addressed. A comprehensive plan generally includes a strategy for development of land under the local government jurisdiction.

- Often times this strategy is summarized in a “future land use map” which designates the general locations of differing types of land uses such as

commercial, industrial, and residential. It also may identify locations for future public facilities such as water towers, fire stations, and parks. The strategy for land development may also address the phasing of future land development by designating some areas to be developed before other areas.

- In other instances a “comprehensive policy plan” is developed instead. In this type of comprehensive plan the “future land use map” may not be provided at all. Instead it might provide a more detailed set of goals, objectives and policies to provide guidance to the community’s development.

Comprehensive plans may also address a variety of other topics such as transportation systems, parks and open space, housing, community/economic development, and community facilities. Typically, these other topics all have some relationship to the development of land. For example, the transportation component may establish the location of a future major roadway which is anticipated to be needed to serve new commercial areas. As another example, the community facilities component might provide a strategy to add sewage treatment facilities or a water tower when the community reaches a certain level of growth in order to be prepared for additional growth.

The format of a comprehensive plan document may vary widely. Typically, the document will include:

- A section about the existing conditions of the community
 - a historical overview
 - housing
 - business and industry
 - public facilities (parks, community buildings, schools)
 - natural resources
 - infrastructure (roads, water & sewer, and communications systems);
- A discussion of projected growth patterns such as the average amount of land being developed, population growth rates, and other measurable changes in the community;
- An analysis of issues facing the community;
- A statement of goals and policies;
- A plan for community development including a future land use map;
- A strategy for implementing the plan.

One additional topic which may not have been a consciously planned component of a comprehensive plan in the past is emergency management. The enabling legislation was amended in 1999 to state that local government land use regulations should address emergency management. Thus it seems appropriate that the comprehensive plan should address emergency management so that the regulations which serve emergency management purposes can have a proper basis. Each county, and many individual cities, in North Dakota have emergency management plans. These plans are very

detailed, and should not be incorporated directly into the comprehensive plan. However, it is important that aspects of the emergency management plan which could influence how development occurs within a community should be incorporated. For example, communities which have floodplain regulations should have plans which address floodplain development within their jurisdictions. Similarly, the location of critical facilities such as hospitals, clinics, nursing homes, emergency response services, schools, utility plants, and electrical substations should be consistent with emergency management principles and plans.

There may be many other aspects of emergency management which could be addressed by the comprehensive plan. It is important to discuss emergency management with the county and/or city emergency manager to learn what kinds of emergency management might be appropriate to address in a comprehensive plan. At a minimum, efforts should be made to coordinate the plans for emergency management and the comprehensive plan.

B. Procedures

The process by which a comprehensive plan is prepared and adopted is directed in the enabling legislation. As noted in Chapter III, the general steps for developing a plan are:

- Appoint a planning/zoning commission.
- Investigate the community needs with respect to planning and zoning.
- Survey and study present conditions and future growth in the community.
- Develop the plan, including specific goals, objectives and policies consistent with the community's present and future needs with respect to planning and zoning
- The planning and zoning commission should hold a public hearing complying with all applicable notice requirements. This hearing will provide an opportunity for public input into the process.
- The planning commission should adopt the plan with any changes approved by the commission.
- The planning commission should submit the plan with all recommendations to the governing body of the jurisdiction.
- The governing body of the jurisdiction should then adopt the plan, after having complied with the applicable public notice requirements.

However, there are some aspects which vary by type of jurisdiction as discussed in the following subsection.

The process typically used for developing a comprehensive plan can take many paths. One well-known comprehensive planning expert summarizes the process for plan development as including the following steps:

- evaluating current conditions,
- identifying objectives,
- projecting where you're going,

- charting alternative ways to get there,
- and, evaluating how you've done.¹⁶

Generally, the planning/zoning commission is contemplated as the primary agency in the process of developing a comprehensive plan. However, it is important to gain widespread community input. This may mean holding public input meetings; completing surveys about community attitudes and issues; and working with numerous community organizations. Sometimes a separate advisory committee is appointed to assist in the planning process. Additional people to consult include those with an understanding of the community's economic development issues; infrastructure needs; emergency management plans; educational institutions; health care facilities; and parks and recreational issues. The process may also involve obtaining assistance from planning consultants, regional councils, attorneys, or other experts with knowledge about planning procedures.

C. Distinctions

The primary distinction between the plans of different types of jurisdictions is that townships and counties do not have enabling legislation referring to a master plan or street plan. It should be noted that the county planning commission is supposed to work "in conjunction with the township boards of the affected areas to investigate and determine the necessity of establishing [zoning]."¹⁷

For cities, there is enabling legislation referring to a master plan and a street plan. The relationship and distinctions between these terms is not clearly identified in the enabling legislation. The references to master plans are found in Chapter 40-48 of the NDCC. These references note both purposes and contents of the master plan in more detail than is provided about comprehensive plans referenced in other chapters of the NDCC. The references to street plans are also found in Chapter 40-48 of the NDCC. Guidance from an attorney is strongly suggested on matters relating to street plans.

D. Implementation

There is often a tendency for local governments to go through the process of adopting a comprehensive plan and then get caught up in the day-to-day procedures of zoning and platting review, and not use the comprehensive plan as a tool for guiding the daily decisions. While it is true that zoning and subdivision regulations provide more detail about acceptable development, the comprehensive plan goals, objectives, and policies should guide the daily decision-making process. The comprehensive plan should be used as a benchmark to ensure that decisions made are helping to implement the goals of the plan. Additionally, the plan can sometimes provide direction for ambiguous situations.

Once a comprehensive plan has been adopted by the local jurisdiction, it should be consulted regularly. Whenever a hearing is held for a zoning amendment, a variance, or a conditional use permit, the planning commission¹⁸ should review the pertinent parts of the comprehensive plan to determine whether or not the proposed action is consistent with the plan. If an application is not consistent with the plan, the local jurisdiction should not approve the requested action. If the jurisdiction does approve such an application, it runs the risk of making an arbitrary decision which is contrary to the comprehensive plan.

When a local jurisdiction finds that it is facing decisions where what seems good for the community is inconsistent with the comprehensive plan, it may be time re-evaluate the goals and objectives of the plan. The situation of the community may have changed to the degree that a revised comprehensive plan should be prepared. As a rule of thumb, a community should update its comprehensive plan every 5 to 10 years.