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Planning and Zoning INTRODUCTION

A Conversation with Gene Bunnell and Erica Powers

Vera Prosper: Both of you have said that planning and zoning have a significant impact on the quality of life of a community's residents. Many people who will read this *Resource Manual* are not professionals in the fields of planning and zoning, so please give our readers a general sense of what these two activities are all about. To start, what is planning, and what does it mean for a community to engage in planning?

Gene Bunnell: Land use planning is a group process that requires that people talk to and listen to one another, and cooperate with one another. It's not something that can be done alone. Planning is all about thinking collectively about the *future*-- about what our communities might be like in the future and how to make them better places to live.

There are various process models that communities can use when they engage in planning—and different labels for these various methods—but all of them involve envisioning how communities might change over time, and trying to devise ways to manage that change in desired directions. In short, it involves trying to *anticipate* changes that might possibly occur in the future, and being pro-active rather than just reacting to what happens.

It is worth noting that the capacity to think about the future, to conceive of alternative courses of action and outcomes, and make conscious choices to shape the future is what makes us *human*, and sets us apart from other living creatures. For example, squirrels gather food and store food in the fall in preparation for winter, but they aren't thinking about possible alternative living arrangements—nor about how future winters might be different, or how their activities might be affected by global climate change. They operate on instinct. But *human beings* are different. Humans have the ability to reflect on the past, to think about how our communities have changed, and consider what they might be in the future.

Most importantly of all, planning is a purposeful activity; we engage in planning because we *care* about what happens to our communities in the future, and want

to identify actions and policies that, once implemented, will make desired outcomes more likely.

VP: The impetus for the State's *Livable New York* initiative is the fact that our community populations are changing, our social norms are evolving, and people's thinking about personal health and the health and sustainability of our environment is shifting significantly. In particular, there are major shifts taking place in the profiles of our communities' residents—New York is one of the most ethnically diverse in the nation; our communities are graying significantly because of the aging of the baby boomers and the increasing longevity of all groups (including people with all types of disabilities); and public policies are supporting the ability of frail older people and people with disabilities to live in their communities for as long as possible. Those factors, as well as economic and environmental forces, compel us to seriously consider what our future will be.

GB: A key reason why it is important for communities to engage in planning is that what happens in the future, and *how* communities change, is *not inevitable*. The nature and direction of community change is very much affected by the actions we take in the here and now-- including the land use and housing policies and development regulations we adopt. Will environmental resources and water supplies be protected? Will there be an adequate supply of affordable housing for low and middle income households and the elderly? Will we maintain balanced communities or segregate ourselves economically and racially? None of these outcomes are inevitable. They will come about largely as a result of the choices we make and the actions we take both individually and collectively at the local level. Needless to say, putting off hard choices and failing to consciously act to shape the future in desired ways also has consequences.

VP: Getting people interested in planning for the future can be difficult. Most people are much more concerned with dealing with present-day pressures and challenges. How do you get people interested in planning?

GB: If you asked people what they would like the future to be like, most people would probably say they'd like the future to be very much like the present. Contemplating and experiencing change can be scary and unnerving, so if given a choice people tend to favor what they know vs. the unknown. Notwithstanding this desire for stability and predictability, the future, in all likelihood, will *not* be like the past or present. Change is *inevitable*. What is *not* inevitable is the *nature* and *direction* of that change.

If you look at what our communities were like just 20 or 30 years ago, and what they are like today, it is clear that they have changed a great deal. Some of those changes have been positive, but many of them we probably regret and would like to have a chance to undo and do over. What I try to do in my work with community groups, public officials and students, is to get them to appreciate that communities are not powerless in confronting current problems and challenges, and need not continue to endure the kinds of negative impacts of growth and development that have characterized the past. At the same time, I try to inspire

them to dream about future *possibilities*—how things might be different—and to think about, and share with others, what they'd like to see happen that would make their community a better place to live and work.

Erica Powers: Let's go down a level and think about the planning *process*. In some states, local governments are required to have a "comprehensive plan" and adopt land use regulations and development policies in accordance with that plan. For example, in places like Maryland's Montgomery County and Prince George's County, some wonderful planning work has been done along transportation corridors—concentrating development along these corridors in ways that respond to the needs not only of aging individuals but the needs of the whole population to have walkable communities and good public transit.

Oregon and Vermont also have statewide planning. And in 2000, the Commonwealth of Massachusetts made grants available to local governments to offset the local costs of preparing comprehensive plans—all in an effort to enable communities to prepare for what they wanted their communities to look like in the year 2020.

GB: Erica has mentioned various state approaches aimed at encouraging and supporting comprehensive planning. The type of planning encouraged and supported in these states is one where you look at a *whole* community and *all* the issues affecting the community, for the purpose of developing a "comprehensive plan" dealing with *all* of the issues that are important to that community. However, it is important to realize that there a number of other types and levels of planning. Planning can be undertaken focusing just on a particular area within a municipality—such as the downtown area or a particular neighborhood. Or, a community might want to develop a plan for economic development, or for housing. The state of Illinois mandates that communities prepare affordable housing plans, based on a recognition that *every* community has a responsibility to provide an adequate supply of decent, affordable housing.

EP: Some states have established a uniform, state-approved framework that specifies the required elements that need to be included in comprehensive plans. In many states, these required elements conform to officially adopted state goals for land use and development. In Wisconsin, for example, starting in 1999, communities were required to prepare plans that met fourteen (14) state goals. Communities that do not comply with this requirement are prohibited from exercising subdivision control and zoning powers. They also lose their ability to finance development projects using tax increment financing. Counterbalancing these penalties is the fact that Wisconsin gives grants to communities to encourage them to prepare plans that address the state's goals.

GB: The adoption of state goals pertaining to land use and development, in my opinion, is actually a very positive model because it essentially says "these are our overall goals at the state level . . . we want to protect the environment, we want equal-opportunity housing, we want affordable housing for the poor and for our seniors, etc." With this broad policy framework in place, communities are

then empowered to develop specific plans that they think are the best way to meet those goals.

EP: Goals are established at the state level, but *local governments* decide the details of exactly how those goals are met on the ground. This gives community residents and local leaders significant opportunities to take account of specific local issues and concerns relevant when developing their plans.

VP: Preparing a comprehensive plan that addresses all the relevant issues in a community seems like a daunting task.

EP: Admittedly, organizing and carrying out a community planning process can be hard work; but it can be well worth the effort in the end. Because planning ideally addresses the welfare of the entire area being planned for, a large cross-section of residents from that area needs to be involved and participate in the process. At the same time, many people come to the planning process with specific concerns and interests focused on specific issues.

To make the planning process manageable, and accommodate and capture these specific interests, very often the large group of participants will be broken down into a number of subgroups, each focusing on a particular issue—such as economic development, housing, transportation, environmental conservation, historic preservation, public safety, etc. Each subgroup essentially puts together a wish list related to the issue it is addressing. The real challenge, of course, comes when the groups come together and attempt to establish community-wide priorities—i.e., decide which action items and approaches to implement first, and which action items are less urgent and need to be set aside for later. Gaining overall consensus and agreement is crucial, because resources available to implement various actions (time, energy and money) are inevitably limited.

In textbooks, planning is often described as a rational process, but it can be quite contentious at times. Achieving workable solutions requires that people with differing opinions and priorities listen to, respect, and cooperate with one another so as to try to devise and agree on workable, effective action strategies that address local needs and concerns in a fair and equitable way.

VP: What is the relationship between planning and zoning?

EP: Land use *planning* is a process for defining problems and identifying solutions. Planning, in and of itself, does not have legal status—except in states where there is mandatory planning established through law (New York is not one of these states). *Zoning*, which does have legal status because it is established in law, is a tool communities use to implement the planning decisions.

For example, a town that has no zoning, but wants to develop it, will convene a committee and do a survey to determine the town's goals—what the community may want in terms of everything ranging from where to locate houses, businesses, office parks, and funeral homes; to the size of parking lots, or

whether there should be bushes screening the drive-thru at MacDonald's, or whether to have sidewalks on one or both sides of the street in suburban areas; or clustering housing to maintain open space near it; or protecting wetlands; or allowing accessory dwelling units, such as "in-law" apartments. The committee will map these decisions and articulate these goals, and hold public hearings about them, and write a proposed comprehensive plan as a "road-map" for future zoning. That's all part of the planning process.

Then there is a separate process by which the town executive and the town board put on their hat as a legislative body that passes legislation—called a zoning map and zoning regulations. They bring in consultants and a lawyer; they go over the study committee's recommendations and they consider the political implications; then ultimately they may pass a zoning map and zoning regulations. The zoning map establishes which uses, such as single-family residences, or strip malls, can be located in which specific areas. The map controls, and the zoning regulations (written law) interpret, what uses are allowed in the different sections of the town.

In New York, there are additional aspects of the zoning process, including state-level review under the environmental quality review act (SEQR) and submission of the zoning law for review at the county level by all the abutting towns and cities. So, it can take a long time for a community that has never had a zoning map and zoning regulations to get zoning legislation passed at the local level. Like all local legislation, zoning does not take effect until it has been filed with the New York Department of State.

VP: We hear a lot about "home rule" in New York. What is home rule and what is the relationship between home rule and zoning?

EP: Home rule is the power that the state legislature delegates to local governments (counties, and municipalities—such as cities, towns, and villages) to enact legislation. For example, the state legislature may pass a law that gives counties or municipalities the right to establish zoning; or to collect local taxes; or to license dogs. New York is one of a number of states that delegate legislative powers to municipalities through home rule. Traditionally, zoning regulations are enacted at the local level.

The historic basis for this is the United States Constitution. There is no Federal zoning law. The "police power," which is the right to pass legislation and regulations to protect the public health and welfare, was not delegated to the Federal government by the drafters of the Constitution, and remains, exclusively, a state power. In more recent laws, such as the Federal environmental protection laws passed during the last 40 years, the Federal government tends to use incentives and sanctions to induce states to pass local environmental protection laws to carry out the Federal purpose.

Local zoning laws must meet the constitutional standards of fairness and due process set out in the 5th and 14th Amendments to the United States Constitution.

A number of cases about "takings" interpret these constitutional requirements; if government action has led to a "taking" of an owner's use of real property, the owner may be entitled to monetary compensation.

GB: Home rule and its related local decision-making are prized politically. Philosophically it is very complicated, because, at one level, home rule decision-making is made within the kind of small, public-access transparency that we all value. However, natural resources such as groundwater do not conform to local maps such as town boundaries, and may be within overlapping jurisdictions. Some states do comprehensive planning at the county level, or at a regional or state level. This makes particular sense for environmental planning, or for watershed planning, which may even involve more than one state. Thus, home rule is a planner's dilemma—and these are the types of issues that impact the context within which people try to plan.

VP: You mentioned that you did research comparing British and American approaches to planning. Considering our historical ties to England, is our system similar to theirs?

GB: You can summarize England's whole system in four words: "no development without permission." Also, in Britain it's the same planning system everywhere in the country; it is a very centralized system of planning and development control—the same rules apply from county to county, north to south. The central government issues planning guidance that the local governments have to follow. It is very simple and, actually, a very powerful planning system. Plans are prepared and local authorities have very strong powers to deny development and there is no requirement for compensation.

EP & GB: Unlike England, in the United States we cannot just zone land for "no development." If we do, we have to compensate people for the "taking" of the potential use of their land.

EP: In the United States, zoning is a system designed to create predictability. When you buy the property, you look at the zoning regulations and you see the menu of things that you can do with it and the things you can't do with it, and that affects the value of that property and what you pay for it. There are some things that you can do with your property "as of right," which means without getting permission from the local government, and there are other things that you can do only after getting permission.

There are separate land uses incorporated in zoning: in the early 20th Century, when many states encouraged localities to engage in land use planning and to adopt zoning, it was important to separate residential uses from industrial uses such as manufacturing.

GB: After World War II came the era of rapid suburbanization, and the development of suburban communities on the urban fringe. The character of these automobile-oriented suburbs was shaped to a large extent by zoning

regulations which required the strict separation of different types of land uses and severely limited densities of development. Commercial development was prohibited from occurring in residential zones, and multi-family housing units (including two and three-family houses and townhouses—which are single family dwellings which share common walls) were prohibited in zones reserved for single family detached houses. Zoning regulations also required wide roadways, and that each property have more than enough on-site parking. The result was the creation of sprawling, low density communities incapable of supporting public transit, where walking and/or bicycling to stores and schools was all too often not a feasible or attractive option.

The pattern of suburban development I've described is very different from the traditional pattern of development that occurred in older New England towns and villages that developed during the late 19th Century and first half of the 20th Century. In such older communities you typically find a mixture of uses, with shops and offices (including the offices of doctors, dentists, lawyers and chiropractors), and civic uses like the public library, post office and churches inter-mixed with various types of housing. In the 1980s, when I was the planning director of Northampton, Massachusetts, my wife and I lived in a neighborhood where there was a mixture of single family, two-family and three-family homes, an apartment building and a nursing home. I could walk to the downtown area and to work in 10 minutes.

In the late 1990s and early 2000s we lived in a transit-oriented community in Westchester County, New York (the Village of Tuckahoe), within easy walking distance of a Metro-North commuter rail station with frequent train service to Manhattan and White Plains, and multiple stations in-between. Within a five-minute walk of where we lived, in addition to the rail station, were a grocery store, shoe repair shop, drug store, barber shop, beauty salon, appliance repair shop, a bank, a Chinese take-out restaurant, a pizzeria, a laundry/dry cleaner, luncheonette/sandwich shop, coffee shop, a bakery and two sit-in restaurants.

VP: What you're saying is that just about everything a person would need on a daily basis was within easy walking—including the opportunity to travel and commute by public transit. How different that is from the typical suburbs that have developed over the past few decades!

GB: Absolutely. The sad part is that the suburbs we have today didn't have to turn out that way. Essentially we got the type and form of development required by the zoning regulations of communities. A lot of harm has been done through rigid adherence to single use, low density zoning. The result is that people have become totally dependent upon the personal car; you can't walk to stores or the post office or church or often even to a park; you cannot comfortably bike or walk and benefit health-wise from the exercise. Instead, people join health clubs and drive to the gym in order to exercise. Moreover, the needlessly restrictive zoning regulations enforced by many suburban communities present obstacles and impediments to meeting the needs of our aging population, because they prevent

putting an accessory apartment in your home for your aging mother or father to live in.

That approach to land use planning is now being substantially rethought. More and more communities are adopting regulations that are much more flexible, that permit a much greater variety of uses, and encourage the creation of more pedestrian-friendly community environments. People are becoming increasingly concerned about the design and aesthetics of our communities (something that past zoning ordinances gave very little consideration to) and increasingly dissatisfied with the homogeneous, sprawling development that has arisen through compliance with past use-based zoning regulations. So what we are seeing is a fundamental shift in values that reflects an appreciation of the need to create and maintain communities that meet the needs of people of different ages (from young children to the elderly), that are more energy-efficient and environmentally sustainable, and that are healthy and satisfying places in which to live, work, play and grow old in.

EP: The social sense of what are appropriate amenities has changed significantly. With these evolving changes has come a recognition of the importance of public education, outreach and involvement in community planning and the formation of public policies at the local level. When residents become informed and involved in planning they will understand, for example, the synergy between having walkable neighborhoods and conserving energy, and the contribution that creating pedestrian-friendly communities can make to combating youth obesity.

GB: When I look at older urban centers that have struggled economically and lost population and jobs as people moved to the suburbs, I cannot help but think that their compact urban form and mixture of uses could very well turn out to put them at a competitive advantage in the future, in terms of being able to adapt to the realities of our changing world — rising energy costs, the growing need to curtail energy consumption due to global warming, our aging population, etc. If you lived in such a compact, mixed-use community, you wouldn't need to drive to get a quart of milk or loaf of bread, and a family certainly wouldn't need to own a second and third car. You could walk, or possibly take public transit, for many trip purposes.

The places that I believe will be most at risk in the future are those highly homogeneous suburban, bedroom communities with lots of housing but no businesses, few if any places where people work, few if any services or other destinations that people can walk to, and no public transit. Indeed, one of the big challenges planners will face in the future is to find ways to retrofit and modify such suburbs to make them more livable and sustainable. Systematically revising the zoning regulations in such one-dimensional, low density communities will inevitably be a major part of the solution.