Recent Developments in Comprehensive Planning

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I. Introduction

THIS ANNUAL REPORT DEALS WITH THE RELATIONSHIP OF ZONING and other land use regulations and actions and the comprehensive plan (sometimes referred to as the "general" or "master" plan). The tension between planning and land use regulation has existed since the promulgation of the two model acts drafted by an advisory committee to the Secretary of Commerce in the 1920s. The first in time, the Standard State Zoning Enabling Act (1926) was the more popular of the two, having been enacted in one form or another by three-quarters of the states and providing the basis for local governments to divide their territories into use districts.[1] The second model act was the Standard City Planning Enabling Act (1928)[2] which provided for a framework for future land uses and public works and was enacted by about half the states. Section three of the Standard State Zoning Enabling Act provided that zoning must be "in accordance with a comprehensive plan;"[3] however, the term "comprehensive plan" was not used in the Standard City Planning Enabling Act, so courts were left with guessing at the relationship between the two acts. More than eighty years

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1. ADVISORY COMM. ON ZONING, U.S. DEP'T OF COMMERCE, A STANDARD STATE ZONING ENABLING ACT UNDER WHICH MUNICIPALITIES MAY ADOPT ZONING REGULATIONS (rev. ed. 1926), *available at* www.smrpc.org/workshops/ZBA%20Workshop%20April%2029%202009/A%20Standard%20State%20Zoning%20Enabling%20Act,%201926.pdf [hereinafter SZEA].

2. ADVISORY COMM. ON CITY PLANNING & ZONING, U.S. DEP'T OF COMMERCE, A STANDARD CITY PLANNING ENABLING ACT (1928), *available at* www.planning.org/growingsmart/pdf/CPEnabling%20Act1928.pdf.

3. SZEA, *supra* note 1, at 6. This definitional problem was especially acute in those cases in which no plan existed at all.

later, courts are still exploring the relationship between planning and land use regulations and actions.

This report chronicles those cases decided on these matters between October 1, 2011 and September 30, 2012 and, following this introduction, is divided into several parts. The next three parts deals with three schools of thought on this relationship—one in which the plan is unnecessary and legally irrelevant,[4] another in which the plan is a factor in judicial review of land use regulations and actions,[5] and a third in which the plan achieves quasi-constitutional status, although it may be changed as can any policy.[6] Following this tripartite analysis, the authors review the cases for this same period which relate to amendment, and then interpretation of the comprehensive plan, if the plan has legal significance, and proceeds to conclusions.

II. Unitary View

Although the view that the comprehensive plan is found in the zoning ordinance and maps was once the majority view, very few states now adhere to that analysis. Connecticut has most of the cases in this category for the last year, but also noteworthy is a rural land use case from Ohio. The Connecticut cases are all at the sub-appellate level, and the Ohio case was decided by the Court of Appeals, and is where the discussion will start.

In *White Oak Property Development, LLC v. Washington Township,* the court upheld a summary judgment motion that the county court granted in favor of the Township.[7] White Oak sought a zone change of a 60 acre parcel to construct 300 multi-family condominium units. Petitioner challenged whether a comprehensive zoning plan existed and whether the zoning resolution and map were "in accordance

4. This was the former majority rule so well decried by the late Charles Haar in his seminal work, *In Accordance with a Comprehensive Plan. See generally* Charles M. Haar, *In Accordance with a Comprehensive Plan,* 68 HARV. L. REV. 1154, 1157 (1955).

5. This school of thought seems to be the prevailing one at the moment. *See, e.g.,* Daniel R. Mandelker, *The Role of the Local Comprehensive Plan in Land Use Regulation,* 76 MICH. L. REV. 899 (1976); Edward J. Sullivan & Lawrence Kressel, *Twenty Years after—Renewed Significance of the Comprehensive Plan Requirement,* 9 URB. L. ANN. 33 (1975) and); Edward J. Sullivan & Matthew J. Michel, *Ramapo Plus Thirty: The Changing Role of the Plan in Land Use Regulation,* 35 URB. LAW. 75 (2003).

6. This school is the one suggested by Professor Haar. *See generally* Charles M. Haar, *The Master Plan: An Impermanent Constitution,* 20 L. & CONTEMP. PROBS. 353 (1955).

7. White Oak Prop. Dev., LLC. v. Wash. Twp., No. CA2011-05-011, 2012 WL 368254 (Ohio Ct. App. Feb. 6, 2012).

with a comprehensive plan" as required by state law. The court found that the Township's zoning resolution reflected four available current uses—agricultural, residential, commercial, and industrial; and allowed for change as additional needs develop.[8] Further, the resolution and map, incorporated into the resolution by reference, provided a potential purchaser with the identity and location and boundaries by each district.[9] Thus, the town zoning resolution and map were considered a valid comprehensive plan.

In a representative Connecticut case, *Perugini v. Watertown Planning & Zoning Commission,* plaintiff appealed a decision of the commission that amended the town's zoning regulations and zoning map to create a new medical and general business zone for an 18.24 acre parcel that was formerly zoned for industrial use.[10] Plaintiff creatively claimed the amendments were inconsistent with the town's comprehensive plan because the purpose of the new zone was inconsistent with the purpose of the industrial zone from which the new zone was carved.[11] The court disagreed, finding that the planning commission had reasonably approved the rezoning based on the need for medical facilities and the proximity of the rezoned property to existing

8. *Id.* at *2-3.

9. *Id.* at *4.

10. Perugini v. Watertown Planning & Zoning Comm'n, No. UWYCV106005794S, 2012 WL 2149469 (Conn. Super. Ct. May 11, 2012). The state law requires localities to adopt a plan of conservation and development ("PCD") to address environmental impacts, and analysis of that plan is similar to consistency requirements in comprehensive plan review. *See* Reiner v. Town of E. Granby Planning & Zoning Comm'n, No. HHDCV116024119, 2012 WL 2477966, at *4 (Conn. Super. Ct. June 1, 2012); *see also* Coastline Terminals of Conn. v. Planning & Zoning Comm'n of Bridgeport, CV106011797S, 2012 WL 3641749, at *15 (Conn. Super. Ct. July 24, 2012) (court upheld a city commission denial of a project because it determined that, based on substantial evidence the application was inconsistent with the objectives set forth in the town's master plan). But note the PCD "is only an interpretive tool and cannot override the zoning regulations." Grumman Hill Montessori Ass'n, Inc. v. Planning & Zoning Comm'n of Wilton, FSTCV106004144S, 2012 WL 4466345, at *25 (Conn. Super. Ct. Sept. 11, 2012).

11. *Perugini,* 2012 WL 2149469, at *7. Challenges to spot zoning are reviewed against a finding of consistency with the comprehensive plan. *See* Straw Pond Assoc., LLC v. Planning & Zoning Comm'n of Middlebury, No. CV054005175S, 2012 WL 669848, at *17 (Conn. Super. Ct. Feb. 3, 2012) (zone amendments found to restore harmony and consistency with comprehensive plan); Sharpe v. Planning & Zoning Comm'n of Watertown, Nos. LLICV106003273S, LLICV106003277S, 2012 WL 522031, at *4 (Conn. Super. Ct. Oct. 6, 2011) (where increased density at a school is consistent with the comprehensive plan because increased density has the purpose of serving the needs of the community as a whole); Fielding v. Metro. Gov't of Lynchberg v. Moore Cnty., No. M2011-00417-COA-R3-CV, 2012 WL 327908 at *6 (Tenn. Ct. App. Jan. 31, 2012) (a similar analysis in Tennessee allowing zone change for tow truck service on agricultural land improved public safety and the efficient allocation of law enforcement resources, fully consistent with the purposes of the general zoning ordinance).

senior housing complexes.[12] Thus, where substantial evidence ties a rezone to the general purpose of a zoning ordinance and map, the courts will defer to local government discretion in zoning matters.

III. Planning Factor Cases

For many years now, the trend in cases relating to the significance of the comprehensive plan is that in which the plan is a factor or consideration in a judicial analysis. This past year has seen a similar trend.

In an Idaho case, *Friends of Minidoka v. Jerome County,* petitioners challenged respondent County's approval of a Concentrated Animal Feeding Operation ("CAFO"), *inter alia,* for violation of the county's comprehensive plan.[13] However, the court noted the county's zoning ordinance stated it was made in accordance with a comprehensive plan,[14] but the plan was not dispositive in any event.[15]

In an Illinois case, *Robrock v. County of Piatt,* neighbors challenged the county's grant of a special use to establish a restricted landing area ("RLA") for a personal gyrocopter.[16] The appellate court found a trial court injunction overly broad, but upheld the invalidation of the grant.[17] In doing so, the court considered two factors used in Illinois to determine the validity of a zoning ordinance, one of which was the care the County took when planning its land use.[18] The plan had identified protection of the rural countryside as a whole, and the proximity of other airports negated the need for similar improvements in

12. *Perugini,* 2012 WL 2149469, at *8. For an analysis of whether an ordinance is a zoning ordinance or only an ordinance advanced under a town's police power, see *Zwiefelhofer v. Town of Cooks Valley,* finding an ordinance that does not comprehensively address a wide range of potential classes of land uses, but only speaks to a single specific land use, along with other characteristics of note such as not automatically permitting or prohibiting any land use, is not a zoning ordinance. Zwiefelhofer v. Town of Cooks Valley, 809 N.W.2d 362, 377 (Wis. 2012).

13. Friends of Minidoka v. Jerome Cnty., 281 P.3d 1076 (Idaho 2012).

14. *Id.* at 1094. Of course, the legislature may exempt certain uses or units of government from compliance with a plan or land use regulations, or choose not to do so. *See* Town of Zionsville v. Hamilton Cnty. Airport Auth., 970 N.E.2d 185 (Ind. Ct. App. 2012); Commonwealth v. Bd. of Educ., Nos. 2010-CA-001733-MR, 2010-CA-001736-MR, 2012 WL 876722 (Ky. Ct. App. 2012); Stewart v. City of Paris, No. 2010-CA-001847-MR, 2012 WL 1957323 (Ky. Ct. App. 2012).

15. "A comprehensive plan is not a legally controlling zoning law, it serves as a guide to local government agencies charged with making zoning decisions. The in accordance with language . . . does not require zoning decisions to strictly conform to the land use designations of the comprehensive plan." *Friends of Minidoka,* 281 P.3d at 1094 (quoting Evans v. Tenton Cnty., 73 P.3d 84, at 89 (2003)).

16. Rockbrock v. Cnty. of Piatt, 967 N.E.2d 822, 824 (Ill. Ct. App. 2012).

17. *Id.* at 831-32.

18. *Id.* at 830.

the County; thus, the court found the County approval not to be in harmony with the County's plan.[19]

A Kansas case, *Baggett v. Board of Commissioners,* involved a challenge to an annexation based on the local plan.[20] The court used a standard of whether the decision was unsupported by sufficient evidence or otherwise arbitrary, capricious or unreasonable[21] and remanded, based on inconsistencies set out in the planning staff report, the plan itself, and petitioner's specific reliance on the plan.[22]

In a Maine case, *Forest Ecology Network v. Land Use Regulation Commission,*[23] the fact that a state land use commission was required to have any zoning be consistent with a comprehensive plan did not require the agency to adopt zoning for the area when it considered a concept plan for land within Maine's unorganized areas.[24]

19. *Id.* at 831. In an Illinois federal case involving the validity of pawnshop zoning regulations, plaintiffs challenge was based, *inter alia,* on the Village's justification that the prohibition would advance its comprehensive plan. Oxford Bank & Trust v. Vill. of La Grange, 879 F. Supp. 2d 954, 969-70 (N.D. Ill. 2012). The court used rational basis review and determined the various justifications advanced were sufficient. *Id.* at 975.

20. Baggett v. Bd. of Comm'rs, 266 P.3d 549 (Kan. Ct. App. 2011).

21. *Id.* at 553. Respondent adopted findings that the proposed use did not conflict with any area plan. In Kansas, the plan is a factor to be considered, but not dispositive. In *Stebbins v. City of Overland Park,* the court made the point that cities were "not required to follow their master plan, so long as they give consideration to its provisions." Stebbins v. City of Overland Park, 276 P.3d 837, *3 (Kan. Ct. App. 2012).

22. *Baggett,* 266 P.3d at 557. The court cited certain portions of the plan in support of its conclusion:

> The Comprehensive Plan provides a vision for the community. It is used as a policy guide that identifies the community's goals for directing future land use decisions. The Plan is also used by property owners to identify where and how development should occur; by residents to understand what the city and county anticipates for future land uses within the community; and by the city, county and other public agencies to plan for future improvement to serve the growing population of the community.
>
> The Comprehensive Plan is used most often as a tool to assist the community's decision makers in evaluating the appropriateness of land development proposals.

Id. at 555.

23. Forest Ecology Network v. Land Use Regulation Comm'n, 39 A.3d 74 (Me. 2012).

24. *Id.* at 92-94. Even in those cases where an action requires consistency with a comprehensive plan, Maine only requires that, on the basis of the evidence before it, a local government could have made the determination that the rezoning was in "basic harmony" with the plan. Golder v. City of Saco, 45 A.3d 697, 700 (Me. 2012). On the other hand, in a Massachusetts case regarding state administrative review of a local rejection of an affordable housing permit, *Scituate Zoning Board of Appeals v. Herring Brook Meadow, LLC,* the reviewing court found the housing portion of the local plan and local housing efforts inadequate in affirming the agency's overruling of the local denial. Scituate Zoning Bd. of Appeals. v. Herring Brook Meadow, LLC, No. 10 PS 432685, 2012 WL 3132961, at *17 (Mass. Land Ct. July 27, 2012); *see also* DiGiovanni v. Pope, No. 08 MISC 380468 GHP, 2012 WL

A Maryland case, *HNS Development, LLC v. People's Counsel for Baltimore County,*[25] involved a local code provision (as opposed to a statute) requiring development to comply with the county's master plan[26] was a sufficient basis for rejecting further development of a plat.[27]

Two unreported Minnesota Court of Appeals cases illustrate the use of the plan as a factor in that state. In *Wilmes v. City of St. Paul,* a landowner challenged denial of his request for removal of a tree in a city right of way.[28] The majority upheld the denial, but did not mention any city plan; however, the dissenting judge noted that the city's "Street Tree Master Plan" was termed a "comprehensive *guide* for selection, placement and proper maintenance of trees" and was thus not binding.[29] But in *Vier v. City of Woodbury,* respondent city relied *inter alia* on its comprehensive plan as a justification for adoption of an ordinance against installation of an "outdoor wood boiler."[30]

IV. The Planning Mandate View

Some states take the view that the plan is a quasi-constitutional document to which land use regulations and actions must adhere. Cases from six states illustrate this view.

The cases from California over the past year relate most often to consistency with the General Plan.[31] For example in *Center for Sierra*

259977, at *16-17 (Mass. Land Ct. Jan. 30, 2012) (where the plan supported local enforcement of a zoning code against commercial weddings and social events in a residential zone).

25. HNS Dev., LLC v. People's Counsel for Baltimore Cnty., 42 A.3d 12 (Md. 2012).

26. *Id.* at 23; *see also* BALT. CNTY. CODE § 32-4-102(a) (2004) (stating conformity with the master plan is required).

27. *Id.* at 23-25.

28. Wilmes v. City of St. Paul, No. A11-589, 2012 WL 171390 (Minn. Ct. App. Jan. 23, 2012).

29. *Id.* at *4-5. Similarly, in a New Mexico case, *Ricci v. Bernalillo County Board of County Commissioners,* the court refused to apply the more rigorous standards for plan compliance to a special use permit. Ricci v. Bernalillo Cnty. Bd. of Cnty. Comm'rs, 266 P.3d 646, 651 (N.M. Ct. App. 2011).

30. Vier v. City of Woodbury, No. A11-1948, 2012 WL 1658932, at *2-3 (Minn. Ct. App. May 14, 2012). The court found a "legitimate governmental purpose" for the ordinance through a lengthy planning process, of which the nuisance regulations in this case were a part, concluding that the evidence was insufficient to support the contention that the plaintiff was "targeted" and the ordinance was not adopted in good faith. *Id.*

31. This is the terminology used for comprehensive plans in California. *See, e.g.,* CAL. GOV'T CODE §§ 65300-65303.4 (West 2013) (authority for and scope of general plans).

Nevada Conservation v. County of El Dorado,[32] respondent adopted an alternative means of dealing with the potential loss of oak woodlands from that contained in its General Plan, but only provided a negative declaration to support that decision, rather than an environmental impact report ("EIR"), which petitioners challenged as insufficient.[33] While the potential loss of these woodlands was contained in the General Plan, dealing with that loss through an alternative mechanism to that identified in the plan was not covered by the plan and would result in significant environmental effects which required an EIR, resulting in reversal of the county decision.[34]

A Delaware case, *Farmers for Fairness v. Kent County Levy Court,* arose over respondent's adoption of a new county comprehensive plan which, Petitioners claimed, adversely affected the use and value of their property.[35] Petitioners claimed that Delaware statutory law prohibited development in conflict with the comprehensive plan and the impact of the plan adoption effected zone changes from a general maximum density of one dwelling per acre to one dwelling per four acres.[36] Respondent contended the case was not ripe until the County adopted new regulations and maps, while Petitioners claimed the effects were immediate upon adoption of the plan.[37] The statute at issue provided that the plan has the "force of law" and development

32. Ctr. for Sierra Nev. Conservation v. Cnty. Of El Dorado, 136 Cal. Rptr. 3d 351 (Cal. Ct. App. 2012).

33. *Id.* at 354.

34. *Id.* at 372-73; *see also* Citizens for Open Gov't v. City of Lodi, 140 Cal. Rptr. 3d 459 (Cal. Ct. App. 2012); Sierra Club v. Napa Cnty. Bd. of Supervisors, 139 Cal. Rptr. 3d 897 (Cal. Ct. App. 2012); Pfeiffer v. City of Sunnyvale City Council, 135 Cal. Rptr. 3d 380 (Cal. Ct. App. 2011) (all these cases involved general plan considerations in the context of California Environmental Quality Act litigation). An unreported case, *Erickson v. City of Clovis,* involved a challenge to approval of a retail shopping center, *inter alia,* for alleged inconsistency with the city's general plan. Erickson v. City of Clovis, No. F063526, 2012 WL 4450854, at *1 (Cal. Ct. App. Sept. 24, 2012). In rejecting these challenges, the appellate court noted the deference due to a local government in a review of its decision on plan consistency and that the general plan has been characterized as a " 'constitution' or 'charter' for future development" and was situated "at the top of the hierarchy of local government law regulating land use." *Id.* at *2-3. The court further observed:

> The propriety of nearly every local decision affecting land use and development depends on consistency with the applicable general plan and its elements. The consistency doctrine is the linchpin of California's land use and development laws because it gives the force of law to the plans for growth set out in the general plan.

Id. (citations omitted).

35. Farmers for Fairness v. Kent Cnty. Levy Ct., No. 4215-VCG, 2012 WL 295060 (Del. Ch. Jan. 27, 2012).

36. *Id.* at *3.

37. *Id.*

must be in conformity with both the plan and the local development regulations.[38] That result meant that development proposals inconsistent with the newly adopted plan could not go forward.[39]

Florida requires that a "development order," a term that includes most permits to develop land, be in conformity with a comprehensive plan.[40] In *Graves v. City of Pompano Beach,* a revised plat approval was challenged as allegedly inconsistent with the city's comprehensive plan.[41] The court reversed dismissal of the challenge, finding a plat approval to be a reviewable development order which must be consistent with the local comprehensive plan.[42]

Three unpublished New Jersey cases all deal with the role of the master plan in the grant or denial of variances and are of no special importance.[43] In an Oregon case, *McCollum v. State,* relief from more restrictive farm zoning was possible under Oregon's Measure 49[44] but dependent on the planning and zoning status of the land upon acquisition by the present owner.[45] Under the facts of the case, there was a plan that required protection of farmland by exclusive farm zoning; however, there was no minimum lot size for the property at issue.[46] The court construed Measure 49 to the effect that one additional residential parcel was allowed, in addition to the existing dwelling, as the Measure provided for that specific relief.[47]

Finally, an unpublished Washington case illustrates that state's consistency requirements. *Belleau Woods II, LLC v. City of Bellingham,* involved the application of credits against Petitioners' impact fee for parks imposed by respondent City.[48] The ordinance gave credit only

38. *See* Quality of Life Act of 1988, DEL. CODE ANN. tit. 9, §§ 4951- 4962 (West 2013).

39. *Farmers for Fairness,* 2012 WL 295060, at *7.

40. *See* FLA. STAT. §163.3194(1)(a) (2013).

41. Graves v. City of Pompano Beach, 74 So.3d 595 (Fla. Dist. Ct. App. 2011).

42. *Id.* at 599; s*ee also* W.A.R., Inc. v. Levy Cnty., 93 So.3d 1244 (Fla. Dist. Ct. App. 2012); 1000 Friends of Florida, Inc. v. Palm Beach Cnty., 75 So.3d 1270 (Fla. Dist. Ct. App.2011) (both memorandum opinions show similar results).

43. McFadden v. Delanco Twp. Joint Land Use Bd., No. L-1069-10, 2012 WL 2529405 (N.J. Super. Ct. Law Div. July 3, 2012); LT Propco., L.L.C. v. Westland Garden State Plaza Ltd. P'ship, No. L-10113-09, 2012 WL 1658700 (N.J. Super. Ct. Law Div. May 14, 2012); Sico v. Park Terrace, L.L.C., No. L-3947-10, 2012 WL 117975 (N.J. Super. Ct. Law Div. Jan. 17, 2012).

44. OR. REV. STAT. §§ 195.300-195.336 (2013).

45. McCollum v. State, 286 P.3d 916 (Or. Ct. App. 2012).

46. *McCollum,* 286 P.3d at 922-23.

47. *Id.* at 924-25. The court said that if the applicant qualified for relief, at least one additional lot, parcel or dwelling must be allowed. The court found that petitioner qualified for relief and "fit the bill" for an additional lot. *Id.*

48. Belleau Woods II, LLC v. City of Bellingham, No. 67019-1-I, 2012 WL 2688771 (Wash. Ct. App. July 9, 2012).

for those dedications made under the City's Capital Facilities Plan. In this case, plaintiff dedicated land for a public trail which was also part of a larger wetlands dedication made pursuant to another city ordinance. Only the trail was listed in the Capital Facilities Plan.[49] The City required a conservation easement for the wetlands under its Wetlands and Streams Ordinance, enacted under the State's Growth Management Act, rather than the enabling legislation for impact fees, even though all of the 167,000 square feet were dedicated. The trail through the conservation easement constituted the only dedication for which credit is available against impact fees.[50] The plan was the dispositive element for the city's credits in this case.

The cases involving required comprehensive plan consistency over the past year evince a growing sophistication and appreciation of planning in the context of judicial review.

V. Plan Interpretation

As plans become more significant, issues arise over their interpretation, as the following cases demonstrate.

In a California case, *Jamieson v. City of Carpinteri,* petitioner sought review of the denial of his application to add a patio onto an existing house in the coastal area because the permit would violate the coastal element of the city's general plan.[51] The court indicated it would defer to the city's interpretation.[52] In *Ideal Boat & Camper*

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49. *Id.* at *2.

50. *Id.* at *4-5.

51. Jamieson v. City Council of Carpinteria, 139 Cal. Rptr. 3d 48 (Cal. Ct. App. 2012).

52. *Id.* at 55. The court added:

> Generally, courts accord great deference to a local governmental agency's determination of consistency with its own general plan, recognizing that 'the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity. Because policies in a general plan reflect a range of competing interests, the governmental agency must be allowed to weigh and balance the plan's policies when applying them, and it has broad discretion to construe its policies in light of the plan's purposes.

Id. at 54.

> In *Erickson v. City of Clovis,* the appellate court deferred to the City's plan interpretation that it could grant site plan approval for a commercial shopping center for a site shown as mixed use on the specific plan under a plan provision that allowed for a mixed use overlay zone "or similar mechanism." Erickson v. City of Clovis, No. F063526, 2012 WL 4450854 (Cal. Ct. App. Sept. 24, 2012). The court found a commercial zone met this standard and that the City's generic mixed use zone need not be utilized.

Id. at *8.

Storage v. County of Alameda, petitioner challenged the denial of its site development review plan for inconsistency with two applicable local plans, one of which was adopted by initiative.[53] The appellate court affirmed the denial, calling the plan a "constitution for all future developments"[54] and adding:

> The proposed development "must be 'compatible with' the objectives, policies, general land uses and programs specified in the general plan." In addition, a project's consistency with some general plan policies will not overcome inconsistencies with a policy that is fundamental, mandatory and clear. Moreover, even in the absence of an outright conflict, a local agency will not approve a project that is not compatible with, and would frustrate, the general plan's goals and policies.[55]

In Florida, a challenge to a development order to allow mining in the Everglades was upheld in *1000 Friends of Florida, Inc. v. Palm Beach County*[56] because the plan limited such mining "only to support public roadway projects or agricultural activities or water management projects associated with ecosystem restoration, regional water supply or flood protection [on certain lands] where such uses provide viable alternate technologies for water management."[57] Because the trial court found that some of the aggregate would be used in public road projects, it granted summary judgment to the County, but the Court found it need not defer to the County's interpretation of the word "only" and reversed the trial court judgment.[58]

In a Mississippi case, *City of Saltillo v. City of Tupelo,* a Tupelo annexation was challenged by a neighboring city and others.[59] Both the trial and appellate courts affirmed, finding Tupelo correctly interpreted its plan to find it supported both inward and outward growth.[60]

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53. Ideal Boat & Camper Storage v. Cnty. of Alameda, 145 Cal. Rptr. 3d 417 (Cal. Ct. App. 2012).

54. *Id.* at 424-25 (citing Citizens of Goleta Valley v. Bd. of Supervisors, 801 P.2d 1161 (1990)).

55. *Id.* at 425 (citations omitted) (citing Families Unafraid to Uphold Rural El Dorado Cnty. v. El Dorado Cnty. Bd. of Sup'rs, 74 Cal. Rptr. 2d 1 (1998). The court added that the effect of the plan amendment by initiative was that the County could not thereafter make a discretionary decision inconsistent with the plan and, in fact, had an obligation to revise its development regulations to be consistent with the amended plan. *Id.* at 426-27; see Cal. Gov't. Code § 65860(c).

56. 69 So. 3d 1123..

57. *Id.* at 1125.

58. *Id.* at 1126-27. The court found that the trial court's reading would "undercut the plain language, as well as the spirit, of the comprehensive plan if only one percent of the aggregate would need to go to public roads while the other ninety-nine percent could go to non-enumerated activities." *Id.* at 1127.

59. City of Saltillo v. City of Tupelo, 94 So. 3d 256 (Miss. 2012).

60. *Id.* at 277.

In Oregon, plan interpretation is grounded in both a statute[61] and a significant case[62] which have greatly influenced that state's approach to the matters. In *Mark Latham Excavation, Inc. v. Deschutes County,*[63] the court determined that even if there were a more logical interpretation than that adopted by the governing body, that interpretation would not be overturned if it were plausible.[64] Similarly, in *Rudell v. City of Bandon,*[65] the City's interpretation of "foredune," beyond which petitioner could not build, was upheld when the City used a dictionary definition, as the interpretation was consistent with the text and context of its comprehensive plan.[66]

The cases relating to interpretation over the past year appear to reflect the increased sophistication found in the interpretation of state statutes.

VI. Plan Amendments

Again, as plans become more significant in the land use regulatory process, their amendment also becomes significant, as the cases over the last year demonstrate.

The most interesting and compelling of the California cases is *Avenida San Juan Partnership v. City of San Clemente,*[67] in which the City denied an application for a plan amendment and zone change to develop four houses on a tract because of the plan and implement-

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61. OR. REV. STAT. §197.829(1) provides:

> The Land Use Board of Appeals shall affirm a local government's interpretation of its comprehensive plan and land use regulations, unless the board determines that the local government's interpretation:
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> (a) Is inconsistent with the express language of the comprehensive plan or land use regulation;
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> (b) Is inconsistent with the purpose for the comprehensive plan or land use regulation;
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> (c) Is inconsistent with the underlying policy that provides the basis for the comprehensive plan or land use regulation; or
>
> (d) Is contrary to a state statute, land use goal or rule that the comprehensive plan provision or land use regulation implements.

62. Siporen v. City of Medford, 243 P.3d 776 (Or. 2010) (stating that local governing body interpretation of its own plan or land use regulations must be upheld if "plausible").

63. Mark Latham Excavation, Inc. v. Deschutes Cnty., 281 P.3d 644 (Or. Ct. App. 2012).

64. *Id.* at 651.

65. Rudell v. City of Bandon, 275 P.3d 1010 (Or. Ct. App. 2012).

66. *Id.* at 1014.

67. Avenida San Juan P'ship v. City of San Clemente, 135 Cal Rptr. 3d 570 (Cal. App. 2012).

ing zoning designations, which had been established in 1993 and 1996 respectively.[68] The appellate court agreed that the rezoning and the city's refusal to consider the development application were "arbitrary and capricious" as spot zoning, notwithstanding the plan designation.[69] Also interesting is *Rialto Citizens for Responsible Growth v. City of Rialto,*[70] where the failure to state in the notice and certain approval documents that the application was consistent with the City's general plan was not dispositive—in view of petitioners' failure to show any prejudice or that the grant of the applications were not consistent with the plan.[71]

Florida has had its share of plan amendment cases as well. In *Martin County Conservation Alliance v. Martin County,*[72] an appellate court found environmental organizations and individuals they represented did not have standing to challenge a plan amendment and sanctioned counsel.[73] In *City of Riviera Beach v. Riviera Beach Citizens Task Force,*[74] a citizen initiative for a charter amendment to limit the uses of a publicly-owned marina was determined not to be a "comprehensive plan amendment" which could not be initiated by citizens.[75]

68. *Id.* at 574.

69. *Id.* at 579-80. The court reviewed the City's reasons for the denial and found them unreasonable. The judgment in this case was conditional; if the City granted the application with "reasonable" conditions, it would not be liable for full amount of the inverse condemnation judgment.

70. Rialto Citizens for Responsible Growth v. City of Rialto, 146 Cal. Rptr. 3d 12 (Cal. Ct. App. 2012).

71. *Id.* at 25-32; *see also* Saunders v. City of L.A., No. B232415, 2012 WL 4357444 (Cal. Ct. App. Sept. 25, 2012) (plan introductory language not meant to be binding). A more relaxed view of notice requirements may also be found in *Friendship, Inc. v. Township of New Hanover,* where personal notice to a landowner was excused in the context of an ongoing periodic review of the entire master plan. Friendship, Inc. v. Twp. of New Hanover, No. L–1623–08, 2012 WL 715988 (N.J. Super. Ct. App. Div. March 7, 2012).

72. Martin Cnty. Conservation Alliance v. Martin Cnty., 73 So. 3d 856 (Fla. Dist. Ct. App. 2011).

73. *Id.* at 864. There was a vigorous dissent by Judge Van Nortwick, which may have been sufficiently persuasive for the Florida Supreme Court to grant review. *Id.* at 866 (although review was ultimately dismissed).

74. City of Riviera Beach v. Riviera Beach Citizens Task Force, 87 So. 3d 18 (Fla. Dist. Ct. App. 2012).

75. *Id.* at 23-24. The prohibition is found in FLA. STAT. §163.3167(12). A fairly strict view of plan amendments was also taken by the Eleventh Circuit in an unpublished opinion in *Weiss v. City of Gainesville,* where the court refused to resurrect a plan amendment that required certain actions to be taken within a certain time, but were not. Weiss v. City of Gainesville, 462 F. App'x 898 (11th Cir. 2012). Another strict view on plan amendments is found in *Montgomery Preservation, Inc. v. Montgomery County Planning Board,* where the court found the denial of an historic property designation amendment to a county master plan was not appealable. Montgomery Pres., Inc. v. Montgomery Cnty. Planning Bd., 36 A.3d 419 (Md. 2012). *But see* Great Rivers Habitat Alliance v. City of St. Peters, 384 S.W.3d 279 (Mo. Ct. App. 2012)

In a controversial Hawaii case, *Leone v. County of Maui,*[76] respondent refused to process development applications because of inconsistency with the "Park" designation in its applicable community plan.[77] The court rejected the notion that the case was unripe because plaintiff failed to attempt to amend the community plan[78] and allowed the claim to proceed.

In a New York case, *Village of Pomona v. Town of Ramapo,*[79] a village challenged a town plan amendment and rezoning of a site and prevailed on certain issues, but not on compliance of the rezoning with the comprehensive plan, the court stating:

> As we held in *In re Village of Chestnut Ridge v. Town of Ramapo,* villages 'have no interest in [a] Town Board's compliance with . . . its comprehensive plan,' since, unlike individuals who reside within the Town, '[villages] are beyond the bounds of the mutuality of restriction and benefit that underlies the comprehensive plan requirement.'[80]

Oregon has a unique land use system based on a local comprehensive plan and an overlay of state laws and administrative rules. This combination generally keeps urban type uses within urban growth boundaries; however, there may be the occasional need for certain non-rural uses, like truck and travel stops, in rural areas through a "reasons exception."[81] In *Devin Oil Co. v. Morrow County,*[82] such a travel stop was authorized by a plan amendment and the use initially limited by a condition to an implementing zone change.[83] Oregon law, however, requires that a plan "exception" to the normal rules that limit urban uses to urban growth boundaries, be implemented by a "limited use overlay" zone, so that the exception does not migrate into another

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(affirming rejection of a challenge to an urban renewal plan amendment for nonconformity with the city's comprehensive plan, citing the urban renewal plan as a policy document which was broadly reviewed).

76. Leone v. Cnty. of Maui, 284 P.3d 956 (Haw. Ct. App. 2012).

77. *Id.* at 960.

78. *Id.* at 967-68. The court distinguished *Williamson County Regional Planning Commission v. Hamilton Bank,* as requiring only administrative remedies to be taken, not legislative ones. *See* Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank, 473 U.S. 172, 186 (1985).

79. Vill. of Pomona v. Town of Ramapo, 943 N.Y.S.2d 146 (N.Y. App. Div. 2012).

80. *Id.* at 149 (citation omitted). Even when an individual brings a challenge for plan nonconformity, New York accords a "strong presumption of validity" and a court will review whether the change conflicts with the "fundamental land use policies and development plans of the community." Bergami v. Town Bd. of Rotterdam, 949 N.Y.S.2d 245, 247 (N.Y. App. Div. 2012).

81. Under this process, an applicant must show in its comprehensive plan, *inter alia,* reasons why the goals should not apply. OR. REV. STAT. §197.732(2)(c).

82. Devin Oil Co. v. Morrow Cnty., 286 P.3d 925 (Or. Ct. App. 2012).

83. *Id.* at 927.

type of urban use.[84] In that way, the plan continues to be the controlling document in land use. In *Protect Grand Island Farms v. Yamhill County,* another peculiar aspect of Oregon planning law is manifest[85]—for certain natural resources to be preserved (e.g., gravel and aggregate), those resources must be inventoried and shown to be significant.[86] The *Yamhill County* case was about the details and requirements of that inventory, which was found to be sufficient.[87]

In Washington, certain plan amendments must be challenged, if at all, in Superior Court, but only after the State's Growth Management Board has ruled on the case. That point was brought home in *Stafne v. Snohomish County,*[88] where that state's Supreme Court affirmed dismissal of a challenge brought first in Superior Court.[89]

The cases of the past year regarding plan amendment, like those relating to plan interpretation, show an increasing level of sophistication and detail.

VII. Conclusion

Over the past year, the comprehensive plan is given increasing respect. Where that plan is not seen as a quasi-constitutional document, it is given great weight in evaluating land use regulations and actions. One can only hope that this trend will continue to bring rationality to planning and its implementation.

84. *See* OR. REV. STAT. § 197.732; OR. ADMIN. R. 660-004-0018(3) (2013).
85. Protect Grand Island Farms v. Yamhill Cnty., 275 P.3d 201 (Or. Ct. App. 2012) (contesting the average thickness of an aggregate deposit).
86. The details for such an inventory are found in an administrative rule of the Oregon Department of Land Conservation and Development. *See* OR. ADMIN. R. 660-023-0180 (2013).
87. *Protect Grand Island Farms,* 275 P.3d at 205-06.
88. Stafne v. Snohomish Cnty., 271 P.3d 868 (Wash. 2012) (en banc).
89. *Id.* at 873-75. On the other hand, in *Skagit D06, LLC v. Growth Management Hearings Board,* the case was properly before the Board, which affirmed the local government decision to change its means of providing sewer service and was itself affirmed by the Court of Appeals. Skagit D06, LLC v. Growth Mgmt Hearings Bd., No. 67236-3-I, 2012 WL 4055812 (Wash. Ct. App. Sept. 17, 2012).