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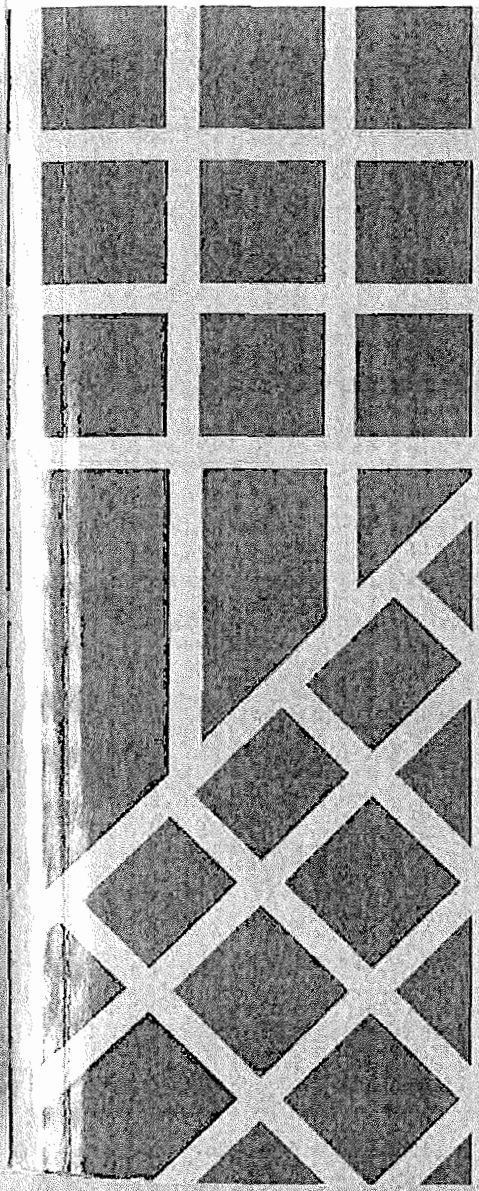

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Recent Developments in Comprehensive Planning

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I. Introduction

AS IT HAS FOR MANY YEARS, THIS ANNUAL ARTICLE CATALOGUES THE ROLE OF THE COMPREHENSIVE PLAN IN LAND USE REGULATION—iu this case for the period from October 1, 2014 through September 30, 2015. One way of viewing that relationship is to consider the importance of the comprehensive plan with regard to regulation. The authors find that there are three broad categories into which cases involving that relationship fit. The first is the "unitary view," a rejection of the plan (or other external reference point) as a separate standard for regulation, a position that was once the majority rule. A second category (which may now be the majority view) finds the plan one measure, to a greater or lesser exteut, of the validity of a land use regulation or action. A final category views the plan as a quasi-constitutional document that controls regulatory activity. Following a discussion of these categories, this article then examines cases dealing with plan amendments and interpretations of plans over this one-year period.

Much of the controversy over the role of the plan originates with the Standard Zoning Enabling Act,[1] which appeared in final form in 1926 as suggested enabling legislation by a federal advisory committee, and was adopted by approximately three-quarters of the states at one time. Section 3 of the Standard State Zoning Enabling Act required that zoning be "in accordance with a comprehensive plan."[2] Cases interpreting Section 3 arose over both the nature and necessity for a comprehensive plan. Courts almost uniformly ignored or blunted the words of Section 3

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1. *See* A STANDARD STATE ZONING ENABLING ACT foreword (1926).
2. *Id.* § 3.

and found the "comprehensive plan" requirement fulfilled by the zoning regulations and map, thus avoiding invalidation of a zoning regulations or actions through interpretive prestidigitation.[3]

In an oft-cited law review article, "*In Accordance with a Comprehensive Plan*," Professor Charles Haar rejected this view and suggested the plan had an independent existence and role with respect to land use regulation[4] Later, Professor Daniel Mandelker authored an article, "*The Role of the Comprehensive Plan in the Zoning Process*," to reach a similar conclusion.[5] This recent developments article utilizes the work of these land use pioneers to assess statutory provisions and case law regarding the role of the comprehensive plan in land use regulation and nuances over the amendment of plans and their interpretation.

II. The Unitary View

A recent Connecticut appellate case, *Verillo v. Zoning Board of Appeals of the Town of Branford*,[6] exemplifies the Unitary View, which does not require or use a separate comprehensive plan by which to assess the validity of zoning regulation, but refers instead exclusively to

3. The most frequently cited case is Kozesnik v. Twp. of Montgomery, 131 A.2d 1 (N.J. 1957).

4. *See* Charles M. Haar, *In Accordance with a Comprehensive Plan*, 68 Harv. L. Rev. 1154, 1167-70 (1955).

5. *See* Daniel R. Mandelker, *The Role of the Local Comprehensive Plan in Land Use Regulation*, 74 Mich. L. Rev. 899 (1976).

6. 111 A.3d 473 (Conn. App. Ct. 2015). In an unreported New Jersey case, the court ignored the plan in evaluating allowance of a commercial gas station and commercial facility, stating the test as follows:

> The test is whether the zoning change in question is made with the purpose or effect of establishing or furthering a comprehensive zoning scheme calculated to achieve the statutory objectives or whether it is "designed merely to relieve the lot of the burden of the restriction of the general regulation by reason of conditions alleged to cause such regulation to bear with particular harshness upon it." If it is in the latter category, the ordinance is invalid since it is not "in accordance with a comprehensive plan" and in effect is "a special exception or variance from the restrictive residential regulation, thereby circumventing the board of adjustment to which is committed by our Zoning Act . . . the quasi-judicial duty of passing upon such matters, at least initially, in accordance with prescribed standards" . . . Our inquiry therefore has been directed to ascertaining whether in view of the purposes of the zoning act the action of the borough in rezoning . . . represents sound judgment based on the policy of the statute "to advance the common good and welfare" or whether it is arbitrary and unreasonable and furthers "purely private interests."

Quick Chek Corp. v. Howell Twp. Zoning Bd., No. 11-4667, 2014 WL 5782786 (N.J. Super. Ct. App. Div. Nov. 7, 2014) (internal citations omitted). *See also* Residents for Reasonable Dev. v. N.Y.C., 11 N.Y.S.3d 116 (N.Y. App. Div. 2015). In another case, *Konrad v. Epley*, a federal court noted that New York law allowed for zoning ordinances to supersede comprehensive plans. 586 Fed. App'x 72, 73 (2d Cir. 2014).

zoning regulations to do so.[7] In *Verillo*, an applicant appealed the denial of a variance to the zoning regulations. Because the regulations themselves prohibited the dimensional changes, there was no authority to allow a variance.[8]

In a Maryland case, *County Council of Prince George's County v. Zimmer Development Co.*,[9] the court went to some length to distinguish planning and zoning, but concluded that land use proposals in a plan are a "non-binding advisory recommendation" unless another ordinance makes them binding.[10]

The most important case decided over the period covered by this Article was *Apple Group, Ltd. v Granger Township Board of Zoning Appeals*,[11] which, over a dissent,[12] found the "in accordance with a comprehensive plan" language derived from the Standard Zoning Enabling Act to refer to the zoning ordinance and map, rather than to a separate comprehensive plan.[13]

7. However, in an appeal of conditions by an affordable housing applicant (in Connecticut affordable housing approvals are governed by state statute, rather than solely local regulations), the court emphasized that the plan of development is controlling only as to municipal improvements and the regulation of subdivisions. Sterling Trails, LLC v. Planning & Zoning Comm'n, No. 126038940S, 2015 WL 2035544, at *5 (Conn. Super. Ct. Mar. 12, 2015). Thus, in some limited instances, Connecticut's local jurisdictions may be willing to treat the plan as a factor in decision making. *See id.*

8. The court used case law that required that a variance be "in harmony with the purpose and intent of the zoning ordinance" to conclude that the variance be "in harmony with the comprehensive zoning plan." *Verillo*, 111 A.3d at 473-74. However, section 8-2 of the General Statutes of Connecticut does not use the term "comprehensive zoning plan," but rather "comprehensive plan." The gloss adding "zoning" is a feature of case law, not based on statutory law. *Compare Verillo*, 111 A.3d at 473-74 *with* CONN. GEN. STAT. § 8-2 (2016). A similar evaluation of a variance against the "zone plan" was found in an unreported New Jersey case. *See* Gaelic Commc'ns, LLC v. Borough of Milford, No. 12-496, 2014 WL 6675296 (N.J. Super. Ct. App. Div. Nov. 26, 2014). In an unreported Kentucky Appeals case, Sansbury v. City of Hillview, No. 2013-001660, 2014 WL 6878925, at *4-5 (Ky. Ct. App. Dec. 5, 2014), a statute (Ky. Rev. Stat. Ann. § 100.213 (West 2016)) required plan conformity, but allowed for deviations if the zoning classification were inappropriate and the proposed classification were appropriate or if there were major changes in the area not anticipated in the plan that substantially altered the character of the area. The court affirmed the findings that determined both situations were present. *Sansbury*, 2014 WL 6878925, at *5.

9. 120 A.3d 677 (Md. 2015).

10. *Id.* at 696.

11. 41 N.E.3d 1185 (Ohio 2015).

12. *See id.* at 1192-93 (Kennedy, J., dissenting).

13. *Id.* at 1189 (majority opinion). A similar result occurred in the Ohio Court of Appeals, where the court stated:

> "A 'comprehensive plan' is a specific plan which sets forth uniform standards in a given district or zone, as opposed to a 'general plan' for the entire community." Simply put, the plan sits as a zoning and use template upon the township's land. It is the "local government's textual statement of goals, objectives and policies accompanied by maps to guide public and private development within its planning jurisdiction."

In an Oregon case, *Lake Oswego Preservation Society v. City of Lake Oswego*,[14] the court considered a statute[15] that purports to give a landowner "opt out" authority from historic review protections found in the local plan and zoning regulations by filing an objection at the time of designation, or thereafter. The court upheld a broad interpretation of the statute to include both the landowner at the time of the designation and any succeeding landowner, each of who may validly object to the designation.[16]

In a Pennsylvania case, *In re Bartkowski Investment Group, Inc.*,[17] the court considered a statute[18] that allowed a court to override a local government decision that "unlawfully prevents or restricts" a development or use.[19] In this case, the court could order the use, or provide other relief, notwithstanding plan incompatibility.

In conclusion, it appears that most of the cases in which the plan is not a factor arise out of some legislative or judicial exemption from plan effectiveness, rather than, as in the past, a construction that the "in accordance" language refers to the zoning ordinance. That said, the *Granger Township* case is a powerful reminder of the lingering influence of an historical interpretation of that language.

III. The Plan as a Factor in the Validity of Land Use Regulations or Actions

For many years now, the trend in cases relating to the significance of the comprehensive plan is that in which the plan is at least a factor or

Willow Grove, Ltd. v. Olmsted, 38 N.E.3d 1133, 1140 (Ohio Ct. App. 2015) (internal citations omitted). For an extensive critical analysis of *Granger Township*, see Edward J. Sullivan, *"When Will They Ever Learn? A Lament Over the Ohio Supreme Court Decision in Apple Group, Ltd. v. Granger Township Board of Zoning Appeals"* 39 Plan. & Zoning L. Rep. 1 (2016). In *G & H Development, LLC v. Penwell*, the plaintiff challenged the conclusion that a master plan existed because the parish only had a "mish-mash" of seven plans, ordinances and zoning maps. No. 13-0272, 2015 WL 2452434, at *2 (W.D. La. May 21, 2015). The federal district court disagreed, citing the parish's authority under the Louisiana Constitution's broad authority to adopt zoning ordinances, so long as it is adopted in accordance with a comprehensive plan. *Id.* at *3. Adoption of a master plan is not a prerequisite to adopting a zoning regulation. *Id.* at *4.

14. 344 P.3d 26 (Or. Ct. App. 2015), *rev. granted*, 351 P.3d 52 (2015) (pending now is the decision of the Oregon Supreme Court).

15. Or. Rev. Stat. § 197.772 (2016).

16. *See Lake Oswego*, 344 P.3d at 32. It may seem odd to include an Oregon case in the unitary category; however, the statute in this case allows a single owner to preempt the plan and allows a one-dimensional view of regulations at the option of the landowner. *Id.* at 30-31.

17. 106 A.3d 230 (Pa. Cmmw. Ct. 2015).

18. Pa. Mun. Plan. Code § 1006-A(c) (2016).

19. *Bartkowski Inv. Grp.*, 106 A.3d at 235-36.

consideration in a judicial analysis. This past year has seen a similar trend.

In *Dockter v. Burleigh County Board of County Commissioners*, the Supreme Court of North Dakota affirmed a zone change from agriculture to industrial, upholding the County Commission's findings of consistency with the comprehensive plan.[20] In North Dakota, the comprehensive plan, when read as a whole, serves to guide decision makers in their exercise of discretion in adopting zoning ordinances.[21] Thus, in *Dockter*, where plan goals include encouraging industry to be located close to transportation facilities, and that quality of growth in industry should be supported, the Board of Commissioners' findings in terms of meeting those goals were found well-within the discretion of the board and supported by substantial evidence in the record.[22]

In *Newton v. Monroe County*, a county denied extension of electric service by a municipal utility to No Name Key because the extension was prohibited by the county's comprehensive plan, and land development regulations designed to limit development and protect the environment.[23] Although the residents of another Key, Big Pine Key, had

20. 865 N.W.2d 836 (N.D. 2015). In Maryland, a list of eleven factors—ranging from orderly growth of a community to conservation of property values—are reviewed to determine whether a conditional use is consistent with the comprehensive plan. Carroll Cty. Planning v. Silverman Co., 223 Md. App. 780, 785 (Md. Ct. Spec. App. 2015) (finding Planning Commission considered each factor in approving a conditional use assisted living facility).

21. *Dockter*, 865 N.W.2d at 843. Similarly, in *I-465, LLC v. Metropolitan Board of Zoning Appeals*, the Indiana appellate court affirmed a variance approval to allow a PetSuites in a zone that did not permit dog kennels or dog-boarding uses. 36 N.E.3d 1094, 1097 (Ind. Ct. App. 2015). In that case, the zoning board found that the evidence demonstrated that the PetSuites services would be retail, professional, and business in nature, similar to other allowed uses, and that granting the variance would not substantially interfere with the comprehensive plan for the area. *Id.* In Massachusetts, in addition to approving a zone change, a special permit for affordable housing was found to be consistent with the local plan, where affordable housing was one goal. Powers v. Town of Falmouth, No. 12-466621, 2015 WL 4208528, at *13 (Mass. Land Ct. July 13, 2015); *see also* Atlantis Iyanough Realty, LLC v. Cape Cod Comm'n, No. 11-454785, 2015 WL 4879652, at * 5 (Mass. Land Ct. Aug. 17, 2015) (affirming the expansion of a major retailer where a limited traffic study supported a view that the expansion was consistent with the regional plan). In a Minnesota case, one factor for approval of a conditional use is consistency with the comprehensive plan. *See* Whitefish Area Prop. Owners Ass'n v. Crow Wing Cty. Bd. of Comm'rs, No. 14-0407, 2015 WL 648280, at *3 (Minn. Ct. App. Feb. 17, 2015); *see also* Lyons v. Zoning Hearing Bd., No. 178.2014, 2015 WL 5123636, at *7 (Pa. Cmmw. Ct. Mar. 9, 2015) (finding that a rezoning to mixed use category was consistent with a joint comprehensive plan; the court also affirming a local government rejection of a spot zoning argument).

22. *Dockter*, 865 N.W.2d at 843-44.

23. No. 4:14-10034, 2015 WL 1289790, at *1 (S.D. Fla. Mar. 20, 2015). In another case, *RDNT, LLC v. City of Bloomington*, the City denied a 254-unit skilled nursing and assisted living facility, in part because the proposal violated its transportation

obtained electric service, the court denied the plaintiff's equal protection claim because the Big Pine Key residents obtained electric service prior to the county's enactment of the current comprehensive plan policies and related regulations.[24]

In a conditional rezoning of historic property in Portland, Maine, the comprehensive plan was a factor in allowing commercial uses within a residential neighborhood where consistency with the plan was determined by viewing the plan as a whole.[25]

Thus, in these states, comprehensive plans are typically viewed as a whole and can be used by decision makers to sway the analysis of land use applications towards either approval or denial.

IV. The Plan as an Impermanent Constitution

For those states that have ascribed quasi-constitutional status to comprehensive plans, the judicial analysis of cases involving application of the plan to ordinances or actions results in closer scrutiny to assure consistency or conformity.

In *Banning Ranch Conservancy v. City of Newport Beach*,[26] the California Court of Appeal rejected plaintiffs' contention that defendant city violated its own general (comprehensive) plan by approving the challenged residential and commercial development before identifying whether wetlands and habitats on the site would be preserved, restored, or developed.[27] The court stressed its obligation to defer to the city's construction of the plan and determined its consistency determination was "reasonable."[28]

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policies in its comprehensive plan. 861 N.W.2d 71, 73 (Minn. 2015). Another factor considered by the City Council was that under the City's conditional use permit ordinance, the proposal would not preserve the character of the surrounding low density, single family neighborhood. *Id.* at 74. The Minnesota Supreme Court affirmed the City's denial, but only reached the question of whether the City's findings were legitimate under the conditional use standard. *Id.* at 76.

24. *Newton*, 2015 WL 1289790, at *3-4.

25. *Remmel v. City of Portland*, 102 A.3d 1168, 1173 (Me. 2014). Similarly, in Iowa, urban renewal plans are required conform to the general plan for the municipality as a whole. *See* Iowa Code § 403.17(24) (2016); Concerned Citizens of Se. Polk Sch. Dist. v. City of Pleasant Hill, 870 N.W.2d 274, 279 (Iowa Ct. App. 2015).

26. 187 Cal. Rptr. 3d 495 (Cal. Ct. App. 2015), *rev. granted*, 354 P.3d 302 (Cal. Aug. 19, 2015).

27. *Banning Ranch*, 187 Cal. Rptr. 3d at 511-12.

28. *Id.* at 509. The court observed in analyzing the trial court determination:

> [T]hat "the City failed to coordinate and work with the Coastal Commission in identifying which wetlands and habitats present on the Project site would be preserved, restored or developed, prior to your approval of the Project." The court does not explain what it means, in practical terms, to coordinate and work with the Coastal Commission prior to project approval. Presumably, it is something in between

In Florida, a trial court's grant of summary judgment for a plaintiff landowner in a contested determination of plan consistency by a county to allow mining[29] was reversed in the face of conflicting affidavits of professional planners for the parties.[30]

On the other hand, a New Jersey court in *Griepenburg v. Township of Ocean*,[31] upheld a revised zoning designation to a large, privately

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consultation and capitulation. But the lack of specific guidance in the general plan indicates to us that it is unreasonable to find the City's view of [general plan goal] 6.5.6 to be arbitrary. It is improper for courts to micromanage these sorts of finely tuned questions of policy and strategy that are left unanswered by the general plan. Cities are free to include clear, substantive requirements in their general plans, which will be enforced by the courts. But courts should not invent obligations out of thin air.

Id. at 512-513; *see also* Redlands Good Neighbor Coal. v. City of Redlands, No. 060138, 2015 WL 1393294 (Cal. Ct. App. Mar. 26, 2015) (applying a similar rule of deference).

29. Howell v. Pasco Cty., 165 So. 3d 12 (Fla. Dist. Ct. App. 2015). Note the definition of plan consistency. FLA. STAT. § 163.3194(3) (2016) (defining a consistent use as one that is compatible with the objectives and policies in the comprehensive land use plan).

30. *Howell*, 165 So. 3d at 13. While mining, itself, was a use permitted outright, ancillary processing of mined materials, which was proposed in this case, required a separate special use permit, suggesting that such mining was not always consistent with the county comprehensive plan, an issue that would have to be resolved in a contested factual setting. *Id.* In a religious land use case, the comprehensive plan of the City of Jacksonville Beach, provides that institutional uses, such as churches, should be located outside of areas zoned for low-density residential uses. *See* Church of our Savior v. City of Jacksonville Beach, 69 F. Supp. 3d 1299, 1306 (M.D. Fla. 2014). The City's land use regulations provided an exception to the policy if the applicant obtained a conditional use permit. *Id.* at 1307. The City denied a conditional use permit and listed one of the reasons as its violation of this plan policy. *Id.* at 1311. After the denial, the City passed an ordinance to require parks in residential zones to obtain conditional use permits to ensure the City's compliance with the Religious Land Use and Institutionalized Persons Act ("RLUIPA"). *Id.* The court did not find the requirements of a conditional use permit a substantial burden to the exercise of religion. *Id.* at 1316. Further, the court found the equal-terms violation was rendered moot by the passage of the ordinance requiring parks to obtain conditional use permits. *Id.* at 1319. Nonetheless, the court concluded that as applied, the church was treated unequally as compared to similarly situated secular uses. *Id.* at 1324. The City was directed to grant the church a conditional use permit subject to reasonable conditions of approval. *Id.* at 1326. In *Palm Partners, LLC v. City of Oakland Park*, the court avoided an Americans with Disabilities Act case by finding that those being treated for disabilities could be excluded from a Community Facilities zone (which, under the city's comprehensive plan, does not allow for residential uses) because the nature of the proposed facility was residential. 102 F. Supp. 3d 1334 (S.D. Fla. 2015). A similar analysis was applied in an unreported Minnesota case, *Volunteers of America v. City of St. Paul*, but with a different result. No. 14-0865, 2015 WL 234288, at *4 (Minn. Ct. App. Jan. 20, 2015). The City's denial of a special use for a transition facility to assist recently released prisoners in a light industrial zone was upheld, as any residential use required a special use permit. *Id.* at *1. That permit denial was upheld on the basis of a plan policy under which certain industrially-designated sites were to be preserved for commercial and industrial uses. *Id.* at *2.

31. 105 A.3d 1082 (N.J. 2015).

owned tract pursuant to the township's comprehensive "smart growth" development plan,[32] which in turn supported state plans for environmentally sensitive areas.[33]

Finally, in *Woods View II, LLC v. Kitsap County*,[34] a tort claim case that alleged, inter alia, that the defendant county interfered with plaintiff's development, in that the sewer system proposed to serve the development inappropriately allowed for urban services outside an urban growth area in violation of its comprehensive plan. However, the plan was found to be "rational" and thus not a source of liability.[35]

To conclude, in those states where the plan is a separate and legally binding document, the courts will often defer to the construction of that policy by the local government. In such contexts, words matter.

V. Plan Adoptions and Amendments

It should not be surprising that there is a correlation between states where the case law categorizes the plan as a quasi-constitutional document and cases where there is litigation over the adoption or amendment of a plan. If a plan is a meaningful legal document, its adoption or change will have significant land use consequences, as the cases for the past year demonstrate.

Florida has had a number of cases in this area. In a federal district court case, *Dibbs v. Hillsborough County*,[36] a pro se litigant made sweeping constitutional and statutory claims against a community plan (a subset of a county-wide comprehensive plan) adopted in

32. *Id.* at 1085-86; *see also* Great Atl. & Pac. Tea Co. v. Borough of Closter Planning Bd., No. 09-5301, 2015 WL 1280815, at *5 (N.J. Super. Ct. App. Div. Mar. 23, 2015) (noting the importance of comprehensive planning and finding an ordinance increasing the square footage limitation in the subject zone was consistent with the comprehensive plan).

33. *Griepenburg*, 105 A.3d at 1090-91 (citing Riggs v. Twp. of Long Beach, 538 A.2d 808, 813 (N.J. 1988)) The court set out a four-part test for the validity of land use regulations:

> First, the ordinance must advance one of the purposes of the [MLUL] as set forth in [state statutory law] Second, the ordinance must be substantially consistent with the land use plan element and the housing plan element of the master plan or designed to effectuate such plan elements, unless the requirements of that statute are otherwise satisfied. Third, the ordinance must comport with constitutional constraints on the zoning power, including those pertaining to due process, equal protection, and the prohibition against confiscation. Fourth, the ordinance must be adopted in accordance with statutory and municipal procedural requirements.

Riggs, 538 A.2d at 813.

34. 352 P.3d 807 (Wash. Ct. App. 2015).

35. *Id.* at 824.

36. 67 F. Supp. 3d 1340, 1344-45 (M.D. Fla. 2014).

2001, claiming it was written by Not-In-My-Backyard proponents and was "ridiculous."[37] While plaintiff desired the area in which he owned property to be urban, the court upheld the county's rural designation and rejected challenges to regulations that plaintiff alleged to be unfair.[38]

Case law from Florida and elsewhere appears to demonstrate that broad, unfocused constitutional challenges are likely to fail. More likely to succeed are challenges based on failure to meet procedural[39] or substantive[40] standards for adoption or amendment. If the plan is legally significant, its adoption or amendment provides grounds for inverse condemnation claims.[41]

37. *Id.* In Louisiana, on the Parish Council member's defense based on qualified immunity, the U.S. District Court granted immunity finding that the council members made a legislative decision in adopting the comprehensive plan and that the land use decision applying the plan to a particular parcel was also legislative in character. Petroplex Int'l, LLC v. St. James Parish, No. 15-140, 2015 WL 6134097, at *5 (E.D. La. Oct. 19, 2015). Notwithstanding the immunity defense, the Parish's actions in the underlying case terminated a property right based on a Resolution treated as a conditional land use permit. *Id.* at *6. Issuing a stop work order in contravention to the Resolution violated the developer's due process rights. *Id.*

38. *Dibbs*, 67 F. Supp. 3d at 1351. The court's summary disposition of plaintiff's facial equal protection claims exemplifies its approach to all of plaintiff's claims:

> Plaintiff has failed to show that there are no set of circumstances under which the Plan would be valid. Quite simply, Plaintiff has not established that the Plan, on its face, treats his property differently than that of similarly-situated landowners or that it lacks a rational basis. Accordingly, the County is entitled to summary judgment on Count II to the extent Dibbs asserts claims under 42 U.S.C. § 1983 and the U.S. Constitution.

Id.

39. *See, e.g.*, Anderson v. City of St. Pete Beach, 161 So. 3d 548 (Fla. Dist. Ct. App. 2014) (holding failure to give statutory notice and violation of open meetings laws); Fifty Six LLC v. Metro. Dev. Comm'n of Marion Cty., 38 N.E.3d 726 (Ind. Ct. App. 2015) (holding failure to abide by citizen participation and statutory notice and hearing requirements); Spokane Cty. v. E. Wash. Growth Mgmt. Hearings Bd., 353 P.3d 680 (Wash. Ct. App. 2015). Absent such a situation, judicial deference is usual. *See* Saddleback Canyons Conservancy v. Cty. of Orange, No. G049040, 2015 WL 1089582 (Cal. Ct. App. Mar. 11, 2015); Neighbors for the Preservation of Big and Little Creek Cmty. v Bd. of Cty. Comm'r, 358 P.3d 67 (Idaho 2015); Whatcom Cty. v. W. Wash. Growth Mgmt. Hearings Bd., 344 P.3d 1256 (Wash. Ct. App. 2015). As with other areas of land use law, the denial of a discretionary application is difficult to overturn. *See* Concrete N.W. v. W. Wash. Growth Mgmt. Hearings Bd., 342 P.3d 351 (Wash. Ct. App. 2015).

40. *See* Ooten v. Clackamas Cty., 270 P.3d 214 (Or. Ct. App. 2015). To contrast, in New Jersey, substantial consistency with the Master Plan is the standard, and an ordinance to rezone a property that supported many of the goals of the township's Master Plan was affirmed. 426 Royal, LLC v. Twp. of South Brunswick, No. 10-7449, 2014 WL 10123049, at *8 (N.J. Super. Ct. App. Div. July 27, 2015).

41. *See* Finr II, Inc. v. Hardee Cty., 164 So. 3d 1260 (Fla. Dist. Ct. App. 2015), *rev. granted*, 182 So. 3d 632 (Fla. 2015); Hussey v. Collier Cty., 158 So. 3d 661 (Fla. Dist. Ct. App. 2014).

Elsewhere, a Maryland case shows that a plan amendment is not required to contain data to support the general goals, policies, and recommendations of the plan.[42] Two federal cases in Oregon required a final decision on plan amendments before constitutional claims may be heard.[43] A Washington case involving a local government's failure to act on a statutory mandate to adopt or amend a plan found there was no statute of limitations on a challenge to that failure.[44]

VI. Interpretations of Plans

As plans become more significant, their interpretation becomes more important, as the following cases demonstrate.

A New Jersey case involved the governing body's authority to adopt a zoning ordinance, and its conformity with the municipality's master plan.[45] The plaintiffs sought to change the zoning to bring their nonconforming homes into permitted use status.[46] However, the zoning board has discretion whether to act on a reexamination proposal for the city's zoning.[47] While the refusal to adopt the proposed zoning would lead to some inconsistency with the overall master plan, the

42. Friends of Frederick Cty. v. Town of New Market, 120 A.3d 769, 777 (Md. 2015). However, if adjudicative findings are required, their absence may void the plan adoption. Hudson v. Hardin Cty., No. 2012-001214, 2014 WL 7006583, at *3 (Ky. Ct. App. Dec. 12, 2014). Also, a Planning Commission's approval of three zone changes were reversed when the court found no evidence that major changes of an economic, physical, or social nature within the area involved which were not anticipated in the adopted comprehensive plan. Bardstown Junction Baptist Church, Inc. v. Shepherdsville, No. 2013-001168, 2014 WL 6879919, at *6 (Ky. Ct. App. Dec. 5, 2014).

43. Blumenkron v. Eberwein, No. 3:12-00351, 2015 WL 5687869, at *9 (D. Or. Sept. 28, 2015); Exit 282A Dev. Co. v. Eberwein, No. 3:12-00939, 2015 WL 5692562, at *9 (D. Or. Sept. 28, 2015).

44. Save Our Scenic Area v. Skamania Cty., 352 P.3d 177, 184 (Wash. 2015). Moreover, the court found that there was no statute of limitations to challenge inconsistencies between the county's plan and its zoning ordinance until the county adopted those regulations. *Id.* at 184. In another Washington case, *Spokane County v. Eastern Washington Growth Management Hearings Board*, the court found a site specific plan amendment complied with some, but not all, of the County's plan policies and remanded the matter for further proceedings. 186 Wash. App. 1047, 1048-49 (Wash. Ct. App. 2015).

45. Myers v. Ocean City Zoning Bd., 106 A.3d 576, 579 (N.J. Super. Ct. App. Div. 2015).

46. *Id.* at 578. (New Jersey's comprehensive plan is referred to as its master plan).

47. *Id.* at 579. In analyzing the meaning of New Jersey's statute section 40:55D-62(a), the court focused on the opening sentence, "The governing body *may* adopt or amend a zoning ordinance . . ." and determined the statute imposes conditions upon a governing body when it decides to act, but does not require it to affirmatively act in the first instance. (emphasis added).

state's Municipal Land Use Act requires only substantial consistency with findings to support the claimed consistency.[48]

In *Delta Property Co. v. Lane County*, the Oregon Court of Appeals deferred to the county's interpretation of its own plan to analyze whether a gravel mine was included in the county's inventory of mining sites.[49] The Delta property lies within a geographic area covered by the Metro Plan, but at the same time, was subject to the county's land use code, which required the mine site to appear in the Rural Plan's inventory.[50] Delta's land did not lie within the area covered by the Rural Plan.[51] Nonetheless, the court deferred to the county's plausible interpretation that it was more stringently limiting mining uses in the area covered by the Metro Plan than areas further away from urban growth boundaries that were listed on the Rural Plan's inventory.[52] The court also determined that the county was entitled to deference in its interpretation of the Metro Plan, despite the plan being a joint effort of three jurisdictions.[53] Namely, the court found that the county's board of commissioners was accountable to the electorate of the two other local governments that adopted the Metro Plan.[54] This conclusion was further bolstered by the fact that the county alone was charged with deciding land use applications of the kind at issue in this case.

An unpublished decision from Washington involved a citizen's attempt to avoid code enforcement liability based on an argument that the city's enforcement was in conflict with the city's comprehensive plan.[55] In *City of Bonney Lake v. Kanany*, the court found no inconsistency with the plan.[56] Although the plan policies allowed accessory

48. *Id.* at 581 (holding a governing body's determination that its ordinance is substantially consistent is entitled to great weight and deference).

49. Delta Property Co. v. Lane Cty., 352 P.3d 86, 91 (Or. Ct. App. 2015). The local code required the mining site to be included on a specific comprehensive plan's inventory, more specific than the statutory requirement that the mining site be included on an "inventory." *Id.*

50. *Id.* at 92.

51. *Id.*

52. *Id.* at 94. The court further discussed additional limitations to exclusive farm uses. *Id.* at 97. The court did not reach whether the county plausibly interpreted that its local code requires that the mining inventory in the Metro Plan would be added by amendment to the Rural Plan, and until that time the Delta property would not meet the local code requirements. *Id.* at 98.

53. *Id.* at 103.

54. *Id.*

55. City of Bonney Lake v. Kanany, 340 P.3d 965, 971 (Wash. Ct. App. 2014).

56. *Id.*

dwelling units (ADUs) in all residential zones, the plan did not suggest that ADUs must be allowed in every situation in those zones.[57]

VII. Conclusion

The cases decided during this period show an increasing regard for the comprehensive plan. There are few cases in which the plan is encompassed in the zoning ordinance, but often there is some reason, statutory or otherwise, for not applying the same. The category of cases where the plan is seen as a quasi-constitutional document appears to be holding steady, while there is an increase in the "broad middle" of cases where the plan is a factor in the evaluation of land use regulations and actions. Similarly, there is an increase in the number of cases involving plan amendments and interpretations, an indicator of growing judicial respect for plans and planners. For planning law, this is a heartening result.

57. *Id.* While the appeal in the first case was pending, Kanany sought a director's interpretation about whether an ADU was permitted in conjunction with a duplex. Kanany v. City of Bonney Lake, 188 Wash. App. 1036, 1039 (Wash. Ct. App. 2015). The director and a subsequent hearings examiner both concluded that ADUs were unambiguously prohibited on the same lot as a duplex. *Id.* On review, the court upheld its earlier interpretation that the plan policies were not in conflict with the prohibition on ADUs built "in conjunction with" duplexes. *Id.* at 1042.