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## **COMPREHENSIVE PLANNING: CONSISTENCY AND CHALLENGES**

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## **COMPREHENSIVE PLANNING—CONSISTENCY AND CHALLENGES**

For most of my practice, two points about comprehensive plans hold true. First, most attorneys I come across don't share, or maybe don't understand, my interest in and fascination with comprehensive plans. Second, planners may not understand the importance, or at least the benefits, of having planning documents reviewed by an attorney.

Comprehensive plans are:

1.     Fun. A comprehensive plan is more entertaining and likely to keep your attention than, face it, reading ordinances. The process to create them is fun. My favorite citizen participatory practice involves "City Dollars," where attendees at open houses are given bills and asked to put their dollars where they most want the city to improve. A new twist on this gives attendees emoticons to place on their highest and lowest priorities. It is extremely rewarding to listen to what citizens want to achieve, or the hopes they have for their community, and be able to put those into words.

2.     Educational. A plan educates everyone about what a city does. You probably know those things already...but a plan forecasts out into what the future will hold for the area, and the tools that cities have at their disposal to achieve those ends. Often, citizens don't fully understand what their city government does for them, though local officials are often the first ones to receive an unhappy citizen call.

3.     Legally important.

- a.     Authority. To accomplish the goals within a plan, the government must have the authority to do what the plan sets out.

b. Substantive due process. Every ordinance we draft for our clients needs to be based on a valid governmental purpose. Though zoning ordinances have been upheld as a valid exercise of a city's police powers since the U.S. Supreme Court's 1927 decision in *Village of Euclid v. Ambler Realty*<sup>1</sup>, land use controls have taken on so many different faces, we still must enunciate WHY the government wishes to regulate.

4. Litigation. Comprehensive plans, and ordinances based on them, are coming under more attacks, and are being used (misread, at a minimum) in land use litigation.

5. Referendum and initiative. Nationally, there is an uptick in "ballot box" fights. General state law on referendum and initiative ("R&I") and home rule charter provisions impact citizen challenges. At least four Texas cities have had citizen resistance to comp plans or planning policies challenged in the past year.<sup>2</sup> The law on initiative and referendum may also be changing, broadening the types of decisions that can be the subject of initiatives.

6. Legislative attacks. Recent legislative sessions have seen attempts to limit municipal authority on land use regulation in particular, as well as taxation issues, which is one way cities pay for municipal services covered by comprehensive plans (see # 2, above). These attempts are likely to continue.

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<sup>1</sup> *Village of Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365 (1926).

<sup>2</sup> The City of Plano has been sued, along with the Mayor and Councilmembers, and the City Secretary being individually named; see Cause No. 380-00469-2016, in the 380<sup>th</sup> Judicial District; filed March 7, 2016. The cities of Colleyville, Allen, and other cities, in North Texas have all had citizen resistance to their plans, and the City of Sugar Land has had two attempts to have an item placed on the ballot for initiative.

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