

Remarks to the Gates Mills Advisory Committee, Meeting #3
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Experience:

- Councilman in Mayfield Village for ~6 years
- Mayor in Mayfield Village for 23 years
- Was prosecutor in the Cuyahoga County Court of Appeals
- Currently one of three commissioners for the Cleveland Metroparks
- Works at law firm with property owners and government entities

Asked to cover two components:

1. How does the comprehensive plan help protect a community's zoning from any challenges?
2. Conservation Development (Chapter 1160) – to what extent does it or does it not protect and function for the purpose it was implemented?

In our country, there is an interesting personal dynamic:

- My use of personal property should benefit me
- Someone else's use of their property should benefit the community

Same in the Constitution:

- Idea of property ownership is a fundamental right
 - Ohio Supreme Court recognizes that private property ownership is a fundamental right guaranteed by the Constitution of the United States
 - Eminent domain case ~15 years ago
 - Any impact adverse to property rights needs to be considered seriously
 - Zoning laws are treated under the law as being in derogation of these private property rights
 - The case law in Ohio Supreme Court says zoning regulations have to be construed strictly
 - The application of zoning laws are to be viewed favorably towards the property owner
- Ohio also recognizes home rule (not something that all states have)
 - Progressive movement back in early 1900s
 - The Village of Gates Mills is a home rule community
 - The Village has its own Constitution, Charter, Council, Mayor
 - And has the right under Ohio law to promulgate zoning regulations for the benefit of the community
- Struggle for public officials
 - Trying to look out for the welfare of the community
 - Also, have to deal with individual property rights

Ohio requires that if the community has zoning regulations in effect at the time an application for development is made, the property owner has a right to proceed with the use of the property as it was zoned, regardless of any subsequent changes to the zoning.

- About 20 years ago, Gates Mills changed zoning for the A1 Single-Family Detached Residential District to increase the minimum lot size to 5 acres (like Hunting Valley)
- Hunting Valley and Gates Mills are the only two communities in Cuyahoga County that have 5-acre minimum lot size residential zoning
 - In the broader context, 5-acre minimum lot size is viewed as exclusionary zoning
- Hunting Valley has the lowest population density in Cuyahoga County (85 persons per square mile) and Gates Mills, at 244 persons per square mile, is number two. In comparison, Cuyahoga County's Outer Ring Suburbs is 1,440, while the county average is 2,630.
 - The Village needs to look at how you are going to justify maintaining an acreage minimum, that in the scheme of things, is exceptional
 - Why is a 5-acre minimum justified?

Zoning codes depend on definitional language:

- Under Ohio law, the more a community has quantitative standards and well-defined terms by which public officials can regulate property rights, the clearer and more objective the better
- When the standards are less objective – decisions become more subjective
- Many times what is good for the public or what the standards mean is, more often than not, subjective

No comprehensive plan definition in Ohio's codified ordinances:

- But every zoning code is supposed to be promulgated in conjunction with a 'comprehensive plan'

Balancing private property rights with public purpose.

- On one hand, you must venerate private property rights. On the other, you have laws that give public officials the power to regulate property use
 - Once law is legislated, the presumption is that it's reasonable and is there for good purpose
 - Anyone who wants to challenge, to upend that law, has a high burden of proof
- For the comprehensive plan – trying to balance between large lot zoning (keeping open spaces) and at the same time find ways to maintain a sustainable environment where you can bring in young people, take care of all generations...and take care of the bottom line.

Under Ohio Law, here is the lens for looking at comprehensive plans:

- What data informs the comprehensive plan?
- What's the methodology used (is it an honest assessment?)
- Under the law, the more objectively based an opinion can be, the better it will be supported

Comprehensive Plan Considerations: When developing/adopting a comprehensive plan, you have to think critically and be prepared to respond if someone challenges it:

- What are the underlying public purposes that are supposed to be served?
- What is the definitional language?
- What will be the strengths and weaknesses?
- What objective measures are used?
- Example: Conservation Development Chapter – ties into the Village’s Subdivision and Land Development Regulations (TITLE THREE in the Planning & Zoning Code)
 - Subdivisions in Gates Mills are supposed to adhere to certain principles, certain guidelines (Chapter 1131 General Provisions and Definitions)
 - Section 1311 02, Statement of Findings notes that the Commission and Council find significant portion of lands in the village are compromised because of exceedingly steep slopes, being located in flood plains, containing soil unsuitable for septic systems, or lacking a dependable supply of well water
 - Purpose of the regulations is to preserve natural beauty and terrain, protect public health and safety by preventing erosion of soil, contamination of water, minimizing increased runoff of surface water and flood damage
 - These are what anyone would see as legitimate salutary public purposes
 - Harder question is how do you effectuate them and does your zoning code provide ways that connect the dots with these
 - Are the regulations achieving these goals

Challenging Zoning. When someone (typically a property owner) challenges a community’s zoning regulations, there are two ways to do it:

- Facial Challenge/Constitutional Challenge: prove that under any circumstance this legislation/regulation doesn't wash, that it is not reasonable, and it doesn't rationally effectuate legitimate public purpose
- Applied Challenge: the zoning code applied to my property doesn't accomplish those ends
 - Example: Jaylin Investments, Inc. v. Moreland Hills
 - Moreland Hills has 2-acre minimum lot size zoning
 - Question was whether or not the village could justify imposing the 2-acre minimum lot size requirement against a property owner who proposed a higher density development
 - The proposed development’s infrastructure was going to be efficient and would accomplish many of the stated goals of the Village’s zoning code
 - But the proposed development didn't deal with how it was changing the natural habitat and impacting the environment
 - Ultimately, Moreland Hills successfully defended its minimum 2-acre requirement on that property

If the comprehensive plan is to address new, or adapt existing provisions:

- Look at whether the code is really achieving the ends intended
- Example: Ketchal v. Bainbridge – 3 acre pivot issue

- You have to justify 5 acres per house – public water, septic, hillsides, ravines – at some point, reconcile what your zoning codes say and what your land use shows
 - 75% of residential lots zoned for 5-ac minimum average between 2.5 to 3 acres
 - What if someone wants to acquire those properties, consolidate them to create a cluster development? Under your code, you will have to maintain a 1 unit to 5 acre ratio
 - Can you justify pointing to the Conservation Development regulations in Chapter 1160 and maintaining a 5 acre minimum?

There is market pressure to develop Hunting Valley and Gates Mills. Development is going on in Lorain County

- Need to look at pressures to develop and pressures to maintain community environment

Questions:

Q: In the event the comprehensive plan wanted to, in some way, encourage or allow some other housing type that didn't need the 5 acres of zoning – could that be expressed in a way in the comprehensive plan and ultimately in Village zoning where you know either by through some sort of characteristic or designating specific locations that could be done without changing zoning in the rest?

A: Or, in other words, it doesn't set precedent that's going to blow up the whole village?

Short answer: Yes

How you do it is not just a political question, nor just a legal question – it comes back to if there is certain amount of science/methodology. Because land is different throughout the village. Regulations/density that may be workable in the center of the village may not be suitable for another location such as Gilmour

For example, if Gilmour sold off excess land, or if the nursery sold, what would be a reasonable density for residential development? You have to ask what if?

Are there site or locational characteristics that are unique – you have to be able to identify a plausible, rational basis – once you do that, the law gives you that presumption of validity

Q: Does it throw it all into jeopardy?

A: No, I think you can define it. Part of the problem is that if you do nothing, you still have to consider if there is a spot or location where your existing zoning could come under attack.

Q: If you could define attributes about walkability or proximity to services and healthcare? Are there ways you can accomplish those goals without throwing the whole lower density restrictions into question?

A: In principle, yes. In politics, it could be a different thing.