

March 5, 2024. TLCC Comp Plan 101-5 Planning and Property Rights

What is a comprehensive plan?

“Comprehensive plans are the centerpiece of local planning efforts. A comprehensive plan articulates a series of goals, objectives, policies, actions, and standards that are intended to guide the day-to-day decisions of elected officials and local government staff.” Municipal Resources Service Center (MRSC)

Planning and property rights

There is tension between planning and a private property/ takings / rights perspective.

Comprehensive planning is meant to express community consensus about the vision for the community over the next 20 years. Making a vision come true requires more than nice words on a piece of paper. Comprehensive planning describes the vision. The zoning ordinance, which is revised after to be consistent with the comp plan, gives the County tools to work toward that vision.

If the comp plan wants 1-acre residential lots in a given area, then the County zones reflect that. The zone for 1-acre residential would be limited to residential use or other uses compatible with residential - maybe a day-care business or other in-house business. Other uses would be prohibited - say a tourist destination with large events on occasion. Some people's permit or zoning applications would be turned down.

Planning discussions in Washington, and maybe everywhere, involve discussion of private property rights and takings. Turning an application down can be and is seen as a taking. Requiring compliance with environmental regulations can be and is seen as a taking. So how does a comp plan get put on the ground?

Planning depends on a vision of the common or public good. Individuals contribute to the common good because it benefits them too. We're all better off breathing clean air. Protecting the public good will require some restrictions on individual actions. Those limits and restrictions, if not voluntarily observed, are mostly codified, administered, and applied by government. The takings issue is always framed as government overreach. The common good kind of gets lost in the tussle.

From the MRSC: <https://mrsc.org/explore-topics/planning/takings/regulatory-takings>

[Article 11](#), section 11 of the Washington State constitution grants cities and counties the police power authority to protect the public health, safety, and welfare. Pursuant to that authority, a city or county may regulate the use of property. They may regulate property for purposes such as abating nuisances, enforcing building and health codes, zoning and planning, and ensuring environmental protection. However, both federal and state courts have recognized that government regulation can go "too far" so as to have the same effect on a property owner as if the government had actually physically appropriated the land. The U.S. Supreme Court first recognized such regulatory takings in 1922. See *Pennsylvania Coal Co. v. Mahon* (1922).

Both the federal and Washington State constitutions provide that the government may not take private property unless it is for public use and just compensation is paid. Just compensation is considered to be the fair market value of the property at the time of the taking. A government may "take" property in two basic ways:

1. By physically appropriating the property, such as for a right-of-way.
2. By regulating or limiting the use of property under the government's police power authority in such a way as to destroy one or more of the fundamental attributes of ownership (the right to

possess, exclude others, and dispose of property), deny all reasonable economic use of the property, or require the property owner to provide a public benefit rather than addressing some public impact caused by a proposed use.

When physically appropriating property, the government typically institutes [eminent domain](#) proceedings, also called condemnation. When adopting regulations, the affected property owner typically initiates a lawsuit to protest the effect of the regulations. A suit alleging a regulatory taking is also called an "inverse condemnation" action.

Property owners do not have a constitutional right to the most profitable use of their property. In a takings challenge to a regulation, courts generally do not require compensation when the regulation merely decreases property value or prevents property owners from doing exactly what they want with their property. As long as a regulation allows property to be put to productive economic use, the property has value, and the regulation will not be deemed to deny all reasonable economic use of the property; there is no regulatory taking in that situation.