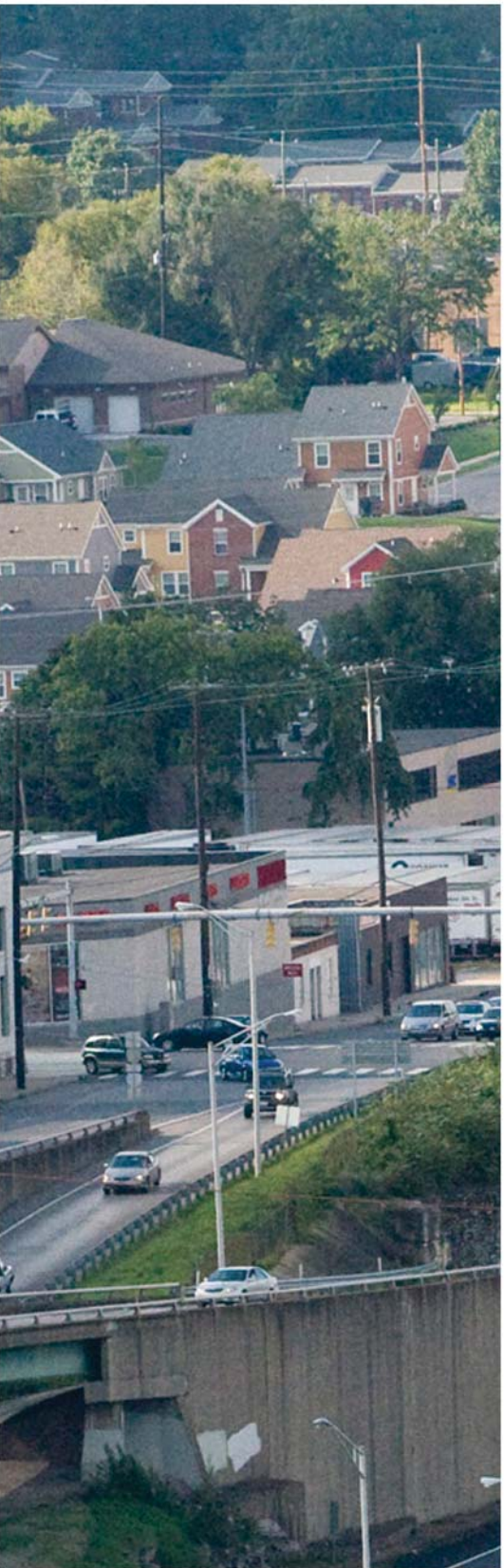
Report of the Tennessee Advisory Commission on Intergovernmental Relations

Land Use in Tennessee
Striking a Balance



June 2013

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Report of the Tennessee Advisory Commission on Intergovernmental Relations

Land Use in Tennessee—Striking a Balance

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State of Tennessee

Tennessee Advisory Commission on Intergovernmental Relations
226 Capitol Boulevard, Suite 508
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June 20, 2013

The Honorable Bill Sanderson
Chair, House State Government Subcommittee
301 6th Avenue North
Suite 204 War Memorial Building
Nashville, TN 37243

The Honorable Joe Carr
Chair, House Local Government Subcommittee
301 6th Avenue North
Suite 205 War Memorial Building
Nashville, TN 37243

Dear Chairman Sanderson and Chairman Carr:

Transmitted herewith is a Commission report on

- House Bill 125 (Sargent) [Senate Bill 347 (Haynes)],
- House Bill 2818 (Faison) [Senate Bill 2878 (Southerland)],
- House Bill 3040 (Elam) [Senate Bill 3171 (Haynes)],
- House Bill 3041 (Elam) [Senate Bill 3119 (Yager)],
- House Bill 3042 (Elam) [Senate Bill 3167 (Haynes)],
- House Bill 3043 (Elam) [Senate Bill 3118 (Yager)], and
- House Bill 3105 (Faison) [Senate Bill 2876 (Southerland)],

referred by the House State and Local Subcommittee for study in 2012. The report was approved by the Tennessee Advisory Commission on Intergovernmental Relations June 20, 2013, and is hereby submitted for your consideration.

Sincerely,

Senator Mark Norris
Chairman

Lynnisse Roehrich-Patrick
Executive Director

The Tennessee Advisory Commission on Intergovernmental Relations

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MEMORANDUM

TO: Commission Members

FROM: Lynnisse Roehrich-Patrick
Executive Director

DATE: 20 June 2013

SUBJECT: Land Use Legislation—Final Report for Approval

The attached report, prepared in response to the following bills referred by the House State & Local Government Subcommittee, is submitted for commission approval.

- **Municipal Government:** [SB 3119 (Yager)/HB 3041 (Elam)]: Allows municipal regional planning commission, in counties that have not adopted zoning, to exercise subdivision approval within the planning commission's region without the approval of the county legislative body.
- **Local Government: Municipalities' Jurisdiction Beyond Corporate Limits** [SB 0347 (Haynes)/HB 0125 (Sargent)]: Deletes provision in the Comprehensive Growth Plan that allows a municipality and a county without county zoning to provide extraterritorial zoning and subdivision regulation beyond its corporate limits with the approval of the county legislative body.
- **Planning, Public:** [SB 2878 (Southerland)/HB 2818 (Faison)]: Creates different requirements for subdivisions and development in counties in which countywide zoning has not been enacted.
- **Planning, Public:** [SB 3167 (Haynes)/HB 3042 (Elam)]: Redefines subdivision in municipal county and regional regulations by expanding the maximum size allowed for the subdivided parcels from less than 5 to less than 25 acres.
- **Planning, Public:** [SB 2876 (Southerland)/HB 3105 (Faison)]: Prohibits local or regional planning commission from prohibiting private road maintenance agreements in residential developments.

- **Planning, Public:** [SB 3171 (Haynes)/HB 3040 (Elam)]: Revises authority or responsibility with respect to street construction and acceptance of public streets located within a subdivision in certain circumstances.
- **Zoning:** [SB 3118 (Yager)/HB 3043 (Elam)]: Specifies evidence of abandonment of non-conforming use, directs the governmental entity with jurisdiction to establish beginning and ending dates for the prescriptive period, and creates a rebuttable presumption of abandonment upon a governmental finding of credible evidence establishing a non-conforming use for the prescribed period.

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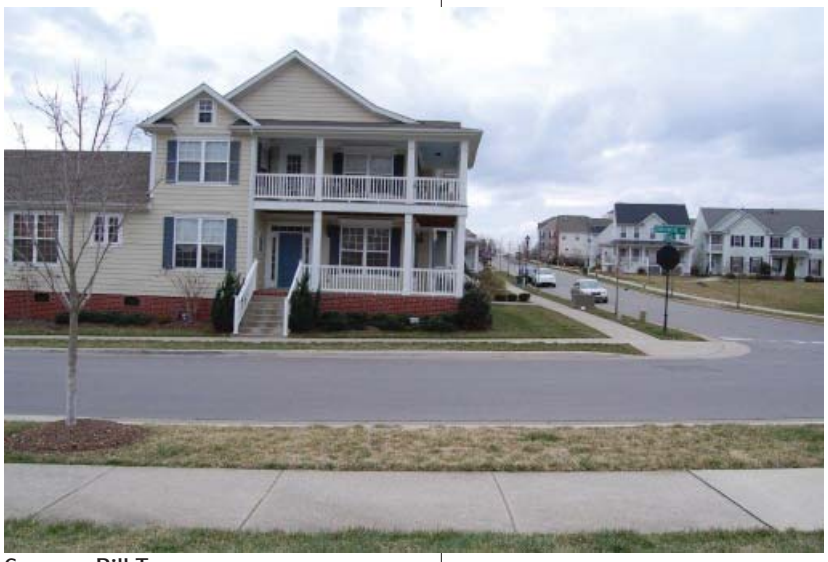
Land Use in Tennessee—Striking a Balance

Disputes between landowners over how they want to use their property have long been a source of tension. How your neighbors use their property affects the value of yours and your quality of life. For most of our history, people have had no recourse except through courts, but by the early 20th century, they had begun to look to their elected officials for less costly and more effective ways to resolve land use conflicts. Today, land-use issues continue to play an important role throughout the country and in Tennessee. During the 107th General Assembly, a large number of bills addressing land-use issues were considered. Of those bills, seven were referred by the House State and Local Government Subcommittee to the Tennessee Advisory Commission on Intergovernmental Relations (TACIR) for study. These bills focused on what constitutes a subdivision, who gets to regulate land use outside city limits in areas set aside for them to annex, roads built by developers, and grandfathering of land uses that don't conform to new zoning requirements.

Disputes between landowners over how they want to use their property have long been a source of tension.

Defining Subdivisions

The Commission was sent two bills that take subdivision regulations in opposite directions. One would regulate less, the other more. Tennessee's current framework for subdivision regulation allows, but does not require, local governments to set standards for the division and development of land into tracts that are five acres or smaller or that require extension of roads or utilities. All states have similar provisions, but only five others limit this grant of authority based on lot size. House Bill 2818 (Faison) [Senate Bill 2878 (Southerland)] would have prevented regional planning commissions in the 47 counties without countywide zoning from regulating all lots one acre or smaller. House Bill 3042 (Elam) [Senate Bill 3167 (Haynes)] would have enabled local governments to regulate the subdivision of lots between 5 and 25 acres in size. Exempting lots one acre or smaller from regulation could jeopardize property values by denying property owners such benefits as



Source: Bill Terry.

adequate roads and water, as well as assurances that development of adjacent property will comply with similar standards. Amending it to apply to lots larger than five acres could extend these benefits to more property owners.

Planning and Zoning by Cities Outside Their Boundaries

Two other bills sent to TACIR focused on the authority of municipalities to regulate land use outside their corporate boundaries in the 47 counties without county zoning. Current law allows municipalities in these counties to apply to the Department of Economic and Community Development's Local Government Planning Advisory Committee (LGPAC) for authority to zone and regulate subdivision of land in a region larger than the city itself, but only when the county's governing body agrees. As a matter of practice, LGPAC gives counties with zoning an opportunity to object when a city proposes to regulate the subdivision of land outside their corporate boundaries. LGPAC may nevertheless allow the municipality to regulate the subdivision of land outside its corporate limits. Municipalities may not zone outside their corporate limits in counties that have zoning.

Municipalities may not zone outside their corporate limits in counties that have zoning.

House Bill 125 (Sargent) [Senate Bill 347 (Haynes)] would have enabled municipalities in counties without countywide zoning to both zone and regulate land use outside their corporate limits without prior approval from the county legislative body. House Bill 3041 (Elam) [Senate Bill 3119 (Yager)] would have enabled municipalities in those counties to regulate subdivisions, but not zone, outside their corporate limits without approval from the county legislative body. Support for these bills is based on the city officials' concerns about becoming responsible through annexation for development that does not meet city standards. Opposition to the bills stems largely from the concerns of residents living outside the cities about land-use regulations being imposed on them by government officials for whom they cannot vote.

Tennessee law provides two routes for resolving these conflicts: first through creation of joint city-county planning commissions and, second, since adoption of the state's Growth Policy Act in 1998, through joint economic and community development boards. Four joint regional planning commissions are already operating effectively: Knox County and the City of Knoxville, since April 1956; Hamilton County and the municipalities of Chattanooga, East Ridge, Lakesite, Lookout Mountain, Ridgeside, and Walden, since June 1943; Montgomery County and Clarksville, since January 1963; and Pickett County and Byrdstown, since August 1976.

Roads Built by Developers

Two bills sent to the Commission relate to providing standards for roads built by developers. Under current law, all planning commissions are authorized to adopt requirements for subdivision roads.[1] House Bill 3040 (Elam) [Senate Bill 3171 (Haynes)], which applied only to roads in cities' planning regions outside their corporate limits, would have required those municipalities to accept full responsibility for new subdivision roads, relieving the county of any responsibility for those roads. In effect, this legislation would consolidate responsibility for these roads in the municipalities, but there is no consensus among city officials in support of it. House Bill 3105 (Faison) [Senate Bill 2876 (Southerland)] would have permitted a developer and lot purchasers to agree through restrictive covenants to develop and maintain the roads in a subdivision themselves. These restrictive covenants would run with the land and be recorded with the deed or plat of the development. A planning commission could not prohibit private road maintenance agreements and, consequently, could not deny subdivision plat approval simply because the roads are private instead of public. It is unclear whether a planning commission would be able to require such roads to meet the construction standards adopted for subdivision roads. The concern leading to introduction of this bill is the cost to build roads to municipal standards, but that concern is outweighed by the benefits of both increased safety and lower long-term maintenance costs.

Under current law, all planning commissions are authorized to adopt requirements for subdivision roads.

Land Uses That Do Not Conform to Zoning Regulations

A number of bills were introduced in 2012 related to provisions that protect landowners from zoning changes, but only one was sent to TACIR for study. House Bill 3043 (Elam) [Senate Bill 3118 (Yager)] would have removed language from the law that requires local governments to prove intentional abandonment or discontinuance of land use that does not comply with current zoning in order to prevent the landowner from re-establishing that use. Local governments would have been required instead to prove abandonment based on criteria such as utility connection information and dated pictures indicating abandonment. Substituting specific criteria for the requirement to prove intent benefits local governments but also clarifies for landowners exactly what constitutes abandonment.

[1] Tennessee Code Annotated § 13-3-403.

House Bill 3694 (Gotto) [Senate Bill 3646 (Ketron)], which was taken off notice in the Senate and not acted on in the House, would have completely rewritten the nonconforming use statute. There is widespread agreement that the statute should be rewritten but no consensus on what the content should be. A chart comparing the provisions of House Bill 3694 with the current law is in appendix B.

Land-use Regulation—A Response to Property Conflicts and Public Safety Concerns

Disputes over land-use planning and regulation are increasing as evidenced by the large number of bills that were introduced in 2012 to address various aspects of the enabling acts to restrict the authority granted to local government. At the same time, bills were introduced to expand local governments' planning and regulation authority. Before acting on them, members of the legislature chose to seek guidance from the Commission on how to balance the legitimate interests of property owners whose land-use choices may conflict.

At one time, the only way to resolve land-use conflicts between neighbors was to take each other to court.

Settling Land-use Disputes through the Courts

At one time, the only way to resolve land-use conflicts between neighbors was to take each other to court. Their main remedy was through common law nuisance actions. Nuisance is a common law doctrine "grounded in the maxim that 'a man shall not use his property so as to harm another.'"[2] Nuisance law does not prevent harm. Harm must occur before action can be taken. In almost all nuisance cases, parties ask for injunctions[3] and courts are forced to make all-or-nothing decisions about whether a particular use should be allowed to continue. Cases are often appealed and take considerable time to resolve. Moreover, litigation is expensive and beyond the reach of many.

Nuisance, in law, is a condition that, because of some noxious or harmful characteristic, causes unwarranted interference with the ownership and enjoyment of another's property. Nuisances are classified as *public, private*, or *mixed*. A public nuisance infringes on the rights shared by the community as a whole. Private nuisances affect one or more persons in the enjoyment of an individual right not shared

[2] Zoning 1961.

[3] An injunction is a court order to stop some specified act or to command someone to undo some wrong or injury.

by the general public. Mixed, combine the characteristics of public and private nuisances.[4] One of the oldest common law doctrines, nuisance served as an all-purpose tool of land-use regulation that remained reasonably effective until the Industrial Revolution.[5]

Cities grew dramatically in the latter half of the 1800s as people left rural areas and moved to the cities seeking jobs in factories and offices.[6] With no rules to govern the development of cities, almost all households and businesses discharged their waste onto the land adjoining their buildings, even where yards were small. Water spilled from cisterns or pumps and muddied the ground. Privy vaults called "cispools" or "sinks" functioned as receptacles for excrement.[7] Adding to the problem, kitchen slop and wash water drained into these pits and into the streets.

Source: "Tenement Houses and Progressive Solutions," by Camille Avena. www.fordham.edu/academics/colleges__graduate_s/undergraduate_colleg/fordham_college_at_l/special_programs/honors_program/hudsonfulton_celebra/homepage/progressive_movement/tenements_32232.asp.

To deal with the influx of people into the large cities, tenements were built to house them. Urban workers lived in what were known as railroad flats—apartments with only one room that had a window for light and air. No sanitary facilities or water supplies were provided for these flats. The small backyards of the residences contained a multi-seat outhouse and a well, which resulted in deplorable sanitation and public health. The tenements were built close together, and the streets were garbage filled.[8]

As ill suited as nuisance law was for resolving these conflicts, it was even less effective for settling disputes over the myriad new land uses that came with the Industrial Revolution. When the economy was mainly agricultural, incompatible land uses essentially did not exist. With the Industrial Revolution, however, tensions among property owners began to arise because of incompatible land uses—for example, the conflict between garment manufacturers and department stores on New York's Fifth Avenue. As garment factories

[4] Zoning and the Law of Nuisance 1961.
[5] Halper 1998.
[6] Scott 1971.
[7] Ibid.
[8] Gerckens 1979.

and warehouses began arriving on Fifth Avenue early in the 20th century, owners of the exclusive department stores already in place complained that these establishments depreciated property values and caused traffic problems. The merchants took out newspaper ads encouraging the construction of new factory buildings in the deserted lower warehouse districts far from Fifth Avenue.

Establishing Community Standards to Prevent Land-use Disputes

Americans have been planning their cities since the earliest settlements.

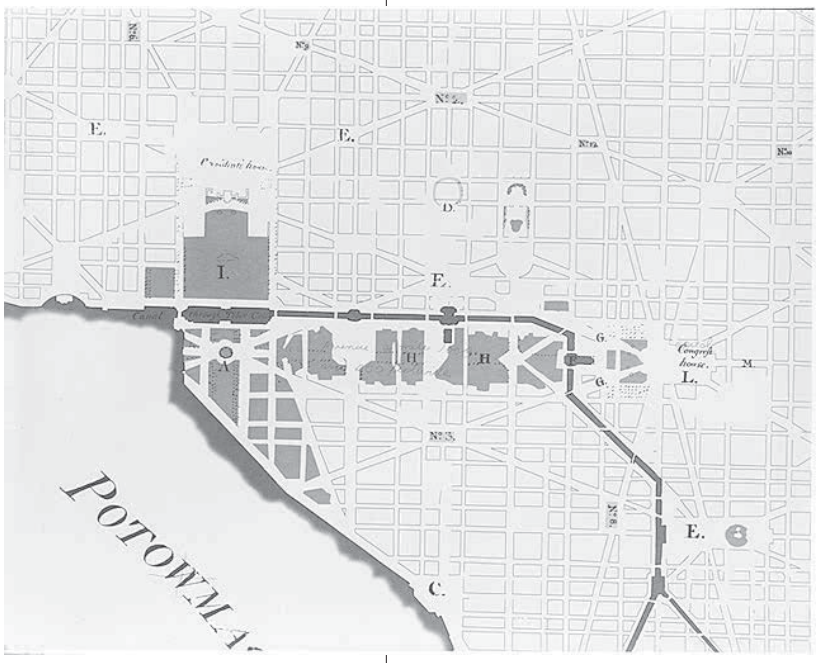
The cost of litigation and the inability of nuisance law to reach all questionable or incompatible land uses—much less prevent them—led communities to search for more effective alternatives. They found a model in city planning. Americans had been planning their cities since the earliest settlements. Initially, cities were planned under the authority of the King of England by joint stock companies, the forerunners of modern corporations. Their goal was both to prevent conditions that might pose health threats and to stimulate growth in the colonies. Jamestown, the first permanent English settlement in the "new world" and the original capital of the Virginia Colony, may be the best-known early example. Unfortunately, the settlers of Jamestown ignored the directive of the company that underwrote its construction, which warned them away from moist and low-lying areas that might be unhealthful, and many of them died of malaria.

Despite its inauspicious start, Jamestown survived many challenges, including being burned to the ground in 1676, and remained the colony's capital from 1607 to 1699 when the new city of Williamsburg was laid out. The legislation establishing Williamsburg as the capital specified the roads leading from the port to the river, the amount of land to be set aside for the town, the site for the capitol, and public landing areas on the rivers. All houses on the principal street were to be setback six feet. The legislation also authorized the directors of the town to adopt rules and regulations for dwelling size and setbacks. The town was divided into half-acre lots, and the buyer had to build a dwelling within two years of buying the property.

The city of Philadelphia, designed by Pennsylvania's first governor, William Penn, was the first large American city to be laid out in a gridiron pattern with streets running at right angles. Its plan including multiple city squares, including three set aside for recreation. Among other things, Governor Penn's plan required that the site for the city be "navigable, high, dry, and healthy," that streets be built in a uniform manner with specified widths based on their use, and that

houses be built in a line and in the middle of the lots with room on each side for gardens, fields or orchards so that "it may be a green country town, which will never be burnt."[9]

Philadelphia's gridiron plan, with open public squares, became a model for cities as diverse as Pittsburgh, Tallahassee, and Raleigh. Perhaps the two best-known gridiron-pattern cities in the Southeast are Charleston and Savannah. The plan for Charleston was known as the "Grand Modell." The original city consisted of eight irregular blocks intersected by four streets and included an open square in the middle. James Oglethorpe's plan for Savannah included a greenbelt surrounding the city to provide additional land as the city grew. The city was divided into four wards, each with its own open square surrounded by four residential blocks and four civic blocks. The wards served as a practical device for compact but attractive urban expansion. Although they have been expanded over the years, most of the original wards are still intact as part of the Savannah Historic District.



Source: Major Pierre Charles L'Enfant's plan for Washington, D.C. Library of Congress (www.loc.gov).

By the time of the American Revolution, city planning was so well established that it was a given that the nation's new capital city would be carefully planned. Major Pierre Charles L'Enfant's plan for Washington, D.C. continues to influence development in the city. John Cogbill, chairman of the National Capital Planning Commission, was quoted as saying, "We take [L'Enfant's plan] into account for virtually everything we do. I think he would be pleasantly surprised if he could see the city today. I don't think any city in the world can say that the plan has been followed so carefully as it has been in Washington."[10]

Through the 1800s, most city planning was done to support development, improve land values, and attract new residents and businesses. Chicago's original gridiron plan is a good example. One lot that sold in the city for $38,000 in 1833 was valued at $1,200,000

[9] Reps 1965.
[10] Fletcher 2008.

just three years later.[11] As the benefits of city planning became more widely recognized, communities began to create city planning commissions to develop city plans. The first official permanent city planning commission was created in 1907 by Hartford, Connecticut. By 1913, 18 cities had established planning commissions by legislative act, and 46 cities had unofficial planning commissions.[12] The number of planning commissions increased rapidly as state legislatures began to pass enabling acts authorizing cities to plan. The US Department of Commerce published a Standard City Planning Enabling Act in 1928. The Act included provisions for the city's physical development and the establishment of a regional planning commission and a regional plan.[13]

As cities grew with industry, they became noisier and more crowded. As residents acquired the means, many began to move out of the cities to escape the discomfort, noise, and overcrowding and into the new suburbs created by land developers. This early 20th century phenomenon was fostered first by horse-drawn and later electric streetcars, which made it possible for people to live farther away from where they worked. It continued with the rise of the automobile and the extension of public roads. By moving to the outskirts of the cities where they worked, residents of the new suburbs could leave city noise and crowding behind, but they brought with them the challenges of disposing of waste and ensuring a potable water supply. In time, some of these areas became characterized by overflowing septic tanks and contaminated water supplies.

The General Assembly passed the first enabling legislation authorizing counties and municipalities to enact zoning regulations in 1935 based on model legislation created in 1926 by the Department of Commerce under then Secretary of Commerce Herbert Hoover.

To meet these challenges, Tennessee communities began planning their cities and suburbs. The General Assembly authorized the creation of the Memphis planning commission in 1920. Planning commissions were authorized for Knoxville and Chattanooga in 1922 and in Nashville in 1925. The state's first county planning commission was the Shelby County Planning Commission, created by private act in 1931. Tennessee's local governments began seeking authority to zone land uses around the same time. The General Assembly passed the first enabling legislation authorizing counties and municipalities to enact zoning regulations in 1935[14] based on model legislation created in 1926 by the Department of Commerce under then Secretary of Commerce Herbert Hoover. Tennessee adopted the subdivision

[11] Reps 1965.
[12] LeGates and Stout 1998.
[13] Ibid.
[14] Public Chapter 33, Acts of 1935.

regulation provisions of the Department of Commerce's 1928 Standard City Planning Enabling Acts in 1935.[15]

The evolution of land-use regulation through the 20th century produced additional ways of establishing community standards. Two in particular arose as strategies to reduce the strain on public resources and adverse effects on quality of life that sometimes come with growth and development: concurrency requirements and performance-based planning. Either can be an alternative to zoning, which remains one of the most controversial land-use planning tools. Both base decisions about specific land uses on a set of consistent criteria designed to ensure that the community gets the kind of growth it desires at a reasonable cost.

Concurrency requires adequate infrastructure for development and can be used both to direct development to places where infrastructure already exists, or will soon be built, and to prohibit development in areas that would require costly new public infrastructure. Three states—Florida, Vermont, and Washington—allow local governments to adopt concurrency requirements. Florida and Washington also have state-level concurrency requirements. Local governments in several other states have adopted concurrency requirements even though their state laws do not expressly authorize them.[16]

Concurrency requires adequate infrastructure for development and can be used both to direct development to places where infrastructure already exists, or will soon be built, and to prohibit development in areas that would require costly new public infrastructure.

Performance-based planning evaluates each proposed development based on the community's quality of life goals, the physical characteristics of the land, and the capacity of existing infrastructure rather, than designating certain areas for different types of development.[17] The performance standards typically cover traffic flow, density, noise, and access to light and air. Since it allows nearly

[15] Public Chapter 45, Acts of 1935.

[16] Florida has a concurrency requirement in Florida Statutes § 163.3180 for sanitary sewer, solid waste, drainage, and potable water infrastructure. Washington's requirement in Revised Code of Washington § 36.70A applies only to transportation. Vermont (24 Vermont Statutes Annotated § 4422), Florida (Florida Statutes §163.3180), and Washington (Washington Administrative Code 365-196-840) have legislation enabling municipalities and counties to adopt concurrency requirements. In Florida, local governments may extend the concurrency requirement so that it applies to public facilities other than sewer and water. In Washington, local governments are authorized to establish concurrency requirements in areas such as schools, parks and recreational facilities, sanitary sewer systems, and storm water facilities. Some examples of local governments that have implemented concurrency requirements without state authorization include Muskego, Wisconsin; Kent County, Delaware; Albuquerque, New Mexico; and Douglas County, Colorado.

[17] Baker, Sipe, and Gleeson 2006.

any building that meets the community's standards, performance-based planning provides great flexibility. It offers so much flexibility that it has proven difficult to administer and has not gained widespread acceptance.[18] One example of where it is still used is the town of Breckinridge, Colorado, which adopted performance-based planning in 1978. However, most communities that have tried performance-based planning have since returned to more traditional zoning or a hybrid of the two approaches. For example, Lake County, Illinois (Chicago), adopted performance-based planning in 1988, but replaced it with a hybrid of traditional zoning and performance-based planning just ten years later in response to complaints that performance-based planning requirements were too unpredictable.[19]

Today, working through elected officials rather than through the courts ensures access to affordable dispute resolution for every landowner or resident adversely affected by another's land-use choices. It also makes it possible for the community to prevent nuisances by working through its elected officials to establish standards for land-use improvements.

Subdivision regulations provide developers with consistent, objective requirements and homebuyers with guarantees of safe roads, adequate water lines, and sanitary wastewater disposal, as well as adequate storm water and floodplain management to reduce the likelihood of flooding.

Land-use Bills Sent to the Commission for Study

Defining Subdivisions

Subdivision regulations provide developers with consistent, objective requirements and homebuyers with guarantees of safe roads, adequate water lines, and sanitary wastewater disposal, as well as adequate storm water and floodplain management to reduce the likelihood of flooding. All of these things help protect property values and homeowners' investments. In Tennessee, these regulations apply only to divisions of property of less than five acres for the purpose of sale or building development and those requiring new streets or utility construction.[20] Until the mid-1970s, there was no acreage exemption in Tennessee law. That is still the case in all but five states. Ohio defines subdivisions as two or more lots, any one of which is less than

[18] Philadelphia Zoning Code Commission.
[19] Baker, Sipe, and Gleeson 2006.
[20] Tennessee Code Annotated §§ 13-3-401 and 13-4-301.

five acres.[21] Virginia's definition covers three or more parcels of less than five acres each.[22] In Illinois, a subdivision is two or more parcels any of which is less than five acres.[23] Illinois' definition does not apply to lots of less than one acre or more than five if they do not involve new streets or easements of access. In Montana, a subdivision is defined as one or more parcels containing less than 160 acres, while in Wisconsin, it is five or more parcels and building sites of one and one-half acres or less if created within a period of five years.[24]

Many planning commissions and planners have expressed concern about not regulating all subdivisions of land for sale or development since Tennessee adopted the acreage limit. Developments that occurred before the five acre limit on regulating subdivisions was put in place have, in some cases, been devalued as unregulated development occurred nearby. Also, as noted by an official in one suburban Tennessee county, allowing extensive inadequate development anywhere in a community inhibits better development everywhere in that community. However, despite the protections that subdivision regulation provides, there is no consensus among planners to change the law.

Many planning commissions and planners have expressed concern about not regulating all subdivisions of land for sale or development since Tennessee adopted the acreage limit.

One of the bills sent to the Commission for study would extend these protections; the other bill would limit them. House Bill 2818 (Faison) [Senate Bill 2878 (Southerland)] would have changed the definition of subdivision for the 47 counties without countywide zoning so that subdivision regulations in those counties would apply only to divisions of land into two or more lots greater than one acre in size. Because most subdivisions have lots smaller than one acre, the result would be that most new subdivisions would be unregulated. Consequently, there was little support for this bill. The Senate never acted on the companion bill other than to assign it to a standing committee. The House State and Local Subcommittee sent it to TACIR after deferring action for several months.

House Bill 3042 (Elam) [Senate Bill 3167 (Haynes)] would have extended the protections of subdivision regulation to divisions of property into lots of up to 25 acres in size; however, it would have increased both the expense of subdividing lots larger than five acres and the workload for local planning staffs. As noted, most states do

[21] Ohio Revised Code Annotated § 711.001.
[22] Virginia Code Annotated § 15.2-2201.
[23] 765 Illinois Compiled Statutes 205/1.
[24] Montana Code Annotated § 76-3-103 and Wisconsin Code Annotated § 236.02.

this already, but the laws are permissive, meaning that the decision whether to regulate lots of any size is a local one. Even if this bill passed, those decisions would remain local. The question raised by the bill, then, is whether to allow local governments to make that call. There is no consensus on this issue.

Planning and Zoning by Cities Beyond Their Boundaries

Under current law, the state grants direct authority to municipalities and counties to establish planning commissions, and most have done so.[25] They use these commissions to plan for future land use, and then implement these plans through land-use regulations. Neither municipalities nor counties can adopt subdivision regulations[26] or zoning ordinances[27] without first having a planning commission. Some municipalities have planning jurisdiction, including subdivision regulation, outside their corporate boundaries, and some even have zoning jurisdiction in these areas.

Municipal planning commissions may be designated municipal *regional* planning commissions through LGPAC and given authority to plan and regulate land use beyond their corporate boundaries within the urban growth boundaries established under Tennessee's Growth Policy Act.

Municipal planning commissions may be designated municipal *regional* planning commissions through LGPAC[28] and given authority to plan and regulate land use beyond their corporate boundaries within the urban growth boundaries established under Tennessee's Growth Policy Act. Two representatives who live in this extraterritorial area must be appointed to serve on the planning commission if the area outside the city limits is at least half of the entire planning region; otherwise, only one need be appointed. In either case, appointments are made by the city.[29]

LGPAC's long-established practice has been to approve these municipal regional planning commissions only in counties that have not adopted zoning ordinances or where counties agree to relinquish their planning authority. If a county objects to the designation, LGPAC will hear evidence from both sides to determine which entity can best manage the region. Tennessee's Growth Policy Act, added a new wrinkle in counties without zoning provisions:

[25] Tennessee Code Annotated, Title 13, Chapter 4.

[26] Tennessee Code Annotated Title 13, Chapter 3, Part 4 (counties) and Chapter 4, Part 3 (municipalities).

[27] Tennessee Code Annotated § 13-7-102 (counties) and § 13-7-202 (municipalities).

[28] Tennessee Code Annotated § 13-3-102.

[29] Tennessee Code Annotated § 13-3-102. (Ten is the maximum number of members allowed on municipal planning commissions per Tennessee Code Annotated § 13-4-101.)

> . . . provided, that in a county without county zoning, a municipality may provide extraterritorial zoning and subdivision regulation beyond its corporate limits with the approval of the county legislative body.[30]

The counties support this requirement because it gives residents living in the extraterritorial region a say in whether land use regulations should be imposed on them by officials for whom they cannot vote. Counties also fear a municipal regional planning commission could use zoning and planning to prohibit development of commercial businesses within the region, pushing them into the municipality and depriving the county of the revenue from the development. This requirement gives them the opportunity to block attempts by municipalities to exercise extraterritorial planning and zoning if they fear this will happen. Municipalities in counties without zoning can still acquire extraterritorial planning regions from LGPAC, but they can no longer implement their plans through regulation and zoning without county consent.

Municipalities, seeing a need for public infrastructure and development patterns to be compatible with existing patterns, want to have extraterritorial planning and zoning authority for areas likely to be annexed. There is a possibility that a county could deny a request for extraterritorial planning and zoning authority. However, there are no specific examples where a county has actually denied a request from a municipality for extraterritorial planning or zoning authority in counties without county zoning.

Municipalities, seeing a need for public infrastructure and development patterns to be compatible with existing patterns, want to have extraterritorial planning and zoning authority for areas likely to be annexed.

Two bills introduced during the 107th General Assembly would have removed the requirement for county approval of planning and zoning authority outside the corporate limits in counties without countywide zoning. One, House Bill 125, would apply to both zoning and subdivision regulation, while the other, House Bill 3041, would apply to just subdivision regulations. House Bill 125 (Sargent) [Senate Bill 347 (Haynes)] would have deleted the provision that would require county approval in order for a municipality in a county without zoning to extend its zoning and subdivision regulation beyond its corporate limits. The issue does not arise where counties zone those areas. House Bill 3041 (Elam) [Senate Bill 3119 (Yager)] would have deleted the requirement in the law that municipal regional planning commissions must get approval from the county legislative body before they can

[30] Tennessee Code Annotated § 6-58-106(d).

exercise subdivision regulation in their extraterritorial region in those counties without county zoning.

If the county approval requirement were deleted, it would be easier for a municipality to establish a planning region and adopt zoning or subdivision regulations outside its corporate limits in counties without county zoning. Lot purchasers in the extraterritorial region would be assured that subdivision lots would have public infrastructure comparable to that within the city limits. However, residents who live in these areas may prefer lots without these amenities and may object to regulations imposed by government officials for whom they cannot vote. Developers may object to the imposition by the municipality of more stringent development standards than the county if those standards increase their costs.

A case can be made for cooperation when there are new developments in the extraterritorial region, but the county does not want to pursue planning and land use regulation on its own.

A case can be made for cooperation when there are new developments in the extraterritorial region, but the county does not want to pursue planning and land use regulation on its own. The Tennessee Department of Economic and Community Development, with the approval of the local governments involved, could form a joint city-county planning commission to plan and administer zoning and subdivision regulations in the extraterritorial region using Tennessee Code Annotated Title 13, Chapter 3, Part 1. This would remove the objections that county residents would have no influence with the municipal regional planning commission. If zoning regulations are applied in the region outside but adjacent to the municipality, land development could be aligned more closely with development in the corporate limits.

Jointly governed regional planning commissions have been created in four Tennessee counties:

- Knox County and Knoxville (April 13, 1956)
- Hamilton County and the municipalities of Chattanooga, East Ridge, Lakesite, Lookout Mountain, Ridgeside, and Walden (June 1943)
- Montgomery County and Clarksville (January 10, 1963)
- Pickett County and Byrdstown (August 20, 1976)

Membership on these commissions requires LGPAC approval. In addition to these four, Shelby County and Memphis have a combined planning commission by private act, and the three counties with

metropolitan governments—Davidson, Moore, and Trousdale—have combined planning commissions.[31]

Two other states have similar legislation, but unlike Tennessee they are not permissive. New Mexico requires the formation of a joint city-county planning commission to administer extraterritorial zoning regulations. The commission may implement subdivision regulations in the extraterritorial region outside the municipality.[32] In Kansas, a joint city-county commission must be formed to administer subdivision regulations in the extraterritorial region.[33]

Roads Built by Developers

Source: Gary Layda.

Roads built by developers eventually become someone else's responsibility—either the people who live on them or the local government. When roads belong to the government, they are called *public roads* and have to be built and maintained to standards established by the local government. When residents maintain them, they are called *private roads*, which may not be subject to the same standards, creating problems for residents. These private roads often become the responsibility of local governments when residents along them cannot afford to maintain them or as safety issues become apparent. One example, from Fayette County, where a private road was not built to county standards, ultimately cost taxpayers more than $900,000. The road flooded, and a drainage structure washed out, stranding numerous property owners. The county is now replacing the structure.[34]

Tennessee's law, as implemented by local governments, helps ensure that roads are built to modern engineering standards, taking into account storm water drainage, traffic flow, and load bearing capacity. Roads that do not meet these standards are more expensive to maintain

[31] Tennessee Department of Economic and Community Development Office of Local Planning Assistance 2011.

[32] New Mexico Statutes Annotated § 3-21-3.

[33] Kansas Statutes Annotated § 12-750.

[34] John Pitner, Fayette County Planning Director, interview with Bill Terry, December 26, 2012.

and may not be safe. Roads without proper drainage structures may flood and wash out, and driving safety may be compromised—for example, if a road is built without consideration for sight distance[35] and speed. Poorly constructed roads can pose additional hazards if emergency vehicles, such as fire trucks, have difficulty traveling on them. Several fire departments interviewed for this study reported problems in fighting fires on private roads.[36] Problems included damage to fire engines because of bridges that could not support the weight of an engine, roads with grades too steep for an engine to climb, and roads without a base and surface adequate for an engine to travel. In one situation, a tanker slid backwards on a steep slope with a washed-out surface nearly tumbling over a 25-foot drop. The tanker had to be stabilized and rescued by wreckers.[37] A similar problem exists with apartment complexes where steep slopes and narrow driveways prevent the use of ladder trucks.

Problems can arise when municipalities have authority to regulate subdivisions outside their corporate limits and county and municipal road construction standards differ.

Current law authorizes planning commissions to adopt standards for subdivision roads but makes no distinction between public and private roads.[38] In practice, planning commissions may have standards for one, both, or neither. If they have standards for both, they may or may not be the same. The law specifies procedures for the acceptance of roads built by developers as public roads.[39]

Public Roads

Problems can arise when municipalities have authority to regulate subdivisions outside their corporate limits and county and municipal road construction standards differ. When a municipality annexes territory with subdivision roads that are not built to municipal standards, the municipality will have to upgrade the roads at taxpayer expense. Current Tennessee law, similar to that of most other states, provides that the approval of a plat by the regional planning commission does not constitute an acceptance by any county or by the public of the dedication of any road or other ground shown upon the plat. In order for a road to become a public road there must be

[35] Sight distance is the distance a driver needs to be able to be able to stop before colliding with something in the road.

[36] The departments surveyed included the municipalities of Greeneville, Sevierville, Ashland City, the unincorporated community of Karns, Metro Nashville, Putnam County, and Rural Metro Knoxville.

[37] Matt Henderson, Fire Chief, City of Sevierville, e-mail message to Kerri Courtney, November 28, 2012.

[38] Tennessee Code Annotated §§ 13-3-403 and 13-3-405.

[39] Tennessee Code Annotated § 13-3-406.

an offer to give the road to the government, and that offer must be accepted.[40]

Municipalities can establish standards for subdivision roads within the area of their planning regions that lie outside their corporate limits, but counties have sole control of roads in those areas. Sometimes county officials are reluctant to inspect or accept roads constructed according to these more stringent standards. County highway officials may choose not to accept responsibility for maintaining roads built to standards higher than their own and refuse to sign plats proposing them. If the roads are not accepted, then the final subdivision plat cannot be recorded and building permits cannot be issued to construct buildings. Although the county legislative body can override the county highway official, the developer can be stuck in the middle in these situations.

Municipalities can establish standards for subdivision roads within the area of their planning regions that lie outside their corporate limits, but counties have sole control of roads in those areas.

Another problem may arise in the collection of a bond when a developer fails to complete the subdivision roads in these extraterritorial areas. A final subdivision plat can be recorded even if the roads are not complete when a bond or other security is filed with the local government. The county attorney has the authority to enforce a bond for street construction in the extraterritorial region. The amount of the bond or other security must be sufficient to cover the total cost of completing the roads. Counties and municipalities may develop a cooperative arrangement whereby the county carries out all the necessary functions and the municipalities agree. Where that doesn't occur—say, if the developer does not complete the roads as required—county taxpayers may be stuck with the bill.

Under House Bill 3040 (Elam) [Senate Bill 3171 (Haynes)], municipalities could ensure that public roads are constructed and maintained according to their road standards. It might mean lower road maintenance costs for the county because they would not have to maintain the roads. It also might be more efficient for a municipality rather than a county to hold and enforce a bond for public roads in the extraterritorial region. However, some municipalities do not want to be required to accept these roads. A municipality would have to maintain roads in an area where it cannot collect property taxes. If the municipality had much higher quality roads, then this might result in additional pressure on the county from citizens in the nearby subdivisions to upgrade their roads.

[40] Hackett v. Smith County, 807 S.W. 2nd 695. (Tennessee Court of Appeals, 1990.) The road acceptance can be express or implied.

Private Roads

Developers concerned about the cost of complying with road construction standards set for private roads by planning commissions sought legislation to forbid regional planning commissions to prohibit private road maintenance agreements. House Bill 3105 (Faison) [Senate Bill 2876 (Southerland)] defined private road maintenance agreements and forbid regional planning commissions to prohibit them. The bill was sent to TACIR because of local officials' concern that the bill would, in effect, prohibit not just these maintenance agreements but any standards for private roads. The bill would have permitted a developer and lot purchasers to enter into a private road maintenance agreement that would become a restrictive covenant running with the land, recorded with the deed or subdivision plat. The purchaser would have to accept the roads as built and agree to maintain them at their own cost.

Although this bill could reduce the purchase price of new homes or lots, its long-term effect could be both costly and dangerous if substandard roads are the result. In time, it is likely that homeowners would turn to their local government to take the roads over and improve them to make them safer. The cost of taking them over would then become a financial burden on the entire community.

Tennessee law allows industrial, commercial, business, or multifamily residential establishments to continue operating when a change of zoning occurs if they were legal before the change.

Land Uses That Do Not Conform to Zoning Regulations

A nonconforming use[41] is established when the zoning of a particular property is changed, either through the adoption of a new ordinance or when territory is annexed by a municipality. Numerous bills regarding nonconforming use were considered during the 107th General Assembly, but only one was sent to the Commission. House Bill 3043 would have provided new criteria for proving abandonment or discontinuance of a nonconforming use. One bill not sent to TACIR for study, House Bill 3694, would have completely rewritten current law.

Tennessee law allows industrial, commercial, business, or multifamily residential establishments to continue operating when a change of zoning occurs if they were legal before the change.[42] Property owners can expand this nonconforming use on the property, tear structures

[41] A nonconforming use is a land-use activity that does not meet the permitted use requirements or various setback, size, or site requirements of the local zoning ordinance.

[42] Tennessee Code Annotated § 13-7-208.

down, and rebuild them as long as there is sufficient space on the property. Some limitations are placed on the reconstruction of multifamily residential properties. The nonconforming use protections apply only to the use and operation of the business not the structures and cease to apply if the protected use is discontinued or abandoned for 30-months. But local governments must prove that the use was intentionally and voluntarily abandoned or discontinued.

Most states leave the issue of nonconforming uses entirely to local governments, whether to protect or prohibit them. Twenty-two states do not address the issue at all.[43] Instead, they leave it to local governments to deal with the issue in their zoning ordinances. Twelve states protect nonconforming uses, but local governments in those states limit them in their zoning regulations.[44] The other fifteen states, like Tennessee, have more specific provisions.[45]

Only two states define abandonment of nonconforming use. Rhode Island defines it as an (1) intent to abandon and (2) some act or failure to act that would lead a person to believe that the owner neither claims nor retains an interest in continuing the use.[46] In Utah, abandonment may be presumed to have occurred if (1) a majority of the primary structure associated with the nonconforming use has been voluntarily demolished without prior written agreement with the municipality regarding an extension of the nonconforming use; (2) the use has been discontinued for a minimum of one year; or (3) the primary structure associated with the nonconforming use remains vacant for a period of one year.[47]

Eleven states specify a period for abandonment. If a nonconforming use is abandoned for the period specified in the statute, it may not be reestablished. Five states specify a period of one year.[48] Two states specify a period of more than one year;[49] four states specify a period

[43] Arkansas, Alabama, Alaska, California, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Mississippi, Missouri, Nevada, New York, North Carolina, New Mexico, South Carolina, Texas, and Washington.

[44] Arizona, Connecticut, Colorado, Delaware, Kansas, Kentucky, Michigan, Montana, New Hampshire, New Jersey, Oklahoma, and Wyoming.

[45] Hawaii, Massachusetts, Minnesota, Nebraska, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, West Virginia, and Wisconsin.

[46] Rhode Island Gen. Laws § 45-24-39.

[47] Utah Code Ann. §§ 17-27a-510 and 10-9a-511.

[48] Hawaii, Nebraska, Utah, West Virginia, and Wisconsin.

[49] Minnesota and South Dakota.

of more than two years.[50] Vermont's statute is slightly different. It allows municipalities, in their bylaws, to "specify a time period that shall constitute abandonment or discontinuance of that nonconforming use, provided the period is not less than six months."[51]

House Bill 3043 (Elam) [Senate Bill 3118 (Yager)] would have amended the law to require local governments to establish abandonment or discontinuance of a nonconforming use based on the following factors: utility connection information, deteriorating structure, information indicating vacancy or change in use, information indicating lack of ownership, activity reactivating the use, dated pictures indicating abandonment, or affidavits of local officials indicating the use has been abandoned. The bill would have removed the language from the statute that requires a local government to prove that the property owner had intentionally and voluntarily abandoned or discontinued the use. Although it could be more difficult for property owners to dispute claims of abandonment, they would know exactly what constitutes abandonment and more readily avoid the loss of their right to continue the nonconforming use.

House Bill 3694 (Gotto) [Senate Bill 3646 (Ketron)], which was taken off notice in the Senate and not acted on in the House, would have completely rewritten the nonconforming use statute. Among other things, it would have expanded protections for

- discontinued uses, making it difficult to prove abandonment;
- any residential use, other than multi-family, and any institutional and assembly use;
- demolition and rebuilding of all uses; and
- accessory structures, activities, signs, materials, and equipment.

There is widespread agreement that the statute should be rewritten but no consensus on what the content should be. Suggestions run in all directions, from simple clarifications to increasing protections for nonconforming uses to removing all protections. A chart comparing the provisions of House Bill 3694 with the current law is in appendix B.

[50] Massachusetts, North Dakota, Ohio, and Virginia.

[51] 24 Vermont Statutes Annotated § 4412.

References

Baker, Douglas C, Neil G. Sipe and Brendan J. Gleeson. 2006. "Performance-Based Planning : Perspectives from the United States, Australia, and New Zealand." *Journal of Planning Education and Research* 25 (4): 396-409.

Ellickson, Robert C. 1973. "Alternatives to Zoning: Covenants, Nuisance Rules, and Fines as Land Use Controls." *University of Chicago Law Review* 40(4): 681-781.

Fletcher, Kenneth R. 2008. "A Brief History of Pierre L'Enfant and Washington, D.C." http://www.smithsonianmag.com/arts-culture/brief-history-of-lenfant.html.

Gerckens, Lawrence Conway. 1979. "Historical Development." *In the Practice of Local Government Planning*. 21-57, Washington D.C.: International City/County Management Association.

Gray, John. "Public Nuisance: A Historical Perspective," http://www.nuisancelaw.com/learn/historical. (accessed January 19, 2013).

Halper, Louise A. 1998. "Untangling the Nuisance Knot." *Boston College Environmental Affairs Law Review* 26(1): 89-130.

Juergensmeyer, J.C. and Roberts, T.E., 2007, *Land Use Planning and Development Regulation Law*. St. Paul, MN: Thomson/West, §2.7.

Knack, Ruth, Stuart Meck and Israel Stollman. 1996. "The Real Story Behind the Standard Planning and Zoning Acts of the 1920s." *Land Use Law and Zoning Digest* 48 (2): 3-9.

LeGates, Richard T. and Frederic Stout. 1998. *Early Urban Planning 1870-1940* Oxford, United Kingdom: Routledge Press.

Peterson, Jon A. 1983. "Impact of Sanitary Reform upon American Urban Planning, 1840-1890." In *Introduction to Planning History in the United States*, edited by Donald A. Krueckeberg. 13-39, New Brunswick, New Jersey: Center for Urban Policy Research Press.

Philadelphia Zoning Code Commission. "Types of Zoning Code," http://zoningmatters.org/facts/trends. (accessed May 8, 2013).

Reps, John W. 1965. *The Making of Urban America: A History of City Planning in the United States*. Princeton, New Jersey: Princeton University Press.

Scott, Mel. 1971. *American City Planning Since 1890*. Berkeley, and Los Angeles California: University of California Press.

Smith, Herbert H. 1993. *The Citizen's Guide to Planning*. Chicago, Illinois and Washington, D.C.: Planners Press.

Tennessee Department of Economic and Community Development Office of Local Planning Assistance. 2011. *Status of Planning and Land Use Controls*.

Tennessee Department of Economic and Community Development Office of Local Planning Assistance. 2003. *Tennessee Planning Commissioners Handbook*.

"Zoning and the Law of Nuisance." 1961. *Fordham Law Review* 29(4): 749-756.

Persons Interviewed

Daryl Blair, Chief
Putnam County Fire Department

Sam Edwards, Executive Director
Greater Nashville Regional Council

Jeremy Faison, State Representative
District 11

Mark Foulks, Chief
Greeneville Fire Department

Jim Gotto, former State Representative
District 60

Dan Hawk, Director of Rural Development
Tennessee Department of Economic and
Community Development

Jerry Harnish, Chief
Rural/Metro Fire Department, Knoxville

Matt Henderson, Chief
City of Sevierville

Bill Ketron, State Senator
District 13

Kevin Lauer, Fire and Emergency Services
Management Consultant
County Technical Assistance Service,
Knoxville

Kenneth Marston, Chief
Karns Fire Department

Phil Morgan, Chairman
Cocke County Planning Commission

John Pitner, Planning Director
Fayette County

Ron Ramsey, Lieutenant Governor and
Speaker of the Senate
District 4

Al Thomas, Assistant Chief
Nashville Fire Department

Jim Tracy, State Senator
District 14

Chuck Walker, Fire Chief
Town of Ashland City

Appendix A. Bills Sent to TACIR for Study

HOUSE BILL 2818

By Faison

AN ACT to amend Tennessee Code Annotated, Title 13, Chapter 3, Part 4, relative to land development in certain counties.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 13-3-401(4), is amended by adding the following language as a new subdivision (C):

(C)

(i) "Subdivision", in any county in which county-wide zoning has not been enacted, means the division of a tract or parcel of land into two (2) or more lots or sites of greater than one (1) acre for the purpose, whether immediate or future, of sale or building development and includes resubdivision and, when appropriate to the context, relates to the process of resubdividing or to the land or area subdivided.

(*a*) The requirements of this subdivision (4)(C) shall not apply if land is being given to a child or grandchild for the purpose of the construction of an owner-occupied residence for such child or grandchild.

(*b*) In addition, in such counties to which this subdivision (4)(C) applies, private road maintenance agreements related to land which is being developed for owner-occupied residences may be entered into by and between the developer and the purchasers of the land within a development and become restrictive covenants running with the land and be recorded with the deed or plat related to such developments.

SECTION 2. Tennessee Code Annotated, Section 13-3-401(4)(A), is amended by deleting the language "Subdivision" and by substituting instead the language "Except as provided in subdivision (4)(C), "subdivision".

SECTION 3. Tennessee Code Annotated, Section 13-3-401(4)(B)(i), is amended by deleting the language "Subdivision" and by substituting instead the language "Except as provided in subdivision (4)(C), "subdivision".

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.

HOUSE BILL 3042

By Elam

AN ACT to amend Tennessee Code Annotated, Section 13-3-401 and Section 13-4-301, relative to subdivisions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 13-3-401(4)(B)(i), is amended by deleting the language "five (5) acres" and by substituting instead the language "twenty-five (25) acres".

SECTION 2. Tennessee Code Annotated, Section 13-4-301(4)(B)(i), is amended by deleting the language "five (5) acres" and by substituting instead "twenty-five (25) acres".

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

SENATE BILL 347
By Haynes

HOUSE BILL 125

By Sargent

AN ACT to amend Tennessee Code Annotated, Section 6-58-106, relative to a municipal planning commission's jurisdiction beyond its corporate limits.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 6-58-106(d), is amended by deleting the following language:

; provided, that in a county without county zoning, a municipality may provide extraterritorial zoning and subdivision regulation beyond its corporate limits with the approval of the county legislative body

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

HOUSE BILL 3041

By Elam

AN ACT to amend Tennessee Code Annotated, Section 6-58-106(d), relative to subdivision regulation.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 6-58-106(d) is amended by deleting the language "and subdivision regulation".

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

SENATE BILL 3171
By Haynes

HOUSE BILL 3040

By Elam

AN ACT to amend Tennessee Code Annotated, Section 13-3-403 and Section 13-3-405, relative to subdivision plat street acceptance and maintenance.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 13-3-403(b), is amended by designating the existing language as subdivision (b)(1) and adding the following language as subdivision (b)(2):

(2) When a municipal planning commission has been designated as a regional planning commission and the municipality's chief legislative body is responsible for accepting public streets under § 13-3-405, the municipal attorney of the municipality with the authority to accept the subdivision street may enforce the subdivision bond, assessment or other method of assurance relative to street construction and maintenance.

SECTION 2. Tennessee Code Annotated, Section 13-3-405, is amended by deleting the section in its entirety and by substituting instead the following language:

(a) The approval of a plat by the regional planning commission shall not be deemed to constitute or effect an acceptance by any county or municipality or by the public of the dedication of any road, street, or other ground shown on the plat.

(b) When a municipal planning commission has been designated as a regional planning commission, it has the authority to enforce its subdivision regulation to street construction specifications and the authority to inspect the street denoted on a subdivision plat both during and after construction to ensure compliance with the commission's subdivision regulations. The acceptance of platted streets located outside

the corporate limits, but within the municipality's planning region rests with the municipality. Even though a road is located outside the municipal boundary, if the municipality's chief legislative body accepts such a street, then it becomes a municipal public street and the municipality becomes responsible for its maintenance, repair, and other normal and necessary public street work.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.

SENATE BILL 2876
By Southerland

HOUSE BILL 3105

By Faison

AN ACT to amend Tennessee Code Annotated, Title 13, relative to private road maintenance agreements.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 13, Chapter 3, Part 4, is amended by adding the following language as a new section thereto:

13-3-414.

(a) Private road maintenance agreements related to land which is being developed for owner-occupied residences may be entered into by and between the developer and the purchasers of the land within a development and become restrictive covenants running with the land and be recorded with the deed or plat related to such development.

(b) A local or regional planning commission may not prohibit any private road maintenance agreements described in subsection (a).

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

HOUSE BILL 3043

By Elam

AN ACT to amend Tennessee Code Annotated, Section 13-7-208, relative to nonconforming uses.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 13-7-208(g), is amended by deleting subdivision (4) in its entirety and by substituting instead the following language:

(4) The reactivation of the non-conforming use any time prior to the end of the thirty-month period. The governmental entity with jurisdiction must establish the beginning and the ending date of the thirty-month continuous period by evidence of abandonment. Credible evidence of abandonment adduced by the governmental entity creates a rebuttable presumption of abandonment for the prescribed period. Evidence of abandonment includes, but is not limited to the following:

(A) Utility connection information;

(B) Deteriorating structures;

(C) Information indicating vacancy or change in use;

(D) Information indicating lack of ownership activity reactivating the non-conforming use relative to the property;

(E) Dated pictures indicating abandonment of the non-conforming use; or

(F) Affidavits of local government officials indicating that the non-conforming use has been abandoned.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

Appendix B. Comparison of Current Law and House Bill 3694

Tennessee Code Annotated § 13-7-208	Senate Bill 3646/House Bill 3694
Any industrial, commercial, or business establishment is allowed to continue in operation and be permitted, provided no change in use is undertaken: Tennessee Code Annotated § 13-7-208 (b)(1).	It expands the nonconforming use protection to any and all uses, including single family residential and any residential other than multifamily. It would also include any institutional or assembly type use in the protective umbrella: Tennessee Code Annotated § 13-7-503 (3).
Any protected use shall be allowed to expand operations and construct additional facilities that involve continuance of the activities being conducted, provided a reasonable amount of space for the expansion available on the property so as to avoid nuisances to adjoining landowners: Tennessee Code Annotated § 13-7-208 (c).	It would allow all nonconforming uses to expand without restriction. It retains the language in the existing statute that reasonable amount of space for the expansion must be available on the property to avoid nuisances to adjoining landowners: Tennessee Code Annotated § 13-7-505.
No building permit shall be denied for the expansion or rebuilding of existing facilities, provided a reasonable amount of space for the expansion or rebuilding of the nonconforming structure is available on the property to avoid nuisances to adjoining landowners: Tennessee Code Annotated § 13-7-208 (c) & (d).	It prohibits local government from denying a building permit or similar authorization for expansion or reconstruction: Tennessee Code Annotated §§ 13-7-505 and 13-7-506.
Any protected use shall be allowed to destroy existing facilities and reconstruct new facilities provided that no change in use occurs. Tennessee Code Annotated 13-7-208 (d) Notwithstanding the provisions of subsection (d) (the destroy and re-construct section), any structure rebuilt must conform to setbacks, height, bulk, and location requirements: Tennessee Code Annotated § 13-7-208 (i).	It would allow all uses to demolish and rebuild without restriction. Any such property shall be allowed to destroy present facilities and reconstruct new facilities provided the reconstruction will not change or increase the pre-existing size, scope, and nature of the continued conduct. Tennessee Code Annotated § 13-7-506(a). Any such property that is wholly destroyed by the owner for the purpose of redevelopment that increases the size, scope and nature of the conduct shall comply with the front, rear, and side setbacks, if applicable; however, no other zoning regulations shall apply: Tennessee Code Annotated § 13-7-506(b).

Tennessee Code Annotated § 13-7-208	Senate Bill 3646/House Bill 3694
Multifamily residential establishments shall be allowed to reconstruct new facilities in the event of damage by fire, wind, or natural disaster. Any change in density, height, setback, or square footage is a change of use, and the protections provide are forfeited. New facilities must comply with all architectural design standards under current zoning regulations and be consistent with the context of immediate and adjacent block faces: Tennessee Code Annotated § 13-7-208 (d)(2).	This bill removes the provisions regarding multifamily residential establishments. Instead, such establishments would be treated the same as any other nonconforming property.
The existing law does not specifically apply to accessory structures, activities, signs, materials and equipment.	It adds a specific definition of "nonconforming property" to include not only use and operation of a business, but also principal and accessory structures, activities, signs, materials, and equipment: Tennessee Code Annotated 13-7-503.
Those provisions only apply to land owned and in use by the affected business and do not permit the expansion through the acquisition of additional land: Tennessee Code Annotated § 13-7-208 (e).	The bill does not address this issue.
Provisions shall not apply if the affected use ceases to operate for a period of 30 continuous months. Tennessee Code Annotated § 13-7-208 (g). However, the 30 month period shall only apply if the property owner intentionally and voluntarily abandons the nonconforming use: Tennessee Code Annotated § 13-7-208 (g)(4).	It eliminates the 30-month period in present law after which a discontinued nonconforming use may not be re-established. This would mean that a nonconforming use could cease to operate for any period of time and still be re-established. In order to establish abandonment, the local government still has to show intentional and voluntary abandonment of the nonconforming use. Discontinuance of use is not considered abandonment: Tennessee Code Annotated § 13-7-504.

Tennessee Code Annotated § 13-7-208	Senate Bill 3646/House Bill 3694
The nonconforming use protections shall apply to an off-site sign: Tennessee Code Annotated § 13-7-208 (h).	It includes offsite and onsite signs in the protected class. This means that if an existing nonconforming sign is totally destroyed for any reason, no new sign regulations could be applied: Tennessee Code Annotated § 13-7-502.
The setback, height, bulk, and location requirement do not apply to off-site signs: Tennessee Code Annotated § 13-7-208 (i).	If the property owner destroys and rebuilds a nonconforming off-site sign, the property owner must comply with setback requirements if the rebuilt sign is larger than the previous sign: Tennessee Code Annotated § 13-7-506 (b).
A local government cannot argue abandonment of nonconforming use involving an industrial establishment where 25% or more of the gross annual sales are derived from sales or contracts with local, state or federal governments, or a subcontractor to those contracts, or to any industrial establishment where 75% or more of the gross annual sales are made to agriculture or construction business: Tennessee Code Annotated § 13-7-208 (k).	The bill does not address this issue.
Within any home rule municipality subsections (g) (abandonment of nonconforming use), (h)(protection for nonconforming off-site signs) and (i)(regulations for height, bulk, setbacks and location do not apply to off-site signs) do not apply. A home rule municipality may opt into the provisions: Tennessee Code Annotated § 13-7-208 (j). The nonconforming use provisions in (b)-(e) do not apply to premier tourist resorts: Tennessee Code Annotated § 13-7-208 (f).	Tennessee Code Annotated § 13-7-508 preserves the premier tourist resort provision and the home rule municipality provisions.

Tennessee Code Annotated § 13-7-208	Senate Bill 3646/House Bill 3694
In Metro Nashville, used car lots may be terminated after notice and hearing before the Board of Zoning Appeals (BZA) upon a finding that certain conditions exist: Tennessee Code Annotated § 13-7-208 (l).	Tennessee Code Annotated § 13-7-510 preserves the Metro Nashville exclusion.
There is no provision that addresses this issue in the existing law.	It applies a new notification requirement in addition to current public notice. It would require notice by certified mail at least 30 days prior to the public hearing for a zoning change that would create a new nonconforming use: Tennessee Code Annotated § 13-7-511.
There is no provision that addresses this issue in the existing law.	Any owner who sues the local government to validate a legal nonconforming use, or is sued by the government when the property is legally nonconforming, is entitled to recover attorney's fees: Tennessee Code Annotated § 13-7-512(b). If an owner defends against an appeal filed by a non-governmental party, when the administrative body has concluded the property is legally nonconforming, attorney's fees can be recovered: Tennessee Code Annotated § 13-7-512(c).
There is no provision that addresses this issue in the existing law.	In any contested matter regarding such properties including an appeal to the BZA, the government has the burden of proving the owner intentionally and voluntarily abandoned the property, including showing proof of an overt act of abandonment: Tennessee Code Annotated § 13-7-507(b).
There is no provision that addresses this issue in the existing law.	If a property owner appeals to the BZA that the property is legally nonconforming, any decision of the BZA concluding otherwise shall be based upon clear and convincing evidence, with written findings of fact justifying the decisions: Tennessee Code Annotated § 13-7-512(a).