

THE COMPREHENSIVE PLAN

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Summary: The comprehensive plan (master plan) requirements in Nevada are contained in NRS 278. Special comprehensive plan requirements pertain to Washoe County. Master plan requirements are the same for cities and counties, but townships have no master plan requirement. Nevada has different requirements, depending on county population, for master plan elements. How the market is affected by the adopted master plan is highly dependent on the required master plan elements required by county population.

I. INTRODUCTION

In Nevada, the formulation, contents and adoption of comprehensive plans (referred to in Nevada Revised Statutes as master plans) occurs in two places. For counties other than Washoe County, Nevada Revised Statutes (NRS) 278.150 through 278.230 direct the process for master plan formulation and adoption. For Washoe County (or in Nevada Revised Statutes, counties with a population of 100,000 to 400,000), there is a special legislation for regional master plans that affect local master plan development and adoption. The sections of NRS that apply to Washoe County are 278.0272 to 278.0288. Therefore in Washoe County, the three jurisdictions of the City of Reno, City of Sparks and Washoe County must comply with both provisions noted above that refer to master plan development, contents and adoption. The portion of Washoe County that lies within the Lake Tahoe basin is exempt from these regional provisions as that portion of the County is regulated by the bi-state Tahoe Regional Planning Agency. There are on-going regional planning cooperative efforts in Clark County which are not discussed to any extent in this treatise.

I. CITY VS. COUNTY VS. TOWNSHIP

The Nevada Revised Statutes do not distinguish between cities and counties in the preparation of master plans. Each type of jurisdiction must follow the same requirements as enumerated in NRS 278.150 through 278.230. There is a distinguishing characteristic between counties with population less than 100,000 and those with populations of 100,000 or greater. A master plan created for the larger counties (which currently only include Washoe and Clark Counties) must include a housing, conservation, and population element (NRS 278.150 Master plan: Adoption

by Planning Commission, and NRS 278.160 Subject matter of master plan). These are three of the fifteen (15) elements listed in the Nevada Revised Statutes (NRS 278.160 Subject of master plan). The remaining elements that may be addressed by a master plan are community design, economic plan, historical properties preservation plan, land use plan, public buildings, public services and facilities, recreation plan, safety plan, seismic safety plan, solid waste disposal plan, streets and highways plan, transit plan, and transportation plan. A city or county may also adopt other elements as they feel appropriate.

The Nevada Revised Statutes do not require master plans for townships. It does provide for the adoption of the master plan for only certain portions of the jurisdiction (NRS 278.170 Coordination of master plans; adoption of all or parts). Therefore, a county could conceivably adopt, as part of its master plan, a specifically oriented plan for one or more of its townships. In Washoe County, the County divides up the unincorporated portion into twelve (12) planning districts that generally follow geographical features, but not township boundaries.

In Washoe County, the special regional planning legislation requires that the regional plan have six mandatory elements: population, conservation, land use and transportation, public facilities and services, annexation, and intergovernmental coordination (NRS 278.0274 Contents of regional plan). The local jurisdictions have all incorporated the first four elements in their local master plans. The Cities of Reno and Sparks have also included an annexation element in their master plans. The only place that intergovernmental coordination is addressed is in the regional plan for the area. Each element of the local master plan must conform to the regional plan's elements; no variation is permitted. In addition, the regulations (zoning) that implement the local master plans must be in conformance with the local plan as well as the regional plan; again, no variation is permitted. Washoe County is one of the few locales in the nation that requires a conformance finding for all local plans and regulations and may be the only sub-state region to require such a mandatory conformance process.

In addition to the increased number of mandatory elements, the regional plan provisions for Washoe County permit spheres of influence to be developed and joint plans to be created. A sphere of influence is akin to an extraterritorial extension of a city's jurisdiction (NRS 278.02788 Adoption of master plan for sphere of influence; appeal of decision concerning use of land within sphere of influence). The intent of the spheres of influence are to provide for definite areas into which a city's planned annexation will occur and where, if agreed upon by the city and county, or between the two cities; a city can exercise development and permitting authority. A joint plan is an inter-jurisdictional plan for an area that presently is under the jurisdiction of two or more entities (NRS 278.027784 Joint plan area: Designation in regional plan; master plan required for area). It is a formal plan that involves the affected property owners and which addresses issues that typically occur when properties' zoning on both sides of a city's corporate boundaries are significantly different. The result of a joint plan will often be an annexation plan, a zoning plan, a plan for the extension of required infrastructure and an agreement regarding which jurisdiction will exercise permitting authority.

To insure that the regional plan provisions required for Washoe County are being followed, a mandatory annual report from the three jurisdictions is required. This report often identifies changes in development patterns, service provision, planned land use, population, and other relevant issues (NRS 278.0286 Annual report by local planning commission; local government to file information relating to proposed actions concerning regional plan). There is no required subject matter enumerated in Nevada Revised Statutes that directs what areas must be addressed. This has created some problems when evaluating the three local jurisdictions' reports as they will, at times, address different issues or address the same issue in different manners and formats.

A final distinction regarding the master planning process in Washoe County is that the state legislature has defined projects of regional significance (NRS 278.0277 Project of regional significance: Adoption of guidelines and procedures for review of proposals, and NRS 278.0278 Project of regional significance: Finding of conformance with adopted regional plan required before final approval and commencement of construction; appeal of determination to governing

board). These are development or service projects that are considered to have the potential for creating an impact on the region. These projects of regional significance require a review by the Regional Planning Commission. The Regional Planning Commission's authority is limited to making a finding that the project of the regional significance is in conformance with the regional plan. Unfortunately, this limited role of the Regional Planning Commission can be misunderstood by those persons who may oppose the approval of a project of regional significance at the local level. It is not uncommon to observe the Regional Planning Commission in the position of being requested to add conditions to an approved local project of regional significance (which they are prohibited from doing) or denying the project of regional significance on its merits (which is not the role of the Regional Planning Commission when making a finding of conformance).

II. BASIS FOR LAND USE CONTROL: POLICY, MAP, OR NO PLAN AT ALL?

Based upon the requirement of a master plan and its form, it would appear that the master plan map is the basis for land use control. Certainly, this precept is supported by language in NRS 278.250 Zoning districts and regulations, which states, "The zoning regulations must be adopted in accordance with the master plan for land use..." But, like many laws, there are inconsistencies in the state statutes that create confusion for 16 of the 17 counties in Nevada (the special regional legislation in Washoe County provides for less confusion). At least two areas of the state statutes related to planning and zoning create fodder for debate over whether the master plan map is the controlling land use document. The first area relates to counties with less than 25,000 population. Under Nevada Revised Statutes, a county with less than 25,000 population is not required to create a planning commission (NRS 278.030 Creation [of planning commissions] by cities and counties; number of members). Without a planning commission, there is no compelling law to adopt a master plan or the map that is required as part of the master plan. Because of this exemption, there has been raised the question of whether a county of 25,000 or less population can adopt zoning laws without a master plan. This issue is relatively minor in scale and scope to another provision of state law that addresses the relationship between subdivision maps and zoning. NRS 278.349 Action on tentative map by governing body;

considerations in determining action on tentative map, states that “The governing body, or planning commission if it is authorized to take final action on a tentative map, shall consider: (e) Conformity with the zoning ordinances and master plan, except that if any existing zoning ordinance is inconsistent with the master plan, the zoning ordinance takes precedence;” Prior to the enactment of the special regional planning legislation for Washoe County, this provision was routinely used to permit tentative map approval of projects that were in clear violation of the county’s or cities’ adopted master plans. It is not inconceivable to believe that this practice still occurs in the other 16 counties to one degree or another. Therefore, these two examples suggest that the master plan map may not always be the controlling factor in land use control.

In Washoe County, this issue has been resolved by the regional planning legislation. All actions on all land use must be in conformance with the local master plans which must be in conformance with the regional plan. There is no question that the regional plan map and policies form the basis for land use control in Washoe County. This conformance is achieved in the following manner.

The regional plan has as part of its adopted documents a regional land form map that generally identifies four land uses: urban, suburban, rural and rural reserve. These land uses are not intended to be zoning, per se, but there have been occasions where the line between being a description and a regulation has engendered debate. One of the current issues surrounding the four land use descriptions is what type of commercial and industrial uses are permitted in suburban and rural land uses. The descriptions of the four regional land uses are more oriented to residential uses than commercial and industrial uses. Because of this lack of specificity regarding non-residential uses, frequent debate occurs around the proper non-residential uses in these land uses, especially suburban and rural. This debate is complicated by the fact that the unincorporated portions of the County are the only areas where suburban and rural regional land uses are identified; both cities are designated urban.

The cities and the county have diverged from implementing the regional land use designations. The cities have opted to develop local master plan maps with separate zoning maps. The county has joined its master plan and zoning (regulatory) map into one map. The one map concept is not common in the United States, found primarily in Florida communities. There are advantages and disadvantages for using separate master plan and zoning maps and a one map process. On the plus side of using two separate maps for planning and regulation, the master plan map represents a long range view of the community's development and the zoning map can be used to implement shorter (5 to 10 year) development patterns. In addition, using two separate maps can result in more flexible zoning criteria. The downside to using the two map process is that zoning often becomes the focus of planning, rather than the master plan. In addition, there is always the risk of attempting to conform the master plan to the zoning, rather than vice-versa. The advantages of the one map process is that planning and zoning are tied intimately together. There is no mistaking the focus of the process, it is on planning. The one map process also requires a focus on available services and the timing of development to match available services. One of the disadvantages of one map is ironically the ability to quickly lose control over where and when development should occur if the local jurisdiction permits private investment in infrastructure to direct growth (as Washoe County permits). In addition, there is a constant debate regarding the responsibility of the local jurisdiction to provide services in a reasonable time because, through the one map process, it has zoned land for a twenty or twenty-five year horizon.

In addition to the regional land form map, the regional planning agency has adopted policies that implement the six mandatory elements that the Nevada Revised Statutes requires. Local governments in Washoe County have, as mentioned earlier, mirrored at least four of the mandatory regional elements in their master plans. Many of the local government policies are more specific guidance to the regional policies. In addition, all three jurisdictions have created policies for issues that the regional agency has not addressed in its plan. One area that local governments have not addressed in their local policy plans is the issue of quality of life indicators. The regional plan lists a number of quality of life indicators and has partnered with a

private non-profit organization to promote the achievement of the quality of life indicators. Efforts to tie the achievement of quality of life indicators to land use processes has been unsuccessful and not considered a productive avenue for addressing quality of life indicators.

All three jurisdictions have adopted land use regulations. The City of Reno and City of Sparks use a traditional zoning code. Washoe County has adopted a Development Code which incorporates development standards for infrastructure as well as including traditional zoning components. All three jurisdictions have attempted to create more flexible zoning districts and uses within those districts. The City of Reno and City of Sparks tend to be more on the traditional side of regulatory schemes with use lists, while the County has adopted more descriptive use categories that do not have a list of uses assigned to each zoning (land use designation). The City of Reno is presently completing a review of a new zoning ordinance that melds some of the traditional zoning ordinance components with more innovative proposals.

III. THE “RELEVANT” REAL ESTATE MARKET AND YOUR RESPONSIBILITY

For most cities and counties in Nevada, the “relevant” real estate market from a regulatory perspective is going to be limited to each jurisdiction. It is each jurisdiction that is going master plan and zone land to meet its particular needs and aspirations. Although the master planning provisions of the Nevada Revised Statutes encourage a regional coordination or each jurisdiction’s master plan(s); it does not mandate this, except in Washoe County. The special regional planning legislation for Washoe County does require that the regional perspective be respected in each jurisdiction’s local master plan.

As noted above, the regional planning legislation that affects Washoe County requires that each local master plan conform to the adopted regional plan. This does not mean that each jurisdiction’s master plan does not have variety. On the other hand, the real estate market is affected by the regional land form and policies that are contained in the regional plan. Probably the most significant effect of the adopted regional plan in Washoe County is that urban densities and uses are encouraged in the municipalities, whereas more suburban and rural densities and

uses (predominantly residential) are allocated to the unincorporated portion of the County. Also, the process by which this regional land form is amended is complicated and time-consuming, thus making it difficult for the real estate market to change planned land uses quickly to meet a perceived real estate opportunity.

For those who are involved in the real estate market, or represent those who participate in the market, some of the following should be considered when working in Washoe County. As noted in the previous paragraph, the amendment of land uses (or zoning) can be complicated and time-consuming, even at the local level. Changes in zoning in the two cities is not as complicated as that in the County. The primary reason is that the two cities have regional urban land uses which accommodate intense uses and high densities. In addition, the cities use a two map process: one map for zoning, another for their master plan. Therefore, a change in zoning is essentially a local matter that requires conformance to the local master plan. In the County, the process can take longer because the County uses a one-map process. A change in the zoning is also a change in the master plan. All master plan changes require a finding of conformance with the regional plan, at a minimum, and depending on the magnitude of the change, can also require a regional land use amendment. In addition, the County has all four of the regional land forms within the unincorporated portion of the county. Therefore, there can be a higher likelihood that a change in the one-map at the County level may result in a regional plan land form amendment, rather than just a conformance finding. It should be remembered, though, that any change in a local jurisdiction's master plan requires some type of review by the regional authority.

The reader may recall that the special regional planning legislation for Washoe County also identifies projects of regional significance. These are projects anticipated to create an impact beyond the local jurisdiction's boundaries. Although the Regional Planning commission is constrained to making a finding of conformance with the regional plan when a project of regional significance is presented to them, it is a process that adds an additional step. No building permit or other development permit can be issued for a project of regional significance until the conformance review has been completed. The trend in Washoe County has been to look

at expanding the number of projects that qualify as a project of regional significance, rather than reducing them.

Washoe County has added an additional issue that must be considered when developing in the unincorporated portion of the County. The twelve planning districts have special regulations to address unique issues found within the boundaries of the districts. These special regulations can be new, or supercede County-wide standards. The person involved in real estate in the unincorporated should be aware of these unique requirements, and not be reliant only on the base-line requirements found in the County's Development Code.

As a concluding remark, those who represent real estate interests should be cognizant of disclosure requirements. The State Legislature has, each session in recent history, added more disclosure requirements for sellers of property. At a minimum, the state law now requires a seller of property to disclose zoning and planned land uses on and surrounding the for-sale property in Clark County. Proposals to expand the area of disclosure and the method of disclosure are raised each legislative session. In addition, it is highly likely that these disclosure requirements will be extended to Washoe County in the next few years. A review of the state statutes on disclosure is incumbent on any seller of land, even a private-property seller.