

# Zoning Resolutions and Comprehensive Plans: What's the Difference?

Ohio townships' zoning authority doesn't come from the Ohio Constitution or a city charter. You are probably familiar with Ohio Revised Code ("R.C.") Chapter 519, which provides the authority for Ohio townships to regulate zoning in the unincorporated territory of the township. Even if you know that statute, did you know that it also states that townships may "regulate [zoning] by resolution, in accordance with a comprehensive plan..."? Your next question might be "what is a 'comprehensive plan'?" We hope you'll find this article helpful as a general overview of zoning resolutions, comprehensive plans, and their differences.

If you have heard the phrase once, you've probably heard it a thousand times, "[i]t is settled that... the [township] trustees can exercise only those powers conferred by statute, or such others as are necessarily to be implied from those granted." *Trustees of New London Township v. Miner*, 26 Ohio St. 452 (1875). R.C. §519.02 expressly provides township trustees with the authority to regulate specifically identified features within the unincorporated area of the township. Specifically, with respect to the "location, height, bulk, number of stories, and size of buildings and other structures, ...percentages of lot

area that may be occupied, set back building lines, ... density of population," as well as the uses associated with land located within the unincorporated area of the township. The township trustees also have the authority to divide the unincorporated area of the township into designated districts or zones, with each district having uniform and consistent land use regulations throughout the designated district. As previously mentioned, these regulations are to be adopted by the board of trustees by a resolution, more commonly referred to as a "zoning resolution" or zoning code.

While R.C. §519.02 identifies the ways that a township board of trustees can regulate land use through a zoning resolution, how should a board of trustees know if its zoning resolution is adopted "in accordance with a comprehensive plan"? You won't find the term "comprehensive plan" anywhere else in the Ohio Revised

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Code relating to township zoning.

There is no statutory definition or explanation, and there are no provisions for the standards that a comprehensive plan should follow or how it should be established. The same is true for county zoning under R.C. §303.02, which is effectively identical

to R.C. §519.02. That's where Ohio courts come in. The rest of current Ohio law relating to comprehensive plans actually comes from case law. Over the years, the Ohio Supreme Court has weighed in on several matters relating to comprehensive plans, resulting in some helpful guidance otherwise lacking in R.C. §519.02.

The question of what constitutes a comprehensive plan from a legal perspective first appeared in the Ohio Supreme Court case, *Cassell v. Lexington Twp. Bd. of Zoning Appeals*, 163 Ohio St. 340, 127, N.E.2d 11 (1955). In that case, the township zoning regulation merely provided that a section of the township was zoned "for farming, residential, commercial and recreational uses," but did not specify which portions of the section could be used for which purposes, and failed to include a map designating those portions. *Id.* For those reasons, the Court held in that case that the zoning regulation was not established in accordance with a comprehensive plan. *Id.* Therefore, a comprehensive plan is something more than simply zoning a section of the township to allow general categories of purposes without specifying what portions can be used for which purposes.



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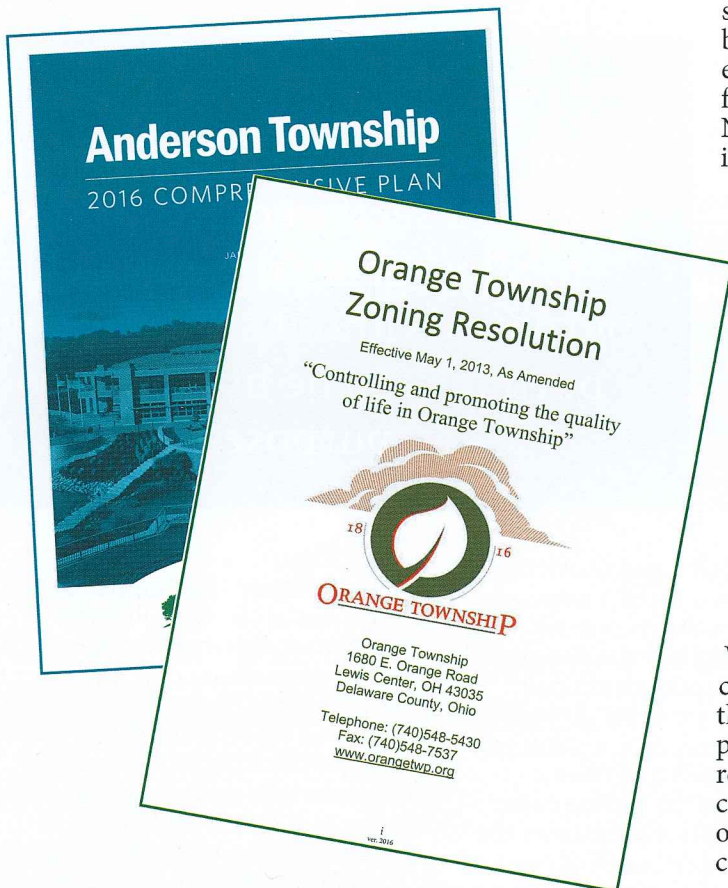
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The comprehensive plan issue arose in another Ohio Supreme Court case: *B.J. Alan Co. v. Congress Twp. Bd. of Zoning Appeals*, 124 Ohio St.3d 1, 2009-Ohio-5863, 918 N.E.2d 501. The issue in this case was whether a township could rely on a county comprehensive plan to meet the statutory requirement that its zoning be



“in accordance with a comprehensive plan.” *Id.* The Court held that, yes, a county plan could constitute a township’s comprehensive plan, and that a township need not necessarily create its own comprehensive plan. *Id.* The Court noted that its ruling did not include a review of the township’s zoning resolution and the county comprehensive plan to evaluate whether they were truly “in accordance,” only, generally, that a county comprehensive plan could constitute a comprehensive plan for township purposes under R.C. Chapter 519. *Id.*

All of this has led to a natural follow-up question: does the comprehensive plan need to be a separate and distinct document, or can it be included within the township’s zoning resolution? The Ohio Supreme Court answered this question in *Apple Group, Ltd. v.*

*Granger Twp. Bd of Zoning Appeals*, 144 Ohio St.3d 188, 2015-Ohio-2343. The Ohio Supreme Court held that a comprehensive plan could be included within a township’s zoning resolution, fulfilling the requirements of R.C. §519.02, if the zoning resolution “(1) reflects current land uses; (2) allows for change; (3) promotes public health and safety; (4) and uniformly classifies similar areas; (5) clearly defines district locations and boundaries; and (6) identifies the use or uses to which each property may be put.” The court noted that the six factors are distilled from the language in R.C. §519.02. No separate and distinct comprehensive plan is necessary if a zoning resolution meets those six criteria. In other words, if a zoning resolution meets those factors, it will have been adopted in accordance with a comprehensive plan.

If your township does have both zoning resolution and comprehensive plan documents, it is important to understand how they work together. First, the primary difference between the two is their legal effect. The zoning resolution is township law - it is a resolution, enacted as legislation by the township, pursuant to the statutory authority to do so. The comprehensive plan is guidance. Comprehensive plans are typically based on general principles, and do not contain the same level of detail that zoning resolutions need.

Second, the zoning resolution and comprehensive plan may be separate but should always be related. While some states require that a zoning resolution comply with a comprehensive plan, Ohio is not one of those states. That being said, to avoid confusion, the provisions of the documents should match - the zoning resolution should be based on the principles in the comprehensive plan. If they do not currently match, one or both should be updated so that the two documents are consistent.

In conclusion, R.C. §519.02 authorizes townships to regulate land use through the enactment of zoning resolutions. Because Ohio law requires a zoning resolution to coordinate with a comprehensive plan, but doesn’t define it, Ohio courts have filled in the gaps. Courts have established that zoning resolutions can meet that requirement if they include the six factors set out by the Ohio Supreme Court in the *Apple Group* case. Ultimately, if a township has a zoning resolution and a separate comprehensive plan, the two documents should work together, rather than in contradiction with each other. To the extent they are inconsistent, the zoning resolution will control, because it is township law, while the comprehensive plan is general land use guidance. ■



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