

## **Part III: Land Use and You Planning the Property Profile**

As your knowledge base of land use grows and you become better equipped to deal with the ever-changing land use environment, the better it will be for your community, your business and ultimately you, as a professional REALTOR®.

As discussed in Part II of this series "Land Use Laws and You," comprehensive plans, critical area ordinances, and shoreline rules all determine the shape of your community and have significant impact on the use, value, and marketability of property.

The value in real estate is not in the physical asset itself, but rather what you can do with the property in a given location. Appraisals and market surveys of value must always be corrected for differing regulatory frameworks. A single zoning classification never tells the whole story. Whenever I approach a property, my first step is to prepare a property profile, or a full analysis of the regulatory controls affecting the utilization of the property.

A brief description and key considerations I use for each of the many levels examined may assist you in evaluating the purchase or sale of a particular property.

**1. The Comprehensive Plan.** Planning in Washington is almost universally carried out through an adopted comprehensive plan. The comprehensive plan is a blueprint for development, and is the essential starting point for any property analysis.

a. The comprehensive plan (whether or not in counties planning under the Growth Management Act) will tell you whether the property is inside or outside planned urban growth boundaries; rural intense or low density areas; or adjacent or within designated resource lands for farm, forest, or mining. Each of these big land use classifications has a major impact on both present and potential future uses of property.

b. The comprehensive plan and zoning ordinance designations may not be the same. The zoning ordinance will determine the uses to which a current building application may vest. But the comprehensive plan will tell you how the surrounding property is expected to develop in the future and may have a significant longer-term influence on overall value.

**2. Zoning.** The zoning of the property, text and map, determine the current uses to which a property development permit may vest.

a. Zoning codes set the uses, height, bulk, and density parameters for use of a property. Zones will define the type of permits, conditional uses, and special uses currently allowed in the area, prohibited uses, and base standards for development. Changes to the zoning code must be consistent with the comprehensive plan, so if a difference exists, any change will be in the direction of the comprehensive plan blueprint.

b. The zoning code will provide permitted, special, and conditional uses and the standards that must be met for each type of use. Variances from the zoning code are available only if a special or unique configuration of the property prevents uses commonly found in the zone. Variances cannot be granted because they would make the development of the property more convenient or more profitable. Variance requests are granted only in rare and extreme cases.

**3. Environmental regulations.** Environmental regulations are overlay regulations that may affect the ability to use property regardless of the zoning.

a. Shoreline Master Program. The Shoreline Management Act imposes a state shoreline zoning overlay over lands 200 feet from the line of ordinary high water of larger streams and lakes (including the 100-year flood plain in some jurisdictions), which regulates uses within the zone. The 200-foot shoreline area is not a buffer

per se, but local shoreline rules commonly have use regulations and setbacks different from zoning that will preempt an inconsistent zone.

b. Critical areas regulations, including wetlands, fish and wildlife habitat conservation areas, aquifer protection areas, geologic hazard areas, and flood hazard areas are new state mandated zones for which all local governments must develop new rules. Much as the shoreline zone preempts local land use zones, the critical area zones impose supplemental regulations on property that may drastically affect uses otherwise permitted under the zoning code. Development is frequently prohibited or severely limited near wetlands, ponds, and small streams. With buffers ranging from 50-300 feet, impact on building areas may be severe. Knowledge of critical areas near the property is important because the buffers for critical areas may project onto your client's property from neighboring lands.

Understanding the full range of regulatory opportunities and constraints listed above, through a well-prepared property profile, will put you in the best position to evaluate and market a property for a seller, or make sure the property sought by your purchasers can in fact provide the opportunities necessary to achieve their objectives.

As REALTORS®, you are encouraged to become familiar with your community's comprehensive plans, its zoning and environmental regulations; you will then be able to better inform your clients on the regulatory controls that may materially affect the use, and therefore the value of the property.

*Alexander W. (Sandy) Mackie of Perkins Coie LLP is one of state's well-known land use attorneys. Over the course of two years, Mr. Mackie conducted Land Use Planning Roundtables as part of Washington REALTORS® Land Use Assistance Program. The Roundtables drew attendance from city and county councils, mayors, city planning staff as REALTORS® were hosts to high level discussions of land use planning options within the framework of the Growth Management Act.*