

COMMENTS REGARDING THE PROPOSED ZONING ORDINANCES FOR MUNICIPALITIES IN SUSQUEHANNA COUNTY PENNSYLVANIA

The following comments are respectfully submitted to the Supervisors of Bridgewater, Forest Lake, Franklin and Jessup Townships at the hearing held on Thursday, April 24, 2008, at 7 p.m., related to the adoption of proposed zoning ordinances for a number of Townships and Boroughs in Susquehanna County Pennsylvania.

It is requested, since the proposed zoning ordinance is the same (except for those items in the “Note about this Draft and Silver Lake Township,” as that note is found at www.communityplanning.biz) for Apolacon, Bridgewater, Choconut, Forest Lake, Franklin, Friendsville, Jessup, Liberty, Little Meadows, Middletown and Rush Townships, that a copy of these comments be provided in a timely manner to the Supervisors of each of the above townships. In addition, it is requested that a copy of these comments be provided in a timely manner to the Supervisors of Silver Lake Township for their consideration, to the extent that the comments are also applicable to that proposed zoning ordinance.

General comments and questions and suggestions regarding the hearing process and proposal to adopt the Zoning Ordinances.

I. **Observation Regarding the Hearing Notice**

The hearing notice cites the location of the proposed zoning ordinances to be located at www.ntc-susq.org **or** www.communityplanning.biz. However, only the later site has the proposed zoning ordinance (“PZO”). The former site has the Northern Tier Coalition Comprehensive Plan (“NTCCP”). The NTCCP contains only a 13-page portion of the document – “Article VII Performance Standards & Environmental Protection” section 700 – which relates directly to zoning. A similar, but not exactly the same, content is found in a 19-page section of the PZO found at the later of the two cited web locations.

II. **Observations and Suggestions Regarding the Hearing & Approval Process**

The proposed adoption of such a dramatic and wide-sweeping change in the regulation of land use across Susquehanna County should receive a very significant period of time for consideration. Even though normal legal notice requirements may have been met by the advertisements in the classified section of a newspaper or papers of general circulation, it is unlikely that most residents and property owners of the County have received actual notice of the proposed adoption of a zoning ordinance, which will impact the value, ownership and future freedom in the use of their property.

While it cannot be denied that some regulation of land use and development may be helpful and even necessary for any number of reasons, the institution of such a change must be done in the first instance with great care and after extensive consideration of the current long standing rights and concerns of all property owners.

This means that **all** property owners should receive actual notice of the PZO details themselves, be given the opportunity to consider the potential impact upon them, be able to raise (in detail) questions and concerns, receive careful and thoughtful consideration of

the same and responses, which provide amendments to the PZO or an exposition of the well-reasoned and well-founded basis for the proposal to stand as first advanced. This process cannot properly be conducted without extensive and careful public airing over a significant period of time.

III. General Comments Regarding the “Guide to Using this Zoning Ordinance”

The applicable ordinance should be maintained on the internet by each township so that residents can have ready access to the current ordinance without having to take time from work (and lose pay) or pay a fee to refer to the ordinance for questions regarding their property.

Likewise, the current fees set by each governing body (Section 1203) should be available on the internet for the same reasons as above.

IV. Observations Regarding Proposed Changes to NTC Draft Zoning Ordinances of December 2007, Section 858.4 Standards (for wind energy facilities)

It is clear that our county faces very serious energy issues. In Northeast Pennsylvania this problem is very pressing as the economy of the region is very depressed. Rising energy costs for power, for heating and for residential and commercial uses have a tremendous negative impact upon the residents and businesses of this already depressed area. Renewable sources of energy, such as wind, solar, water and bio fuels and bio mass as well as other perhaps unidentified technologies, should be fostered and encouraged. The proposed provisions of this section will operate to restrict and discourage rather than to encourage the use of wind as a renewable source of energy for the region and for the nation.

These provisions should be revised to encourage the harvesting of wind energy. Any proposal which is ultimately presented should be supported by adequate, creditable documentation from recognized experts in the field of harvesting wind energy. Further, flexibility should be included in the PZO to allow for the development and use of advances in this technology. For example, there is currently a discussion concerning the use of “vertical axis” (rather than the traditional propeller type) wind turbines. There has also been discussion of using vertical axis generators on buildings.

The PZO should also recognize the use of smaller wind turbines on roofs (a common practice in some rural areas) and close to residential structures (also a common rural practice).

The above comments are merely examples of the types of issues that should be carefully considered regarding wind generators. There are many more such considerations which should be addressed to permit and encourage land use which fosters and promotes renewable sources of energy .

V. Observations Concerning Article I

The use of words such as “prohibiting...restricting,” “land use control program,” are regressive and overbearing. The property owners in the County own their property in fee,

subject only to the occasional easement, deed restriction, mortgage and the overly aggressive taxes imposed on land ownership. The purposes stated in 102A and E of the PZO can be set forth without the use of the types of words and confiscatory concepts behind the words cited above.

This point is important and not a matter of just semantics because these words will no doubt be relied upon and be referred to in construing any ordinance, which is ultimately adopted. Yet, these types of words are very “heavy” when compared to the more specific statements of purpose in 102 A through E.

Section 104, the first sentence is positive in nature as a statement relating to the interpretation of the PZO. It is suggested that the scope of the second sentence, in light of the first sentence, be extended, in addition to not interfering with other rules of Townships, etc., to also not interfere with any pre-existing rights or uses or any rights or uses not addressed in the ordinance as finally enacted.

Section 201 states, “The Community Development objectives include, but are not limited to the following:” In as much as the objectives are a part of the foundation of the PZO, they should **all** be clearly stated. To provide less than all of the objectives leaves the PZO potentially “open ended” as far as its interpretation and application. Further, in as much as these are **community** development objectives, they should be somewhat tailored to address the needs of each community. The general statements are fine but do not address any specific needs of a community.

Subsection H should include a statement providing for “cooperation among individual property owners and businesses whose property use, value or ownership may be impacted.” Such persons are clearly affected persons and therefore “parties who have an interest in the PZO.”

Section 202 appears by reference to incorporate the NTCCP stating that it is intended to “implement the goals and objectives contained in the Northern Tier Coalition Comprehensive Plan.” That plan is very extensive and broad in scope. However, the NTCCP is adopted only by representatives of members and not as a result of hearings or input from the residents and land owners of the County. The input of residents and land owners should be considered to the extent that the goals and objectives of the NTCCP are to be included by reference or used at all in the interpretation of the PZO.

VI. **Observations Regarding the Proposed Adoption of the Proposed Zoning Ordinance (“PZO”)**

Interestingly, the NTCCP comments on the need for the PZO. The section of the NTCCP relating to this topic is copied in Appendix A to these comments. The section provides in part:

Subdivision and Land Development Ordinance Compared to Zoning Ordinance

The subdivision and land development ordinance (“SALDO”) provides standards for dividing land and for residential and

commercial development projects ensuring the provision of adequate community facilities such as roads, water supply and sewage disposal, utilities, proper highway access, and storm water control. The adoption of a SALDO by a local municipality is typically far less controversial than adopting a zoning ordinance. Regulating how land is divided and served by facilities is not perceived by the public as nearly as intrusive as zoning. In addition, most municipalities in the Commonwealth that have not adopted a SALDO are governed by a county ordinance. This is the case in Susquehanna County as well. By adopting a SALDO, the local municipality is simply shifting the responsibility from the County. Many municipalities embarking on land use management first adopt a SALDO, and then proceed to zoning.

The adoption of zoning ordinances typically follows the path of development.

VII. **Article III – Definitions**

Section 302 – Is this the latest authority on such definitions? How was it selected as the authority? The use of definitions is very important to the application and interpretation of the PZO and therefore must be carefully chosen and applied.

Section 303 – “Agricultural use” should be expanded to include those activities which produce crops for use in making ethanol and bio fuels for use as renewable sources of energy (fuels).

Agricultural Products or Processing – This section should also include processing of products as renewable sources of energy.

Bed and Breakfast – Guests often stay for extended periods of time on business, but do not become residents of the area. Such facilities also often offer meeting space and the location for family celebrations, weddings, special events, etc.

Crop Production – Should include use of plants or related products for renewable energy.

Driveway – Add concept of “one or more dwelling unit(s), etc...”

Home Occupation – This definition should be more liberal in a county with a depressed economy and which is mainly rural in nature. Individuals may depend in whole or part on such activities for their support.

Junk (Section C) – Used tires, if being used in a “rammed earth” structure (green building), should not be considered junk.

On-Site Sewage Storage Facility – Some older structures in the County have holding tanks, which are pumped out to remove waste materials. Such locations often do

not have the correct ground (type or amount) for disposal in whole or part into the soil. (See also “Sewage Disposal System B On-Site”.)

Public Notice – It is suggested, where property owners in the immediate vicinity may be impacted, that notice also be by mail to the registered property owner(s). Given the rural nature of the area, many property owners do not have a subscription to the local paper of general circulation.

Paintball Range - Outdoor – One of the top five (5) paintball ranges in the country is found in Susquehanna County. Provision should be made for its continued operation and growth

Since Susquehanna County is in great need of an improved economy. The key to improving its economy is attracting business, professionals, facilities and infrastructure to the County. This would require a wide range of activities to be added to the current definitions of the PZO or to be incorporated within the PZO. Such facilities would include distribution facilities, truck terminals, etc.

VIII. **District Regulations**

Section 401.1 – The designation of districts, without a clear “Unconditional Grandfather Provision” for any uses within a particular type of district, may serve as a “constructive taking” of a portion of a land owner’s rights (see also comments regarding Article IX). The same result (a “constructive taking”) may, even if a use is not existing which is inconsistent with the district designation proposed, result from the elimination of a potential use. Either “constructive taking” may well (see page 2 of these comments) result in a loss of property value and in the potential for future economic improvement through business activities within the County.

Further, creation of some districts, such as a “Lake Overlay District,” may also be contrary to current building locations on lake shores (see also Section 704.3).

At a minimum, existing uses that may be inconsistent with, or within conditional use or special exception uses, should be “Unconditionally Grandfathered” as principal permitted uses, which “Grandfathering” includes the transfer of the subject property with such “Grandfathered” use to run with the property in perpetuity without any limitation of any type (see comments regarding Article IX), unless the right to such use is surrendered to the Township Board in writing by all of the then current property owners. Section 901 of the PZO does not meet this suggestion in that it contains provisions to “extinguish” such rights even though it says the “...property is generally held to have acquired a vested right to...” The potential affect of this section is to provide only a “conditional” vesting, which could adversely impact the value of property and lead to extensive costs of litigation for the property owner.

CI – Commercial-Industrial District – The PZO lists as “conditional uses” many uses which should be permitted “as of right” in the CI district since those uses are either not permitted at all in other districts or are listed only as “conditional uses” in both the VC and CI districts or listed only as conditional uses in the CI district.

In addition, the permitted and conditional uses in some districts, such as CI, need to be expanded to provide the same uses as are found in the RA and VC districts since much of the land in these districts is open and available for business or related growth. Since some of the CI ground in the County also has the Keystone Opportunity Zone (“KOZ”) or similar designation, restricting the use of such ground in the PZO limits the value of the ground and its ability to attract business, which is clearly needed by the County economy.

IX. Section 504.6 D – Parking Spaces Required

This section appears to not take into account public parking (both paid and unpaid) which is available in towns within the various townships. Many of these towns have only on-street parking and limited off-street parking and their business may not meet the standards stated. Further, since these towns are already built up and devoted to various uses, there is little if any room to expand parking to meet the standards in the PZO.

X. Article VI – Residential Standards

Section 607-Mobile Home Parks – While this section provides “Mobile home parks are permitted in certain districts, in accord with the schedule of uses...”, this is a bit misleading since mobile home parks are listed only in the RA district as a conditional use and not as a principal permitted use. Mobile home parks are not permitted in any other districts.

Section 607.2-Mobile Home Sites – As with other provisions, this section should be “Unconditionally Grandfather” for existing mobile home parks. To do less would create many hardships and expenses for current mobile home parks and their residents, as well as reduce the value and continued viability of existing home parks and their potential growth, however limited that may be in the County’s economic condition.

Section 610-Bed and Breakfast Establishments – This section also should “Unconditionally Grandfather” existing facilities.

Bed and Breakfasts should also be “permitted uses” in some places and not just “conditional uses.” In a region whose economy is so poor, yet so rich in natural beauty and in sites of historical and artistic interest and talent, one of the activities that will help the economy is tourism. Therefore, bed and breakfast establishments of good quality are an asset to the County’s economy and should be encouraged.

Some bed and breakfasts establishments which exist already have approvals from their townships or boroughs, and their buildings have been granted the necessary permits by the Pennsylvania departments that deal with such facilities.

Further, as Section 610C seeks to limit the number of guest rooms, this provision is inconsistent with promoting tourism, may be contrary to existing grants of authority from the entities named above and may adversely impact the economics of the operations of bed and breakfast facilities. Across the nation, there are many bed and breakfast establishments, which have more than five (5) rooms. The proposed limitation to five (5) rooms is an unreasonable limitation on such facilities.

It should be noted, in addition, that the County imposes a room tax on bed and breakfast facilities, and the limitation to five (5) rooms will also adversely affect this source of County revenue.

Section 611-Hotels, Motels and Lodging Facilities – By contract to the proposed Section 610, Section 611 seems to favor hotels, motels and lodging facilities over bed and breakfast establishments. Section 611 is vague by comparison to Section 610. The two taken together certainly raise serious questions about the restrictions of Section 610 and the permissiveness of Section 611.

XI. **Article VII – Performance Standards and Environmental Protection**

This article, and many of its sections, places a very heavy financial burden on any existing (since “Unconditional Grandfathering” should be provided, but is not clearly identified) or proposed facility for a number of reasons far too numerous to set forth at this time. As with other provisions of the PZO, for a county whose economy is so poor that its young people leave their roots to find suitable employment, it is unwise to, in one sweeping action, place such a heavy financial burden on any business.

As noted elsewhere in this review, activities that help to build the economy of the County are very important. Any PZO should have this as an objective. Although the “purpose” provisions of the PZO do say this is a purpose, the discussion in the NTCCP, cited earlier in Section IV of these comments, makes it clear that adopting a zoning ordinance is “controversial” and that “the adoption of zoning ordinances typically follows the path of development.”

Unfortunately, there is very little if any development going on in Susquehanna County and thus “jumping” to the Zoning Ordinance step is ill advised and unwarranted at this time.

Throughout this article (VII) as with other portions of the PZO, there does not appear to be any “Unconditional Grandfather” provisions. Therefore, many existing businesses, residences and uses will not be permitted as they exist today, and in many cases had or have existed for years. Some of these have historical as well as economic importance to the County. The failure to recognize these types of conditions and “Unconditionally Grandfather” them as permitted users, in the case of historic structures, etc., overlooks even one of the factors to be considered in an Environmental Impact Statement (“EIS”), see Section 703.2M of the PZO.

Other examples of the problems related to the type of Grandfathering in Article IX, of which there are many in Article VII, are Sections 704.2, 704.3, 704.4 where existing structures and uses are within the prescribed “buffer” areas.

XII. **Article VIII – Standards for Specific Uses**

Section 801-Adult Businesses – No comments are offered, except to say that such uses should be strictly limited to a very few areas, if permitted at all, and should not be located where youth would have access to them or where their existence is repugnant to the residents or businesses located in such areas.

Section 809, in addition to acknowledging the regulation by the PA Public Utility Commission (“PA PUC”), should acknowledge the regulation by the Federal Communications Commission (“FCC”) , which licenses and regulates all such facilities.

Some provisions of Section 809 may actually be regulated by the FCC and or PA PUC, for example, 809.3A and some portions of 809.3B are already regulated by these agencies. Requiring further regulation by the local authorities is a redundant and unnecessary financial burden to the carrier.

In a county, such as Susquehanna, which has a great need for infrastructure to promote economic development and growth and to sustain, in a competitive environment, those few businesses that it does have, such regulation as is contained in Section 809, is ill advised. It adds no protection of the health, welfare and general safety of residents, for these factors are already addressed by the regulation by the PA PUC and the FCC. Such regulation as Section 809, or attempt at it, signals a negative environment for the development of technology and business and is a disincentive to private investment, which the County is in great need of encouraging not discouraging.

Section 813-Detention Facilities, compared to other sections of the PZO, seems, given the nature of the facilities involved, to be lacking in specific requirements for the protection of the health, safety and welfare of residents, businesses and those who may transverse the general area where detention facilities are located.

It is suggested that federal and state standards and experts in this area be consulted to develop a more specific regulation for such facilities.

Section 820.3C-Screening – Rather than the words “may be used”, this section should specify, given the beauty of the County, in addition to fencing, etc., the monitoring of plantings, as described to conceal such uses from public view – with the requirement that the vegetation be maintained in good health and replaced if it becomes diseased or dies.

Section 825-Mineral Extraction – Considering the current activities relating to natural gas drilling, potential extraction and transportation, such activity may become an important source of revenue for many County property owners for years to come. Therefore, it should not be limited as a conditional use only to proposed RA districts, but should be a permitted use in both RA and CI districts. The failure to permit this as noted above is inconsistent with the portion of the statement of intent (Section 825.2) which says, “The primary location standard is the designation of certain zoning districts where mineral extraction is allowed in order to minimize negative effects on residential areas while providing reasonable opportunity for mineral extraction as a lawful use in the Municipality.”

Further, the fact that mineral processing (Section 826) is a conditional use in both the RA and the CI districts suggests that allowing extraction, as noted above, in the CI district would be consistent as a use for the CI as well as the RA district.

XIII. **Article IX – Nonconformities**

Section 901, as noted in earlier comments, is not a true and complete “Grandfathering” of nonconforming uses. It places an undue burden on the current property owner of “perfecting” by registration (Section 901.3) the recognition of the nonconformity. Although Section 901.4 permits the sale of a nonconforming property and its continued use as such, the prohibition against “expansion, alteration” and possibly even “change” basically limits severely the value and long-term continuation of the nonconforming use.

Sections 909.1 and 909.2 – Abandonment and extension of nonconformities may be severely limiting in economic circumstances where the sale, transfer or leasing of property with a nonconforming use takes extensive time to accomplish. In economic times such as these and in an economically disadvantaged county, these standards and time limits are particularly onerous.

XIV. Administration

Section 1216.2-Complaints should also require the correct, complete name, address and telephone number of the person making the complaint so as to eliminate “nuisance” and “spite” complaints. Further, the complaint should be of a nature that there is a “nexus” between the complaining party and the condition, which is the subject of the complaint, for the reasons stated above.

Section 1217.2A-Enforcement Remedies should grant attorneys fees, costs and other expenses of litigation, including expert costs and lost time from work, if the landowner prevails. Since the Municipality is provided these rights, the property owner should also have such rights.

Section 1218-Liability – If the Zoning Officer mistakenly issues a permit and the property owner spends money in conformance and reliance upon the permit, the property owner should be entitled to either payment of the funds expended or to complete the action and use permitted. The property owner should be entitled to rely upon the permit or at least suffer no out-of-pocket expense.

In conclusion, while there are many other points which can no doubt be discussed concerning this proposal and the points advanced in these comments are only the thoughts and concerns of the writer, several concepts stand out as being of paramount importance:

1. The PZO is a wide sweeping dramatic change for the citizens and property owners of Susquehanna County.
2. The NTCCP states that the normal step for a County such as Susquehanna which is guided at the present time by a county ordinance regarding land use is to move first to a SALDO (see comments at VI above)
3. “The development of zoning ordinances typically follows the path of development” (see comments at VI and NTCCP)
4. Susquehanna County is in dire need of significant improvement to its economy for the benefit of all who reside in the County.

5. The PZO will significantly increase the cost to many existing businesses in the Susquehanna County when and if those businesses seek to expand or change their operations.
6. The PZO will cause significant concern for any business owner or person seeking to establish a business in Susquehanna County and may in fact make the County less attractive as a location.
7. The POZ will impact the property of every property owner in Susquehanna County in terms of the use and future value of their property by restricting its potential use.
8. While some regulation beyond what now exists may be appropriate, it should be developed and implemented in a measured, careful way. Proposals should be the subject of wide discussion among all stake holders with certain objectives in mind including:
 - a) The preservation of the environment
 - b) The protection of property rights and values
 - c) A “welcoming” proactive and positive environment (Government and regulators) to encourage the development of existing business and new business for the economic benefit of all concerned.
 - d) The development of greatly needed sources of energy, with an emphasis on renewable, but not to the exclusion or “burdening” of nonrenewable sources (our County sorely needs to free itself from the clutches of foreign oil and all of its negative impacts on America).
 - e) A “measured” responsible type of land and property use that will showcase the natural beauty of the region and preserve and protect for residents and visitors alike to appreciate the history and uniqueness of The Endless Mountains Region”, including its towns and institutions.

Respectfully Submitted By,



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LAND USE MANAGEMENT ORDINANCES
SUBDIVISION AND LAND DEVELOPMENT ORDINANCES AND ZONING ORDINANCES

Existing Land Use Management Ordinances

As authorized by the Pennsylvania Municipalities Planning Code, the subdivision and land development ordinance and the zoning ordinance are the principal land use management tools which are available to local municipalities in Pennsylvania. Zoning is the primary tool used by municipalities in Pennsylvania to direct different types of land uses to certain locations. Only two of the twelve NTC municipalities, Liberty Township and Silver Lake Township, have adopted a subdivision and land development ordinance. The other ten are under the jurisdiction of the Susquehanna County Subdivision and Land Development Ordinance. None of the NTC municipalities have a zoning ordinance, and Susquehanna County has no plans to adopt a zoning ordinance. When a local municipality adopts a zoning ordinance or subdivision and land development ordinance, the locally adopted ordinance supercedes the corresponding County ordinance.

Subdivision and Land Development Ordinance Compared to Zoning Ordinance

The subdivision and land development ordinance (SALDO) provides standards for dividing land and for residential and commercial development projects ensuring the provision of adequate community facilities such as roads, water supply and sewage disposal, utilities, proper highway access, and storm water control. The adoption of a SALDO by a local municipality is typically far less controversial than adopting a zoning ordinance. Regulating how land is divided and served by facilities is not perceived by the public as nearly as intrusive as zoning. In addition, most municipalities in the Commonwealth that have not adopted a SALDO are governed by a county ordinance. This is the case in Susquehanna County as well. By adopting a SALDO, the local municipality is simply shifting the responsibility from the County. Many municipalities embarking on land use management first adopt a SALDO, and then proceed to zoning.

The zoning ordinance regulates the use of land by dividing a community into districts to separate land use activities (residential, commercial, industrial, etc.); sets standards for lot size, setbacks and building height; includes specific standards for a broad range of land uses including for example: parking, signs, junkyards, mobile home parks, natural resource uses and multi-

family dwellings, and other general community development and environmental performance standards. The adoption of zoning ordinances typically follows the path of development. In other words, as development increases local support for zoning builds based on residents' sense of the need to protect the community.

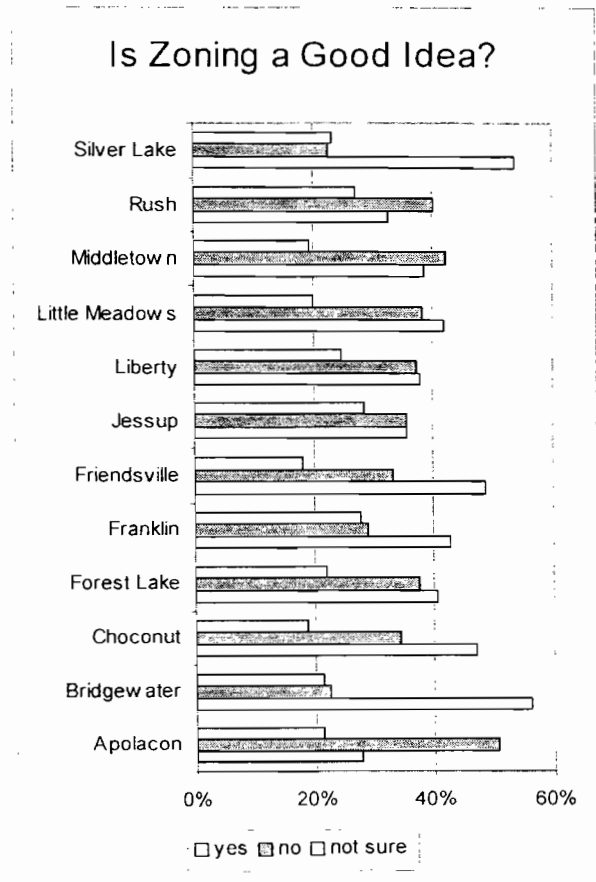


Figure - Zoning Question

Zoning - The Principal Land Use Management Tool

Based on this philosophy, this *Comprehensive Plan* recognizes that the adoption of a zoning ordinance is the most critical action required to implement the future land use plan and manage the growth and change which is inevitable for the Northern Tier Coalition. Continued planning by consulting, reviewing and updating this *Comprehensive Plan*, and amending the zoning ordinance to address changing conditions are associated on-going actions. The timing of the adoption of a zoning ordinance is the critical question.