

Creating Communities of Place

Office of State Planning

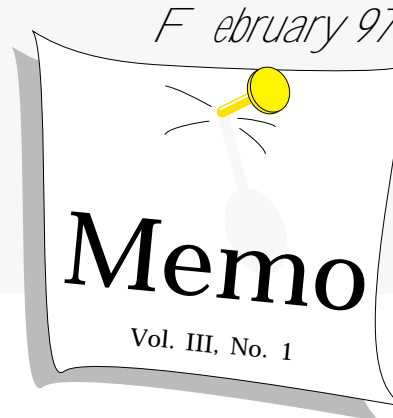
Department of the Treasury

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LAND USE GOVERNANCE REFORM: Recommendations from the State Planning Commission

This issue of the OSPlanning Memo features the Recommendations for Land Use Governance Reform, as formulated by the Land Use Governance Committee of the State Planning Commission and endorsed by the full Commission. The recommendations are presented in their entirety herein. We are pleased to have the opportunity to bring to the attention of our wide-ranging readership this significant set of administrative and legislative recommendations for implementing land use planning and regulation. The Land Use Governance Committee will continue to advance these recommendations into law and administrative procedures. We welcome your comments and suggestions on this report.

OSPlanning Memo is a monthly publication which highlights strategies, techniques and data of interest to the planning community in New Jersey. I welcome your comments on these memos and your suggestions for future topics.

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The State Planning Act (N.J.S.A. 52:18A-196 et seq.) requires the State Planning Commission (SPC) to:

Periodically review state and local government planning procedures and relationships and recommend to the Governor and the Legislature administrative or legislative action to promote a more efficient and effective planning process (N.J.S.A. 52:18A-199e).

In her address to the SPC in February 1996, Governor Whitman stated, "I know that you will work hard to create approaches that lead to a more efficient and pre-

dictable land use decision-making system, based on comprehensive and coordinated planning with opportunities for vigorous and informed citizen participation."

On Jan. 31, 1996, SPC Chairman Jay Cranmer appointed an ad hoc Land Use Governance Committee, charged with reviewing the state's planning and permitting practices and developing recommendations for possible changes. The Land Use Governance Committee's specific mandate included reviewing current statutes (e.g., Municipal Land Use Law, County Planning Enabling Act, State Planning Act, other related laws) and regulatory programs that contain (or should contain) a planning component

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Governor Christine Todd Whitman*

The Land Use Governance Committee was charged with reviewing the state's planning and permitting practices and developing recommendations for possible changes.

related to land use; bringing together interested parties and coalition building; recommending legislative or administrative changes; and assuming the responsibility for advancing planning



LUG Committee Chairman, Paul Maticera

enabling legislation at all levels of government and improving the implementation of land use governance.

forwarded to and formally adopted by the SPC on July 24, 1996. Using Office of State Planning (OSP) staff research and drawing on the oral and written testimony sub-

mitted by planners, engineers, environmentalists, public officials and others directly involved in the state's land use governance system, the Land Use Governance Committee identified key issues in the planning and development review process that should be addressed.

The Land Use Governance Committee then developed a series of recommendations addressing those key issues and reflecting discussions at the committee level, the background research by the OSP, and extensive public comment and input. While some of the recommendations require legislative action, many can be implemented administratively.

Organizations representing the planning, environmental, legal, engineering and development communities were invited to participate and address the committee, as were governmental agencies with a land use governance role.

Chaired by Paul Maticera, a member of the SPC and the mayor of North Brunswick Township, the committee held a series of public hearings on issues of land use governance. Organizations representing the planning, environmental, legal, engineering and development communities were invited to participate and address the committee, as were governmental agencies with a land use governance role.

The Land Use Governance Committee began by developing consensus on a set of fundamental principles that could be used to guide the review of and changes to the land use governance process. The 12 principles were

The land use governance process must facilitate the attainment of the goals and purposes of relevant statutes, and of local, county and state agency plans and the State Development and Redevelopment Plan.

The committee recommendations were unanimously adopted by the SPC on Dec. 4, 1996.



Paul Maticera, Herb Simmens, Jay Cranmer, Brian Clymer

PRINCIPLES TO GUIDE THE REVIEW OF AND CHANGES TO THE LAND USE GOVERNANCE PROCESS

The land use governance process should:

1. Lead to outcomes that reflect public goals

First and foremost, the land use governance process must facilitate the attainment of the goals and purposes of relevant statutes, and of local, county and state agency plans and the State Development and Redevelopment Plan.

2. Provide more meaningful public participation appropriate to the scope of the issues under review in the planning and regulatory process

Planning should encourage extensive and intensive public participation by a broad cross-section of those affected. Public involvement in the regulatory review process, while encouraged, should be focused on the issues directly at hand.

3. Ensure that public officials and citizens are well educated in planning and regulatory processes

An informed and enlightened public will exert a more positive impact on the land use governance process. Likewise, public officials need to know the trends and issues, as well as the opportunities that are available to them, in planning and regulatory review.

4. Not be disproportionately influenced by fiscal consideration

Land use decisions should be based on a community's adopted goals and plans, and not principally on a quest for projected rates.

5. Ensure that plans and regulations are compatible between communities and among local, regional and state agencies

Compatible plans and regulations will reduce conflicts and costs, increase predictability and facilitate the achievement of goals.

6. Result in a more timely and predictable process

An open land use governance process, with clearly defined time parameters and clear criteria for decision-making, should lead to predictable results.

7. Ensure that planning precedes and guides regulatory decisions

Comprehensive and coordinated planning, with adequate public participation, should guide decisions in the development review process, where the applicant is simply responding to the requirements set by those planning efforts.

8. Eliminate duplication of planning and regulatory activities

Compatible processes should lead to the elimination of redundant steps, while at the same time, making sure

that the statutory intent establishing those activities is achieved.

9. Result in coordinated land use and infrastructure decisions

Harmony between land use and infrastructure decisions leads to achieving adopted goals and providing needed, efficient services. Lack of coordination within, between and among jurisdictions results in inadequate infrastructure to support land use decisions.

10. Provide for a regional perspective

Existing planning and regulatory agencies should consider regional issues to the greatest extent possible or assign their authority to an existing or temporary entity. Additional levels of planning and review are not contemplated.

11. Provide enhanced conflict resolution mechanisms

Alternatives to litigation should be developed to resolve contested issues between jurisdictions, and between applicants and decision-makers.

12. Assure adequate ongoing funding for planning and regulation

Adequate ongoing funding will improve the quality of plans, reduce the burden on the regulatory system and result in long-term infrastructure savings and greater resource protection.

RECOMMENDATIONS FOR LAND USE GOVERNANCE REFORM

The recommendations fall into six general categories:

1. *State agency planning and permit coordination*
2. *Intergovernmental plan consistency*
3. *Conflict resolution measures*
4. *Local planning improvements*
5. *Local regulatory improvements*
6. *Funding for planning*

These recommendations were developed as a package, with each category reinforcing and strengthening the other categories. For example, without effective alternative dispute resolution mechanisms (Category 3) and adequate funding and education (Category 6), the recommendations regarding intergovernmental consistency (Category 2) and local planning improvements (Category 4) would be less likely to have significant benefit. Similarly, without state agency planning and permit coordination (Category 1), local regulatory improvements (Category 5) would be less feasible and effective.

These recommendations should be considered within the context of the existing statutory authority of the Hackensack Meadowlands Development Commission and of the Pinelands Commission.

1. State Agency Planning and Permit Coordination

Recommendations

A. Create an entity or empower an existing entity within state government to review and provide recommendations on all current and proposed rules related to land use initiated by all instrumentalities and

agencies of state government, to determine whether the aforementioned rules are:

- ◆ consistent with the enabling legislation;
- ◆ consistent with state agency functional plans;
- ◆ consistent with the State Plan; and
- ◆ consistent with efforts to minimize, if not eliminate, regulatory overlap and redundant procedures.

The review would also determine whether the administration of those regulations could be delegated to lower levels of government.

This entity — which could be established by legislation or by executive order of the Governor — would conduct its activities in an open public forum; would be authorized to consider the compilation of all state agency-related land use regulations under a single cover and in a user-friendly format; and would seek to ensure compatibility between plans and regulations and provide recommendations in those cases where regulations lack existing or adequate plans.

B. Require agencies to prepare and regularly update comprehensive functional plans using common data and forecasts, and ensure that functional plans are consistent and coordinated with each other and with the State Plan.

C. While it is recognized that government efficiencies should continue to be realized throughout government, agencies, in particular, should be required to coordinate

their plans and regulations throughout the state and to facilitate the permit review process in locations and areas consistent with the State Plan.

Rationale

A. There is currently no entity in state government with this responsibility. The Secretary of State's Cabinet Committee on Permit Coordination, with the advice of the Citizens Committee on Permit Coordination and staffed by the Office of Business Ombudsman, reviews and monitors Cabinet initiatives on regulations through the Strategy To Advance Regulatory Reform (STARR). The SPC and the OSP have reviewed some plans and state agency regulations for consistency with the State Plan. Having an adequately staffed entity with clear expertise and authority would raise the profile of these reviews. Only in the context of a holistic review of all land use-related regulations can a determination be made regarding which regulations can be eliminated, merged, expanded, consolidated, delegated or otherwise modified to meet the various public goals set forth in statutes and plans.

B. Agencies prepare functional plans on different timetables, often using very different formats, demographic projections and public participation procedures. Some agencies lack functional plans altogether, and rely solely on regulations. Developing and synchronizing state agency plans, to the degree feasible and consistent with federal and state legislative or administrative mandates, would increase the efficiency and effectiveness of state investments and programs.

C. Coordinated agency permit review procedures would reinforce adopted state objectives and support implementation of the State Plan.

2. Intergovernmental Plan Consistency

Recommendations

A. Amend the Municipal Land Use Law (MLUL) and the County Planning Enabling Act to give greater status to municipalities and counties affected by master plan or rezoning actions contemplated by neighboring jurisdictions. This amendment would confer a degree of legal and procedural status to neighboring municipalities and counties when:

- ◆ re-examinations of municipal and county master plans are undertaken;
- ◆ new master plans or master plan elements are prepared;
- ◆ rezoning or significant use and bulk variances are contemplated.

B. Public participation would be instituted throughout.

C. Among the other options to be considered are:

- ◆ requiring informational meetings with adjacent communities and counties early in the planning process;
- ◆ requiring communities and counties to solicit from their neighbors written reports commenting on the proposed actions within specified time periods;
- ◆ requiring municipalities or counties to provide a written response justifying a proposed course of action if such action were con-

- trary to the official position of any of the other parties;
- ◆ requiring local governing bodies to gain a supermajority for ordinance adoption if there are unresolved objections by other parties.

D. The SPC would have the status to comment on the adoption of county master plans or master plan elements.

Rationale

These recommendations steer a middle ground between the current system, which only requires a description of the relationship of a municipal plan to local and county plans and to the State Plan, and the more binding formal review process for plans and developments of regional impact advocated in several recent proposals.

3. Conflict Resolution Measures

Recommendation

Create an alternative dispute resolution mechanism. Alternative dispute resolution could apply to disputes between governments as well as between applicants and agencies at all levels of government. Public participation would be instituted.

Rationale

The intent of this recommendation is to create an alternative mechanism for dispute resolution similar to the State Tax Court or Construction Board of Appeals. Given the volume of land use cases reaching New Jersey courts (estimated at 300 or more per year) and the high number that go on to the appellate levels (estimated at 100 each year), this mechanism could reduce delays and the cost of appeals.

Only in the context of a holistic review of all land use-related regulations can a determination be made regarding which regulations can be eliminated, merged, expanded, consolidated, delegated or otherwise modified to meet the various public goals set forth in statutes and plans.

Developing and synchronizing state agency plans, to the degree feasible and consistent with federal and state legislative or administrative mandates, would increase the efficiency and effectiveness of state investments and programs.

Land use decisions should be based on a community's adopted goals and plans, and not principally on a quest for projected ratables.

Lack of coordination within, between and among jurisdictions results in inadequate infrastructure to support land use decisions.

4. Local Planning Improvements

Recommendations for improving the local planning process are focused on:

- ◆ revising the MLUL to strengthen provisions for comprehensive planning and coordination within municipalities and between municipalities and other governmental agencies;
- ◆ strengthening the role of the county as a regional planning and coordinating body; and
- ◆ providing new techniques to improve municipal and county planning.

Recommendations

A. Amend the MLUL to require greater consistency between the various types of municipal actions that affect land use.

- ◆ Capital improvement programs, capital budgets, zoning and land development ordinances and municipal operating programs would all be examined for consistency with the goals and elements of the local master plan, county and state plans; and a declaration of consistency would be required when these instruments are updated.
- ◆ All optional master plan elements outlined in the MLUL would be required to be prepared or re-examined every six years unless a municipality adopts a declaration stating the rationale for not undertaking a particular master plan element.
- ◆ Municipal master plans would be required to be sent to the governing body for review and comment prior to adoption by the planning board. Municipal governing bodies may choose to offi-

cially adopt the master plan.

- ◆ Plans developed by other municipal entities such as school boards or utility authorities would be required to contain a statement indicating their consistency with the municipal master plan or to provide a justification for lack of consistency.
- ◆ Regional plans and investment programs such as water quality management plans and transportation improvement programs would be integrated more closely into the municipal master planning and local review process.
- ◆ Documentation of the efforts made to involve the public in the preparation and review of master plans would be required.

B. Amend the County Planning Enabling Act to:

- ◆ Require the preparation and timely revision of comprehensive county master plans with specified elements. These master plans would be developed through an extensive public process with local municipalities and neighboring municipalities and counties;
- ◆ Require county capital investment programs consistent with the county master plan and subject to review and comment by municipalities and the state;
- ◆ Encourage counties to develop regional clearinghouses to coordinate the dissemination of planning information, the resolution of intergovernmental disputes and the tracking and coordination of permits for major projects;
- ◆ Grant the SPC explicit authority to comment on the preparation and revision of county master plans.

C. Encourage and support municipalities and counties in the prepara-

tion and adoption of capital improvement programs consistent with the policies and planning horizons of the State Plan. The SPC and the Department of Community Affairs would provide a model capital improvement program as well as a methodology for local infrastructure needs assessment.

Rationale

These proposals would strengthen the comprehensiveness of local planning, enhance regional planning without creating costly new mandates or additional levels of government, and improve local government response in programming capital improvements.

5. Local Regulatory Improvements

Recommendations

Five recommendations are presented to improve the predictability, efficiency and equity of local development reviews.

A. Amend the MLUL to redefine the role of conceptual, preliminary and final development review. This would create a clearer demarcation between the planning issues to be discussed and resolved at early stages in the review process and the more detailed engineering and technical issues to be resolved at later stages in the process.

B. Incorporate stronger vesting rights commensurate with the MLUL approval process to protect development applications from rezoning or other changes in standards.

C. Institutionalize a system of comprehensive development review con-

ferences. Ad hoc review teams that include local, county and state representatives would meet with applicants to discuss their application. Procedures, timetables, standards, information requirements and a critical path would be agreed to by all public and private parties to the review process and memorialized in "development review agreements." Any significant deviation from an adopted development review agreement would require a public justification by those entities involved. Concurrent reviews of development applications by all levels of government and the delegation of permit review to a single entity (where technical expertise and legal authority exist) would also be encouraged.

D. Require more extensive notice to community residents and others of proposed rezonings, master plan amendments and pending development applications through procedures such as the physical posting of the affected properties, the automatic disclosure to potential purchasers or tenants of the existing or pending zoning status of a property and its immediate vicinity and its relationship to pending development applications. Make sure that all notices are provided in lay terms.

E. Assist municipalities with measures to coordinate their plans and regulations with each other and with other levels of government, and to facilitate the development review process in general, and particularly in areas consistent with the State Plan.

Rationale

These recommendations would lead to fewer delays in the review process, greater emphasis on addressing planning issues early in the application process, more informed public partici-

pation, and enhanced implementation of state and regional plans without taking authority away from local governments or creating new bureaucracies.

6. Funding for Planning

Funding sources to provide additional resources for local, county and state planning are essential. To ensure the effectiveness of each of the proceeding recommendations two categories of funding are recommended.

Recommendations

A. Identify funding necessary to ensure planning training and education.

B. Allocate planning grants to state agencies and local governments a small portion of the money spent by state and regional agencies on infrastructure grants or loans to local governments. This would ensure the preparation of adequate functional or comprehensive plans that would serve as a basis for improving the quality of the projects undertaken with state or regional infrastructure moneys. Such areas as agricultural preservation, historic preservation, open space, transportation, wastewater and water supply facilities, housing, neighborhood preservation and economic development could be supported in this way.

Rationale

The quality of our built and natural environment depends upon the skill, dedication and training of local officials, and the quality of the plans they produce. The state has a major interest in enhancing the effectiveness of its investments in local infrastructure. Establishing ongoing funding programs for education and planning would help ensure that these objec-

The volume of land use cases reaching New Jersey courts is estimated at 300 or more per year and the high number that go on to the appellate levels is estimated at 100 each year.

These proposals would strengthen the comprehensiveness of local planning, enhance regional planning without creating costly new mandates or additional levels of government, and improve local government response in programming capital improvements.

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