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Twenty Years of State Planning: Where Are We Going?

With New Jersey at a crossroads, whoever gets elected in November will be taking the State Plan more seriously

By Thomas Jay Hall

When the New Jersey Supreme Court announced the decision we call *Mount Laurel II*, it used a document known as the State Development Guide Plan (State Plan), which had been developed by the Division of State and Regional Planning in the Department of Community Affairs in the 1970s. *Southern Burlington County NAACP v. Twp of Mount Laurel*, 92 N.J. 158 (1983). The Court needed an authoritative document to describe which municipalities were “developing” and therefore would have an affordable housing obligation, and that Plan was the only document which came close to meeting the need. Unfortunately, Governor Thomas Kean had abolished the Division of State and Regional Planning, and there was no way to provide an updated State Plan.

Mount Laurel II created two years

of litigation, as builders sued municipalities for their failure to meet the as yet undetermined affordable housing obligation. In 1985, the Legislature responded with two pieces of legislation: the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) and the State Planning Act (SPA) (N.J.S.A. 52:18A-196 et seq.).

The SPA created a 17-member State Planning Commission (SPC), composed of unpaid citizen members and representatives of seven state departments (Agriculture, Community Affairs, Commerce, Environmental Protection, Law and Public Safety, Transportation and Treasury), and charged it with creating policies to guide the state’s growth and development. Since 1985, the SPC has promulgated several versions of the State Development and Redevelopment Plan (SDRP). The current SDRP was adopted March 1, 2001; the SPA requires that the plan be updated every three years and the SPC redrafted and adopted a preliminary SDRP in April 2004. That SDRP has been provided to the County Planning Boards and the municipalities and is in the early stages of a process called “cross-acceptance,” a means by which the SDRP is compared with local and county plans and adjustments are

made. The idea now is that there will be a new, fully accepted SDRP by the end of 2006. What will this document do? What has been the history to date?

The SDRP was conceived of as an advisory document. The Legislature recognized that New Jersey is a home-rule state, and the thinking was the state should first get all of its agencies to agree on where to invest their resources to avoid conflict. For example, collective state agencies would agree on how New Jersey Department of Transportation (NJDOT) highway money would best effectuate growth, and New Jersey Department of Environmental Protection (NJDEP) would agree to approve and invest in new sewer infrastructure to support that growth. It was thought that a State Plan, based on consensus and mutual discussion, could guide public and private investment so that areas the SPC thought should be revitalized would get funded and areas the SPC did not think should be developed would not get state money, and without state funding, private investment would not go there. Similarly, in areas where growth was supposed to go, state funding would encourage private investment.

The Plan has a research and development component, so that indicators of growth and prosperity are available

Hall is chair of land use and zoning at Sills Cummis Epstein and Gross of Newark.

and entities such as the Council on Affordable Housing have a means of understanding where communities were developing (and would have a more substantial affordable housing component) and where communities were not growing (and could have a lessened affordable housing obligation). The Plan is based on the presumption that New Jersey will have at least a million more people in 2020 than in 2000; that there will be new jobs, new housing, new transportation, new sewage facilities, new everything necessary to cope with New Jersey's existing and expanding population. The State Plan envisions that these new people will be living at higher densities than at present, in cleaner, more attractive urban areas and in compact, attractive communities which actively seek to have new housing, new jobs, new schools and new residents.

The SPA does not mandate that all state agencies conform their regulations to the State Plan, but suggests that the agencies review their regulations, and if necessary, make changes in those regulations to implement the Plan. The SPA does not invalidate local governmental planning and zoning contrary to the State Plan; it creates an opportunity, through cross acceptance, for the various local plans to be compared with the State Plan, and where obvious conflicts are present, the local governments and the state planners supposedly will come to a consensus on what should change. The idea is that the State Plan would be rational, based on good information widely shared, and incorporating excellent design principles; everyone, therefore, would presumably put aside their parochial interests, drop their agency-oriented missions, and embrace the concepts of broadly shared consensus over good, comprehensive planning.

As one might imagine, the invitation to come and reason together has not yet been successful in getting all state agencies to conform regulations to the Plan, although efforts have been made in that direction. County and local governments, similarly, have been slow to modify their plans, partic-

ularly in the "encouraging higher density development" portion. The 2001 SDRP, in fact, has not proved to be a successful guide for private development, a fact that deserves more explanation.

There does appear to be broad consensus in favor of the five major classifications of land uses adopted by the SPC: Planning Area One includes the metropolitan areas, worthy of full state support for redevelopment and revitalization; Planning Area Two includes the suburban areas which require state support to keep traffic and sewage flowing; Planning Area Three is a "fringe" area covering the areas which are not otherwise classified; Planning Area Four is rural/agricultural; and Planning Area Five is environmentally challenged. In concept, the State Plan would direct growth to Planning Area One and to State Plan designated centers; or, in the new State Plan, in communities which have gone through a Plan Endorsement process. But there are no teeth in the SPA to make the State Plan effective, so those areas which are shown in the State Plan as having rural and environmentally challenged areas are free to downzone their municipalities, with the endorsement of the courts. For example, in *Kirby v. Twp Committee of Bedminster*, 341 N.J. Super. 276 (App. Div. 2000), the court noted with approval that the Master Plan for Bedminster was consistent with the State Plan designation, and the State Plan gave credence to the township's substantial downzoning of plaintiff's property.

A review of the pattern of state and local activity during the past several years reveals an "anti-growth" bias at work. The passage of the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq., has taken nearly 400,000 acres of land out of development immediately, with more to come shortly (see Thomas Hall, "The Highlands: Off Limits To Growth," 176 N.J.L.J. 1166). The strenuous opposition of local governments to additional development because of fears of additional school children, traffic and loss of open space is well known and documented (See

Thomas Hall, "The Death of Comprehensive Planning," 166 N.J.L.J. 45). So there appears to be substantial support for the designation within the SDRP of substantial areas of the state which are "off-limits" to further state infrastructure investment, and those designations are well accepted by local governments. The State Planning process appears to work to prevent growth and development from occurring in rural and environmentally challenged areas.

For the State Plan to accommodate the million or so new residents the Plan indicates are coming, there would have to be some areas of New Jersey slated for future development. Those areas — either in Planning Area One, the metropolitan area, or in Planning Area Two, the suburban areas — would presumably be classified as higher density to provide those growth opportunities. But in the wonderful world of land use planning, there are two passionately disliked outcomes. One is "sprawl," defined as more cars, more traffic, more people and less open space; the other is "density," which appears to be, in the minds of suburban officials, synonymous with "sprawl." Never mind that the State Plan talks about excellence of design and the virtues of compact and denser living arrangements — that part of the state planning message appears not to have a receptive audience. Even in New Jersey's older cities, where "revitalization" has been a mantra for years, both local community activists and environmental spokespeople are questioning why parks, schools and levels of open space enjoyed by suburbanites should be denied to residents of metropolitan areas.

Over the 20-year life of the SPC, there have been various calls to either strengthen the State Planning process so as to make it mandatory, or to abolish it as being a bureaucratic nightmare. From the standpoint of the development community, State Planning has been a one-way street: more land has been happily taken off the "available for development" list; and very little has been put on the "develop now" list. From the standpoint of the environ-

mentalists, the State Plan has been far too liberal with growth inducements, and in 2003, Gov. James McGreevey's State of the State speech precipitated an effort by the NJDEP to supplant the SDRP with a more aggressive regulatory effort, titled the "Big Red Map" (Thomas Hall, "There's a New Map in Town," 171 N.J.L.J. 975).

In many ways, New Jersey is at a

major choice point. The new SDRP is out for review at the county and local level. State agencies are more budgetarily challenged than ever before. New concerns over homeland security, gas prices so high as to challenge conventional wisdom concerning automobile use and levels of anger concerning local property taxes, may create a climate whereby the State

Plan will be taken more seriously by whoever gets elected in November. Having a process to resolve the costly disputes between the public agencies and the private sector and between the state and local governmental perspectives would be more than a good thing — it would make excellent economic and political sense. ■