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ALBANY LAW ENVIRONMENTAL OUTLOOK JOURNAL

ARTICLES

SORTING OUT NEW YORK'S SMART GROWTH INITIATIVES: MORE PROPOSALS AND MORE RECOMMENDATIONS

*Patricia E. Salkin**

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I. INTRODUCTION

"The responsibility to preserve our natural resources for future generations must become one of our highest priorities."¹

Smart Growth is described as "a framework for communities to make informed decisions about how and where they grow."² One key aspect of smart growth is the ability of all levels of government to work together cooperatively and regionally to address sustainable land development practices.³ Smart growth encompasses many things including modernization of state planning and zoning enabling acts; better comprehensive planning practices; development tied to adequate public infrastructure; compact development; neotraditional neighborhood design (mixed-use development); and infrastructure investments made only in furtherance of the local comprehensive plan and goals.⁴ While all of these smart growth planning and policy strategies are important, New York will not truly achieve smart growth absent a stronger recognition of, and movement towards, a regional approach to planning and zoning decision-making.⁵ This can, and must, be accomplished through a "bottom-up" system of state sponsored incentives and programs to entice voluntary local participation.⁶

New York has been a laboratory for smart growth for land use lawyers at least since the landmark Court of Appeals ruling in

¹ PAUL SIMON, AGENDA 21: THE EARTH SUMMIT STRATEGY TO SAVE OUR PLANET, at x (Daniel Sitarz ed., 1994).

² SMART GROWTH NETWORK, GETTING TO SMART GROWTH: 100 POLICIES FOR IMPLEMENTATION, at i (Jan. 29, 2002), available at <http://www.smartgrowth.org/pdf/gettosg.pdf> (last visited Nov. 10, 2002). See also AM. PLANNING ASS'N, POLICY GUIDE ON SMART GROWTH 1-2 (Apr. 15, 2002), available at <http://www.planning.org/policyguides/pdf/smartgrowth.pdf> (last visited Oct. 31, 2002) (defining smart growth as the use of comprehensive planning to guide, design, develop, revitalize, and build communities for all that have a unique sense of community and place; preserve and enhance valuable natural and cultural resources; equitably distribute the costs and benefits of development; expand the range of transportation, employment and housing choices in a fiscally responsible manner; value long-range, regional considerations of sustainability over short term incremental geographically isolated actions; and promotes public health and healthy communities).

³ See AM. PLANNING ASS'N, *supra* note 2, at 2.

⁴ See *id.* at 3-8.

⁵ See *id.* at 3.

⁶ See *id.* at 8-9.

*Golden v. Town of Ramapo*⁷ in 1972. New York courts have long implored the State Legislature to consider better models of regionalism to promote sustainable land development that protects the environment⁸ and provides more affordable housing.⁹ Since the 1970s, across the country, state agencies and legislatures have conducted studies, offered technical assistance, and attempted to deal with regionalism in land use planning and development.¹⁰ Beginning in 1989 with the ongoing work of the Legislative Commission on Rural Resources and its Land Use Advisory Committee, New York's planning and zoning enabling acts have been modernized ahead of the national Growing Smart

⁷ 285 N.E.2d 291 (N.Y. 1972). In *Golden*, the court noted that "current zoning enabling legislation is burdened by the largely antiquated notion which deigns that the regulation of land use and development is uniquely a function of local government," while simultaneously "questions of broader public interest have commonly been ignored." *Id.* at 299 (citations omitted). The court also offered this conclusion: "State-wide or regional control of planning would insure that interests broader than that of the municipality underlie various land use policies." *Id.* at 300. For a detailed discussion on the impact of this case on the smart growth movement, see ROBERT H. FREILICH, FROM SPRAWL TO SMART GROWTH: SUCCESSFUL LEGAL, PLANNING, AND ENVIRONMENTAL SYSTEMS 39-145 (1999).

⁸ See, e.g., *Long Island Pine Barrens Soc'y, Inc. v. Town of Brookhaven*, 606 N.E.2d 1373, 1380 (N.Y. 1992) (expressing that the need to protect the Long Island Pine Barrens and the sole source of drinking water aquifer in the region demonstrates the necessity "for centralized planning by a single regional agency" and reiterated the dissenting opinion of Justice Thomas Sullivan, which stated that "there currently exists no legislatively prescribed mechanism for these agencies to pool their information or share their respective decision-making prerogatives"). The decision can be read to suggest that the Legislature should address the fragmented system to best address environmental and public health concerns. See *id.*

⁹ See, e.g., *Berenson v. Town of New Castle*, 341 N.E.2d 236, 242 (N.Y. 1977) (noting that "[a]lthough we are aware of the traditional view that zoning acts only upon the property lying within the zoning board's territorial limits, it must be recognized that zoning often has a substantial impact beyond the boundaries of the municipality").

¹⁰ See generally Patricia E. Salkin, *Regional Planning in New York State: A State Rich in National Models, Yet Weak in Overall Statewide Planning Coordination*, 13 PACE L. REV. 505, 507-08 (1993). The recently created Task Force on Local Government Reform again offers the potential to re-examine the need for regional planning in the State. See Exec. Order No. 121-A, 24 N.Y. St. Reg. 97 (July 31, 2002). Among its responsibilities, the Task Force is charged with "propos[ing] recommendations to make government more efficient at the village, town, city and county levels" and is required to consider the following in making its recommendation: "regional planning; transportation and energy needs; economic development; environmental and open space protection; historic preservation; farmland protection; education; affordable housing; and the public health and safety." *Id.*

curve.¹¹ In the last decade, members of the New York State Legislature have introduced significant smart growth proposals to foster more inter-jurisdictional cooperation in land use planning and development.¹² In step with governors in other states, Governor Pataki, in January 2000, issued an executive order creating a Quality Communities Interagency Task Force.¹³ In addition, an increasing number of state legislators are proposing bills in the name of smart growth, and annual conferences on smart growth have been held in Albany at the Empire State Plaza.¹⁴

This article focuses on smart growth issues and opportunities in New York with a specific focus on regionalism. There are many other important aspects of reform that are necessary to provide a wide array of tools and techniques to achieve smart growth across the state, but without a more regional, and less parochial approach, smart growth will fail to accomplish a sustainable environment with enhanced quality of life for New Yorkers.

Part I of this article addresses the work of the Legislative Commission on Rural Resources to modernize state land use

¹¹ See New York State Legis. Comm'n on Rural Res., *Land Use Planning and Regulation in New York State Municipalities: A Survey* (1999); New York State Legis. Comm'n on Rural Res. and State Land Use Advisory Comm., *Keep New York Growing: Balancing Working Lands, Conservation and Development* (1998), available at <http://www.nysdocs.nysed.gov/scandocs1> (last visited Nov. 18, 2002). See generally James A. Coon, Sheldon Damsky & Dianne L. Rosen, *The Land Use Recodification Project*, 13 PACE L. REV. 559, 561, 565 (1993) (mentioning the function, as well as the historical developments that led to the creation, of the Legislative Commission on Rural Resources); Patricia E. Salkin, *The Politics of Land Use Reform in New York: Challenges and Opportunities*, 73 ST. JOHN'S L. REV. 1041, 1059 (1999) (discussing the impact the Legislative Commission on Rural Resources has had on zoning and planning).

¹² For a review of the most significant legislative proposals, see discussion *infra* Part III.

¹³ See Exec. Order No. 102, N.Y. COMP. CODES R. & REGS. tit. 9, § 5.102 (2001).

¹⁴ See New York State Dep't of State, *Quality Communities: Quality Coasts Conference - QC2002*, available at <http://www.dos.state.ny.us/cstl/qc2002.html> (last visited Oct. 22, 2002) (illustrating that for the last two years the New York State Department of State has organized a conference called QC2 (Quality Coasts and Quality Communities), which was designed to highlight smart growth principles across the State). See also Audubon New York, *Smart Growth*, available at <http://ny.audubon.org/smart.html> (last visited Nov. 16, 2002) (indicating that the purpose of this movement, for example by conducting conferences such as the "Smart Growth Conference 2001," is to "empower local governments to better manage their futures").

statutes.¹⁵ Part II examines Governor Pataki's Quality Communities Executive Order and the resulting Task Force Report.¹⁶ Part III critiques more than a half dozen smart growth legislative proposals that have been introduced in the New York State Senate and Assembly.¹⁷ A discussion of the recently published American Planning Association Growing Smart Legislative Guidebook is offered as a contrast to the approaches being discussed in the State. Part IV concludes with recommendations to preserve and protect New York's natural resources and to encourage smart growth for economic and social development.¹⁸

II. NEW YORK LEADS THE WAY IN MODERNIZATION OF LAND USE ENABLING ACTS

Although the effort was not labeled "smart growth," New York has been a leading state in the area of land use planning and zoning enabling act reform. Beginning in 1989 with the work of the Legislative Commission on Rural Resources and its appointed Land Use Advisory Committee, the Legislature has enacted more than thirty statutory changes to modernize state statutes.¹⁹ While some of these legislative initiatives were designed simply to clarify existing statutes,²⁰ and others were

¹⁵ See *infra* notes 19–28 and accompanying text.

¹⁶ See *infra* notes 29–45 and accompanying text.

¹⁷ See *infra* notes 46–167 and accompanying text. The New York State Legislature operates on a two year cycle and legislation introduced in the first year of the term is deemed to be introduced in the second year of the term. See RULES OF THE ASSEMBLY, available at <http://www.assembly.state.ny.us> (last visited Jan. 8, 2003). Therefore, the proposals discussed in the article will need to be reintroduced in 2003.

¹⁸ See *infra* note 168 and accompanying text.

¹⁹ See generally New York State Legis. Comm'n on Rural Res., *supra* note 11; Coon, *supra* note 11, at 559; Salkin, *supra* note 11, at 1056–1058.

²⁰ See, e.g., Villages - Adoption of First Zoning Local Law, ch. 514, 1990 N.Y. Laws 1162 (providing the procedure whereby a village adopts its initial zoning law); Towns - Adoption of First Zoning Ordinance, ch. 515, 1990 N.Y. Laws 1163 (describing the procedures for a town to pass its first zoning ordinance). For other Chapters described as initiatives to clarify provisions in various statutes, see Zoning Regulations - Adoption of Amendments - Procedure and Voting, ch. 657, 1991 N.Y. Laws 1318–21 (providing for a process for adopting and amending zoning ordinances and regulations); Towns and Villages - Approval of Site Plans and Special Use Permits, ch. 693, 1992 N.Y. Laws 1807–14 (clarifying the approval procedures for site plan review and special use permits); Towns and Villages - Subdivision Plat Review and Approval, ch. 727, 1992 N.Y. Laws 1960–65 (setting up a procedure for subdivision review and approval); Planning Boards - Site Plan Approval - Special Use Permits, ch. 211, 1993 N.Y. Laws

enacted to codify or modify existing caselaw,²¹ there were a number of new laws enacted that more closely mimic the principles espoused by the smart growth movement.²²

In addition to the ongoing work of the Commission, beginning around 1991, an ad hoc group on New York State Planning Policy began to meet in Albany for the purpose of discussing policy goals.²³ In the beginning, the informally organized group²⁴ met every couple of months, and in 1992, the Regional Plan Association began to more formally organize the group into an "Ad Hoc Committee" that worked on developing a policy paper on

601-08 (dealing with creation of a planning board, the site plan review process, and the approval of special use permits); "Subdivision Plat Review - Site Plan Review, ch. 423, 1995 N.Y. Laws 1324-33 (laying the procedural groundwork for various types of municipalities to review subdivisions and approve plats); General City, Town - Municipal Officials - Decision Filing, ch. 476, 1999 N.Y. Laws 1079-80 (amending the procedure for the filing of decisions made by local officials charged with administering zoning). *See also* New York State Legis. Comm'n on Rural Res., *supra* note 11, at Appendix B.

²¹ *See* Zoning Boards of Appeal - City, Town, Village, ch. 208, 1993 N.Y. Laws 590-97 (changing the General City and Town Laws in relation to a zoning Board of Appeal and its procedures).

²² For some examples of "smart growth" type of legislative initiatives, *see* Town, Villages, and Cities - Cooperative Action for Comprehensive Planning and Land Use Regulation, ch. 724, 1992 N.Y. Laws 1952-57 (providing a statutory framework for joint planning and land use regulatory activities, including authorization for the use of an overlay district when special community resources transcend local boundaries); Comprehensive Plans - City, Town, Village, ch. 209, 1993 N.Y. Laws 597-600 (providing for the first time in state statute guidance on the definition of a "comprehensive plan"); Geographic Information Systems - Temporary State Coordinating Council, ch. 564, 1994 N.Y. Laws 1326 (establishing an interagency geographic information systems coordinating council). *See also* Towns and Villages - Subdivision Plat Review and Approval, ch. 727, 1992 N.Y. Laws 1962 (requiring final plats that deviate substantially from the approved preliminary plats further review under the State Environmental Quality Review Act); County Planning Agencies - Planning Boards - Subdivision Plat Review - Site Plan Review - Special Use Permits - Revised Provisions, ch. 486, 1994 N.Y. Laws 1179 (requiring that certain land use actions be coordinated with review under the State Environmental Quality Review Act).

²³ The various meeting agendas are on file with the author.

²⁴ The expected attendance list is on file with the author. "Membership" was very informal, as anyone interested in discussing land use planning was welcome to attend. For example, the expected attendance at the December 1991 meeting included staff from the Legislature and the Governor's Office, representatives of four state agencies, staff from city and county planning departments, the Business Council, the NYS Builders Association, the N.Y. Land Institute, the Regional Plan Association, Scenic Hudson, the Center for Economic Growth, the Catskill Center, the Open Space Institute, the American Farmland Trust, and the Government Law Center of Albany Law School.

a coordinated development process for New York State.²⁵ Eventually named "New York Futures," the Regional Plan Association attempted unsuccessfully to organize an operation similar in scope to the active "1000 Friends" organizations effective in promoting smart growth reform in other states.²⁶ In 1991-1992, Assemblyman Maurice Hinchey (D) who is now a member of the House of Representatives, introduced a bill designed to provide for alternative local land use management and development regulation and to create a state planning council.²⁷ Among other things, the legislation set forth the following statewide land use management and development goals and guidelines:

Encourage orderly growth and development in appropriate areas of each community, while protecting the State's rural character and cultural heritage; [d]evelop an efficient system of public facilities and services to accommodate desired growth

²⁵ See REG'L PLANNING ASS'N, MOVING TOWARDS A COORDINATED DEVELOPMENT PROCESS FOR NEW YORK STATE: WHERE WE ARE AND WHAT'S NEXT (Apr. 13, 1992) (unpublished draft on file with the author). The statement began:

New York's antiquated land use regulatory system has become a target for reform. Dating from the simpler days of the 1920s, it delegates powerful land use authority to local units of government. Layers of environmental regulations have been piled on top of this overburdened zoning and subdivision system, which itself has been subjected to periodic piecemeal revisions. The result is a cumbersome system where multiple state and local bodies regulate various aspects of every development project, often without coordination, and almost invariably without regard for the cumulative impacts of development on communities, regions, resource systems, or the State's economy. *Id.*

²⁶ See Salkin, *supra* note 11, at 1063 (indicating that "1000 Friends" are "non-profit organizations" typically created and funded through the private and non-profit sectors for the purpose of promoting sound statewide and regional land use planning decision-making").

²⁷ See Memorandum in Support of N.Y. Assemb. B. 10547.

Uncoordinated use of land without comprehensive evaluation of land use impact has resulted in substantial environmental and economic costs and has endangered the health, safety, order, prosperity, and welfare of the people of the state. The people . . . have greatly increased their environmental, economic and social expectations regarding the physical development process Local governments function under planning enabling laws that have not been adapted to new conditions. In order to maintain and increase the momentum towards enhancement of environmental, economic and social values and avoidance of unnecessary economic costs by effective land use management, the option of the alternative of the adaptation of new land use planning regulations and procedures to meet current conditions should now be undertaken. The goal is encouraging a rational allocation of the state and local resources and creation of an administrative process which assures good planning, effective review and maximum participation in the development process.

Id.

patterns and promote economic development; [a]ctively encourage economic development and improve opportunities for employment [and encourage within the context of authorizing local government, population patterns which will complement the natural environment, helping to preserve and protect such natural resources as potable water, wetlands, aquifers, floodplains, estuaries, river corridors, forest and agricultural lands; [e]ncourage and promote affordable housing, decent housing opportunities for all New York citizens; [p]reserve and protect the state's cultural, historic and archaeological resources, including its traditional development patterns, recognizing their cultural and economic significance, efficiency and contributions to a sense of place; and [p]romote wise use and protection of open space resources, including improved access to waterbodies, both for recreational enjoyment and for improvement of everyday local environments.²⁸

III. GUBERNATORIAL LEADERSHIP: TAKING CONTROL OF THE SMART GROWTH DEBATE

Leadership is the most critical ingredient to guarantee success of any effort to modernize state planning and zoning regulations, and programs that impact the ability of municipalities to implement sensible local plans. Between 1992 and 2001, twenty-four smart growth executive orders were issued by governors across the country, with seventeen governors issuing nineteen executive orders on planning and smart growth within the past two years.²⁹ Nationally, the support has been bi-partisan. For example, of the twenty-four smart growth executive orders issued over the last decade, they were evenly divided between Republican and Democratic governors; and in 2001, of the twenty-seven governors who made specific smart growth proposals, fifteen were Republicans, ten were Democrats and two were Independents.³⁰

A. *Quality Communities: Executive Leadership*

On January 21, 2000, Governor George Pataki joined the growing number of executive branch leaders convinced of the need for reforms as he issued an executive order establishing the Quality Communities Interagency Task Force.³¹ The Governor

²⁸ See *id.*

²⁹ See AM. PLANNING ASS'N, PLANNING FOR SMART GROWTH: 2002 STATE OF THE STATES 6 (2002).

³⁰ See *id.*

³¹ See Exec. Order No. 102, N.Y. COMP. CODES R. & REGS. tit. 9, § 5.102

expressly acknowledged the notion of local control or home rule with respect to local development, and recognized the need for greater intergovernmental coordination. He stated, "New York's strong tradition of local home rule necessitates a dynamic partnership between local and state government"³² and reiterated that "New York State and its local governments require creative strategies to combine growth and environmental protection in order to enhance economic vitality and quality of life."³³ In creating the Quality Communities Interagency Task Force, the Governor acknowledged that, "certain state programs, statutes and regulations-such as New York's outmoded building code, which impedes adaptive reuse of urban, historic and mixed-use structures - may inhibit revitalization and encourage sprawl; and State and municipal regulatory activities may need reform to ensure predictability, consistency, and coordinated program delivery between agencies and among levels of government."³⁴

Chaired by the Lieutenant Governor,³⁵ the Task Force was assigned the following responsibilities 1) inventory key local, State, and federal programs that affect municipal community

(2001).

³² *Id.* See also Press Release, Governor Pataki Issues Order Promoting "Quality Communities": Lt. Gov. Donohue to Chair Task Force to Study Growth, Recommend Strategies (Jan. 21, 2000), available at http://www.state.ny.us/governor/press/year00/jan21_2_00.htm (last visited Nov. 27, 2002) (indicating "[t]he Quality Communities Task Force will serve as an important link between state and local governments in determining how communities can foster effective growth and development that is mindful of environmental needs"). [hereinafter Press Release, *Quality Communities*].

³³ Exec. Order No. 102, N.Y. COMP. CODES R. & REGS. tit. 9, § 5.102.

³⁴ *Id.* See also Press Release, Governor: State Adopts New Fire Prevention and Building Codes (Mar. 6, 2002), available at http://www.state.ny.us/governor/press/year02/march6_1_02.htm (last visited Nov. 27, 2002) (noting that after the Executive Order was issued, and unrelated to the work of the Quality Communities Task Force, the New York State Building Code was in fact replaced with a more modern Code). [hereinafter Press Release, *Fire Prevention*].

³⁵ Exec. Order No. 102, N.Y. COMP. CODES R. & REGS. tit. 9, § 5.102 (indicating that in addition to Lieutenant Governor, the Secretary of State was designated as the Task Force Vice-Chair and membership on the Task Force included: the Commissioners of Agriculture and Markets, Economic Development, Environmental Conservation, Health, Transportation, the Office of Parks, Recreation and Historic Preservation, the Division of Housing and Community Renewal, and the Director of the Division of the Budget). The Executive Order also created an Advisory Committee to assist the Task Force, and directed that membership on the Committee (appointed by the Chair) include local government officials and representatives of environmental, business, agriculture, and other related interests. *Id.*

development, preservation, and revitalization goals; 2) make recommendations for coordinating, reorganizing, and improving consistency in the delivery of programs to meet these goals; 3) conduct regionally based forums to collect data through public input; 4) make recommendations to strengthen the capacity of local governments to develop and implement intermunicipal planning and community development strategies; and 5) make recommendations for appropriate changes in State regulations and statutes that would enhance community choice in land development, preservation, and rehabilitation.³⁶ The Task Force was also directed to consider a number of factors in arriving at their recommendation including: balanced growth and economic development, federally required planning processes, creating a range of housing options, open space, farmland and natural resources preservation, integration of transportation and local land use planning; sustainable land use decisions, preservation of distinctive communities and citizen participation.³⁷

The Governor was careful to assure local governments that his approach to smart growth through quality communities would be bottom-up rather than top-down, explaining that "[t]he Quality Communities Program is designed to provide incentives and enhance opportunities for innovative planning and community development techniques" and that "every municipality will be equipped to exercise community choice in land development, preservation and rehabilitation decisions."³⁸ A broad coalition organized as members of a working group promoting smart growth³⁹ issued a press release praising the Governor for issuing

³⁶ *Id.*

³⁷ *Id.*

³⁸ Press Release, *Quality Communities*, *supra* note 32.

³⁹ See generally Audubon New York, *National Audubon Society Applauds Governor Pataki for Quality Communities Executive Order* (Jan. 21, 2000), available at <http://ny.audubon.org> (last visited Jan. 8, 2003) (indicating the National Audubon Society of New York State facilitated for several years monthly meetings of a working group representing diverse stakeholder interests of organizations interested in securing legislative and executive branch attention to smart growth. Voluntary membership/participation included: New York State Conference of Mayors, Association of Towns of the State of New York, the New York Planning Federation, the New York State Builders Association, New York Chapters of the American Planning Association, the Regional Plan Association, the Preservation League of New York State, the New York League of Conservation Voters, the Land Trust Alliance New York Program, American Farmland Trust, Sustainable Long Island, Group for the South Fork of Long Island, and three academic institutions (Albany Law School through the Government Law Center, Pace

the Executive Order.⁴⁰

The Task Force released its report entitled, *State and Local Governments Partnering for a Better New York*, in February 2001.⁴¹ Describing the effort as collaborative, the Lt. Governor delivered the keynote address at the third annual New York Smart Growth Conference and offered, "[t]he goal as well as the vision of the task force itself was to provide the localities with the tools they need to create those quality communities by using existing resources."⁴² The Report contains forty-one recommendations organized into eight categories: 1) state leadership, interagency collaboration and assistance to local governments; 2) using technology to distribute information, create development tools, and eliminate barriers to quality development; 3) revitalizing our downtowns; 4) maintaining New York's leadership in open space conservation; 5) renewing New York agriculture; 6) transportation infrastructure: the search for quality in the built environment; 7) quality for all: strengthening the place we call home; and 8) economic growth: sustaining a community.⁴³ The first recommendation states that "New York should adopt a set of uniform Quality Communities Principles and the Governor should direct all executive agencies and personnel to utilize them in the implementation of State policies and programs and the allocation and administration of State resources related to the concept of building and sustaining quality communities."⁴⁴

Law School through the Land Use Law Center, and the University at Buffalo through the Institute for Local Governance and Regional Growth). See Press Release, *Broad Coalition Welcomes Quality Communities Initiative Executive Order From Governor Pataki* (Jan. 21, 2000) [hereinafter Press Release, *Broad Coalition*]. See also Salkin, *supra* note 11, at 1062 n.98 (noting that this group is neither sanctioned nor appointed by any governmental entity).

⁴⁰ See Audubon New York, *supra* note 39 (indicating that the press release was coordinated to be released with the issuance of the Executive Order, and contains quotes from many of the active participants in the Working Group).

⁴¹ See QUALITY COMMUNITIES INTERAGENCY TASK FORCE, STATE AND LOCAL GOVERNMENTS PARTNERING FOR A BETTER NEW YORK: A MESSAGE FROM THE QUALITY COMMUNITIES INTERAGENCY WORKING GROUP (Winter 2002), available at <http://www.state.ny.us/governor/ltgov/pdfs> (last visited Nov. 27, 2002).

⁴² Audubon New York, *Smart Growth Conference 2001: Proceedings for the Third Annual Smart Growth Conference*, Apr. 23, 2001, at 8 [hereinafter *Conference*].

⁴³ QUALITY COMMUNITY INTERAGENCY TASK FORCE, STATE AND LOCAL GOVERNMENTS PARTNERING FOR A BETTER NEW YORK (Jan. 2001), available at <http://www.state.ny.us/ltgovdoc/cover.html> (last visited Nov. 27, 2002).

⁴⁴ *Id.* at 15. See also *id.* at 16-17 (articulating and providing policy suggestions for the following seven Quality Community Principles: 1) revitalize

In the Spring of 2001, Governor Pataki established an "expanded interagency working group of 25 agencies" to "provide the structure to adopt the Quality Community Principles within state agencies and to collaborate among agency personnel and local governments."⁴⁵

IV. LEGISLATIVE POSTURING TO PASS SMART GROWTH LEGISLATION: WILL ANYTHING ADVANCE OUT OF THE COMMITTEE?

Since 1998, members of the New York State Legislature have been introducing bills designed to foster smart growth strategies at the state, regional, and local levels. The early pioneers of the smart growth legislation,⁴⁶ Senator Mary Lou Rath (R) and

downtowns and city centers; 2) promote agriculture and farmland protection; 3) conserve open space and other critical environmental resources; 4) enhance transportation choices and encourage more livable neighborhoods; 5) encourage sustainable development; 6) strengthen intergovernmental partnerships; and 7) help create, implement and sustain the vision of a quality community).

⁴⁵ QUALITY COMMUNITIES INTERAGENCY TASK FORCE, *supra* note 41, at 1.

⁴⁶ See generally S. 7256, 1997 Leg., 221st Sess. (N.Y. 1997) (introducing legislation in April 1998 that called for the creation of a Land Use Task Force). The Task Force would have been charged with the following:

(A) [E]valuate the effectiveness of current state, regional and local planning and land use laws; (B) survey state and regional agencies, local governments, and the private sector to determine the extent and types of planning techniques, and land use tools being used and their attitudes toward the current system, and identify desired new tools; (C) survey developers, builders, contractors, planners, engineers, surveyors, environmentalists, attorneys, citizen groups, and local government agencies about problems associated with the current system and seek their advice on solutions to those problems; (D) review model legislation and studies on planning and land use systems and collect information on states that have undertaken reform efforts and have working systems; (E) identify public information, training, and technical assistance needs by state and regional agencies and local governments related to planning and land use; (F) identify incentives or techniques for sharing the benefits of economic growth and eliminating or reducing fiscal competition among local governments; (G) propose initiatives for the development of geographic information systems related to planning and land use at all levels of government; (H) propose innovative and cooperative planning and land use approaches that will accommodate and guide growth and development, ensure the planning and construction of adequate supporting services and infrastructure . . . ; (I) examine and evaluate methods of coordinating activities of the legislature and state agencies relating to matters of growth and development . . . ; (J) evaluate and recommend approaches that will balance the advancement of the public interest with the protection of private property rights and ensure certainty in the planning and land use system streamlined and efficient administrative and judicial review of development proposals; (K) and stimulate statewide discussion on problems related to planning and land use change [.]

Assemblyman Sam Hoyt (D),⁴⁷ held a press conference to announce their Smart Growth and Economic Competitiveness Act⁴⁸ before smart growth was on the radar screen in the Executive Branch. In March of 1999, a public hearing was held on the proposed Act, where testimony was taken by invitation.⁴⁹ Beginning in 1999, annual smart growth conferences have been held at the Empire State Plaza, attracting several hundred participants eager to see New York State address the challenges presented by sprawl and by the desire for economic growth balanced with quality of life.⁵⁰ The challenge now facing the State Legislature is to get enough members in both houses to agree on one or more of the proposed bills so local governments can begin to see some state action where they do more than simply study the issue and where they actually start to adopt and implement smart growth plans at the local and regional levels.

Early efforts to promote smart growth in the legislature included legislation to create a smart growth task force⁵¹ and to

Id. at § 160-BBB(1)(A)-(K).

⁴⁷ See Press Release, News From the New York State Legislature, *Rath / Hoyt Secure Funding for Smart Growth Pilot Projects* (Aug. 4, 1999) (on file with the author) [hereinafter News from the NYS Legislature].

⁴⁸ See generally S. 1367, 1999 Leg., 222nd Sess. (N.Y. 1999) (creating legislation from S. 7253, 1997 Leg., 221st Sess. (N.Y. 1997); Assemb. 10038, 1997 Leg., 221st Sess. (N.Y. 1997); S. 7756, 1997 Leg., 221st Sess. (N.Y. 1997); Assemb. 10810, 1997 Leg., 221st Sess. (N.Y. 1997)).

⁴⁹ Senator Rath and Assemblyman Hoyt asked those testifying to address the following questions:

What incentives can the state create to promote, encourage, and support local efforts to better coordinate and develop more sensible growth strategies?; 2) How would building code reform, pre-permitting of development sites, brownfield redevelopment, and farmland preservation grants assist in the redevelopment of abandoned or underutilized areas, and thus contribute to the smart growth strategy?; 3) What existing state government actions and policies pertaining to development can be better utilized to enhance economic competitiveness in New York State?; and 4) How would a smart growth strategy contribute to the reduction of taxes and government spending?

See Notice of Public Hearing, *Smart Growth Economic Competitiveness Act*, Mar. 1, 1999 (on file with the author).

⁵⁰ See Audubon New York, *Smart Growth Conference Proceedings* (March 3-4, 1999), available at <http://www.NY.audubon.org/smart/proceedings99html> (last visited Nov. 2, 2002); Audubon New York, *Smart Growth Conference Proceedings*, available at <http://www.NY.audubon.org/smart/2000/proceedings00html> (last visited Nov. 2, 2002); See also Conference *supra* note 42.

⁵¹ See Assemb. 8829, 1999 Leg., 222nd Sess. § 472(1) (N.Y. 1999) (creating an interagency smart growth task force to essentially deal with many of the issues that were eventually taken up by the Quality Communities Task Force

articulate smart growth principles; bills to create and implement a smart growth planning demonstration program (including the creation of a smart growth planning council and a smart growth planning fund),⁵² and the creation of smart growth compacts.⁵³ In August 1999, Senator Rath and Assemblyman Hoyt announced that funding had been secured for "Smart Growth Pilot Projects," that would be administered by the Department of State.⁵⁴ In 2000, the Quality Communities Task Force announced the awarding of twenty-eight grants that included ninety-nine communities and totaled just under \$1.5 million for the Quality Communities Demonstration Program.⁵⁵

During the 2002 legislative session, almost a dozen smart growth bills were pending representing divergent approaches to addressing smart growth. What follows is a description of the major proposals in no particular order. None of these proposals were adopted.

A. Smart Growth for the New Century Act

The Smart Growth for the New Century Act was introduced in the Senate by Kenneth P. LaValle (R)⁵⁶ and in the Assembly by

appointed by Governor Pataki via executive order).

⁵² See generally S. 5893, 1999 Leg., 222nd Sess. (N.Y. 1999); Assemb. 9080, 1999 Leg., 222nd Sess. (N.Y. 1999) (implementing a smart growth planning demonstration program and planning council as well as amending the law in regards to the planning fund).

⁵³ See Assemb. 10038, 1997 Leg., 221st Sess. § 10(1) (N.Y. 1997). The bill required the governor to:

... submit to the legislature within eighteen months ... a smart growth compact between the various public and private parties involved in the shaping of patterns of development in the state that will include comprehensive policies and actions necessary and appropriate to encourage the use of existing development infrastructure rather than fostering sprawl, preserve agricultural land and other open space resources and enhance urban neighborhoods, the states' traditional cities, villages, first generation suburbs and small towns.

Id. See also S. 7253, 1997 Leg., 221st Sess. § 10(1) (N.Y. 1997). The legislation would have also required the definition of state priority funding areas, a collaborative process for local governments to develop and update maps and plans, and the identification of state and local projects that have an impact upon development patterns. *Id.* § 10(1)(a)-(c).

⁵⁴ See *News from the NYS Legislature*, *supra* note 47 (announcing that \$800,000 had been secured in the 1999-2000 State Budget to implement smart growth pilot projects).

⁵⁵ See Press Release, *Lt. Governor Donohue Announces Funding to Localities from Quality Community Programs* (Oct. 20, 2000), available at http://www.state.ny.us/governor/ltgov/press99/oct20_00.htm (last visited Nov. 27, 2002).

⁵⁶ See S. 5575, 2001 Leg., 225th Sess. (N.Y. 2001) (amending the General

Thomas P. DiNapoli (D).⁵⁷ Both members represent parts of Long Island. The bill, originally introduced in 1999,⁵⁸ articulates the following eight smart growth principles to guide the development of smart growth plans that address 1) public investment;⁵⁹ 2) economic development;⁶⁰ 3) conservation;⁶¹ 4) coordination;⁶² 5) community design;⁶³ 6) transportation;⁶⁴ 7) consistency;⁶⁵ and 8) community collaboration.⁶⁶

The legislation authorizes the development of smart growth

Municipal Law and the State Finance Law in regards to the act).

⁵⁷ See Assemb. 8800, 2001 Leg., 225th Sess. § 1 (N.Y. 2001) (setting “out a process to achieve an improved economy, a healthier environment and equity for the people of New York”).

⁵⁸ See Assemb. 8386, 1999 Leg., 222nd Sess. (N.Y. 1999).

⁵⁹ See Assemb. 8800, 2001 Leg., 225th Sess. § 2002(a) (defining the “public investment” principle as “[t]o plan so as to account for and minimize the true social, economic and environmental costs of new development, including infrastructure costs such as transportation, sewers and wastewater treatment, water, schools, recreation, and loss of open space and agricultural land”).

⁶⁰ See *id.* § 2002(b) (defining “economic development” as “[t]o encourage economic development in areas where transportation, water and sewer infrastructure are readily available or economically practical”).

⁶¹ See *id.* § 2002(c) (defining “conservation” as “[t]o protect, preserve, and enhance the State’s resources, including agricultural land, forests, surface water and groundwater, recreation and open space, scenic areas, and significant historic and archeological sites”).

⁶² See *id.* § 2002(d) (identifying “coordination” as “[t]o promote coordination of state and local government decisions and cooperation among communities to work towards the most efficient, planned and cost-effective delivery of government services by, among other means, facilitating cooperative agreements among adjacent communities and to coordinate planning to ensure compatibility of one community’s development with development of neighboring communities”).

⁶³ See *id.* § 2002(e). “Community design” is defined as the following: To strengthen communities through development and redevelopment strategies, that include integration of all income and age groups, mixed land use and compact development, traditional neighborhood development, planned unit development, open space districts, downtown revitalization, brownfield redevelopment, enhanced beauty in public spaces, and diverse and affordable housing in close proximity to places of employment, recreation and commercial development.

Id.

⁶⁴ See *id.* § 2002(f) (indicating the “transportation” principle would “provide transportation choices, including increasing public transit, in order to reduce automobile dependency, traffic congestion and automobile pollution”).

⁶⁵ See Assemb. 8800, 2001 Leg., 225th Sess. § 2002(g) (defining “consistency” as “[t]o ensure predictability in building and land use codes”).

⁶⁶ See *id.* § 2002(h) (identifying “community collaboration” to mean “[t]o provide for and encourage local governments to develop, through a collaborative community-based effort, smart growth plans that include long-term land use and permit predictability and coordination, efficient decision-making and plan implementation”).

plans by any village, town, city, county or smart growth compact council by action of the local legislative body appointing an advisory committee⁶⁷ to convene a series of consensus building meetings for the purpose of developing “a non-technical smart growth vision statement.”⁶⁸ Once the vision statement, detailing the community plans for the local implementation of the smart growth principles is agreed to by three-fourths of the Committee, the plan is forwarded to the local legislative body for preparation of the draft plan or amendment. The legislative body is then charged with conducting public hearing(s) on notice and adopting the plan by local law, ordinance, or resolution.⁶⁹ Smart growth plans are also required to undergo environmental review under the State Environmental Quality Review Act, and “may be designed to also serve as, or be accompanied by, a generic environmental impact statement”⁷⁰ In essence, the process for adoption of the smart growth plan follows closely the procedures set forth in the enabling acts for the adoption of local comprehensive land use plans (including a statement that reminds localities to coordinate the plans with the agricultural districts law).⁷¹

Duly adopted smart growth plans then may be submitted by any one or more units of local government to a state smart growth review board for certification.⁷² The plans must implement the statutory smart growth principles; present a long range plan to cover at least twenty years that details growth and

⁶⁷ See S. 5575, 2001 Leg., 225th Sess. § 2003(C)(1) (N.Y. 2001) (directing that the membership of the advisory committee shall consist of not more than twenty-one people representing a broad cross-section of community interest groups and must “include representatives from civic groups, environmental groups, economic development interests, business interests, including but not limited to retail and industrial business interests, real estate interests, including but not limited to, builders and developers, recreational interests, agricultural interests, and preservation and cultural interests.” A local government representative (public official) must also be appointed to the committee to represent each participating local government).

⁶⁸ *Id.*

⁶⁹ See *id.* § 2003(C)(3)–(7).

⁷⁰ *Id.* § 2003(D).

⁷¹ See N.Y. TOWN LAW § 272-a (McKinney 2002); N.Y. VILLAGE LAW § 7-722 (McKinney 2002); N.Y. GEN. CITY LAW § 28-a (McKinney 2002).

⁷² See S. 5575, 2001 Leg., 225th Sess. §§ 2004(A)–(B), 2005(A)(1)–(2) (indicating the members, or their designees of the state smart growth review board: the Secretary of State (Chairperson), the Commissioner of the Department of Environmental Conservation, the Commissioner of the Department of Transportation, the Speaker of the Assembly, and the Temporary President of the Senate).

conservation goals, as well as the infrastructure and capital and service requirements needed to meet these goals; contain maps that delineate all of the designated areas in the plan (e.g., areas for growth, conservation, redevelopment, open space, etc.); demonstrate how there will be compliance with the plan; and demonstrate the collaborative community based process that was utilized to develop the plan and explain how such a process will be used to implement the plan.⁷³ Once the plan is received, the Board has ninety days to review the plan for certification.⁷⁴ Within two years of certification, the municipality must provide documentation to the Board that its land use regulations follow the smart growth plan.⁷⁵

To encourage the submission of plans for certification, the legislation sets forth a list of incentives available to local governments with certified smart growth plans. These include indemnification "from the State in the event of legal actions or proceedings brought against any local government or its agents, servants, officials or employees that may result from the implementation of a certified smart growth plan,"⁷⁶ and eligibility for low-interest loans from the State that would be made available through the creation of a new "New York State Smart Growth Revolving Loan Fund."⁷⁷ Furthermore, state agencies would be required to conduct and support its activities, to the maximum extent they are consistent with the articulated smart growth principles and with the certified local plans.⁷⁸

This legislation was moved through the Assembly's Local Government and Ways and Means Committees twice, as well as through the Senate's Local Government and Rules Committees, but never got voted out of committee for consideration by either full chamber. This is somewhat of a defeat in the Assembly as the sponsor chaired the Local Government Committee and served

⁷³ See *id.* § 2003(A)(1)–(5).

⁷⁴ See *id.* § 2006(A)–(B).

⁷⁵ See *id.* § 2006(C).

⁷⁶ See *id.* § 2007(B)(1). See also *id.* (explaining further the circumstances under which such indemnification might not be available).

⁷⁷ *Id.* § 2007(B)(2). See also *id.* §§ 4, 97-yyy(1), (4)(B) (amending the state finance law for the purpose of creating such a fund under the joint custody of the State Comptroller and the Secretary of State, whereby loans of no less than \$5,000 would be awarded at interest rates not to exceed 2½ %).

⁷⁸ See S. 5575, 2001 Leg., 225th Sess. § 2007(A)(1) (providing that agencies would be charged with reporting to the Legislature regarding all state controlled and administered funds that may be used as incentives to encourage participation in smart growth plans).

on the Ways and Means Committee.

B. New York State Smart Growth Compact Act

During the 2001 Legislative Session, the Smart Growth Compact Act was introduced by Assemblyman Brodsky, then Chair of the Assembly Committee on the Environment, to “facilitate coordinated urban and regional planning and public investments in a cooperative and consensual manner consistent with existing home rule powers and allocation of jurisdictions and to foster smart growth”⁷⁹ The compact approach to coordinated planning and development is not a new idea in New York,⁸⁰ and the use of the compact approach specifically to facilitate statewide smart growth was introduced as early as 1998.⁸¹

The 2001-2002 legislation would have created locally based smart growth compact councils covering at least two municipalities.⁸² Councils would be given responsibility for, among other things, preparation, adoption, and enforcement of a smart growth compact plan; appointment of an executive director; contracting for any needed professional services; providing scientific and technical assistance; making grants to municipalities in the compact area for revisions to local comprehensive plans and relevant land use regulations; establishing and maintaining an education and outreach program related to the Council’s work; and convening

⁷⁹ Assemb. 1710, 2001 Leg., 225th Sess. § 1 (N.Y. 2001).

⁸⁰ See generally Patricia E. Salkin & Paul Bray, *Compact Planning Offers a Fresh Approach for Regional Planning and Smart Growth: A New York Model*, 30 REAL ESTATE L.J. 121 (2001) (discussing the use of regional planning compacts in the Hudson Valley and in the Long Island Pine Barrens, and reviewing some still not adopted legislation to enable voluntary compacts anywhere in the State. See also Assemb. 2970, 1995 Leg., 218th Sess. § 763 (N.Y. 1995); Assemb. 130, 1999 Leg., 222nd Sess. § 763 (N.Y. 1999).

⁸¹ See Assemb. 10038, 1997 Leg., 221st Sess. § 10 (N.Y. 1997); S. 7253, 1997 Leg., 221st Sess. § 10 (N.Y. 1997) (directing the Governor to prepare and submit to the legislature a “smart growth compact” between the various public and private parties involved in shaping the patterns of development within the State, including comprehensive policies and actions to encourage the use of existing infrastructure rather than fostering sprawl; preserve agricultural and open space lands; and enhance urban neighborhoods, traditional cities, and villages and first generation suburbs and small towns). The compact also would have required a designation or definition of state priority funding areas and collaborative processes. See *id.*

⁸² See Assemb. 1710, 2001 Leg., 225th Sess. § 2051–52.

conferences, seminars and meetings.⁸³ In addition, each Council voluntarily created under the Act would be required to appoint an advisory committee to actively advise and assist in the preparation and implementation of a compact plan.⁸⁴ The legislation further provides a laundry list of considerations that should go into the development of a compact plan,⁸⁵ which is to be completed in draft within fifteen months.⁸⁶ Within six months of publication of the draft plan, the Council is required to hold public information meetings and at least one public hearing within each of the participating municipalities in the compact area for the purpose of receiving and reviewing comments on the draft compact plan and on an accompanying generic environmental impact statement.⁸⁷ Within three months of the last public hearing, the Council must forward a final proposed compact plan to the legislative body of each participating municipality for ratification and adoption, representing the municipality's commitment to implementing the provisions of the plan.⁸⁸ Finally, within one year of certification of the plan by each locality, they are required to adopt it and make necessary modifications to their local land use plans and laws to conform with the new compact plan.⁸⁹

The Council, in addition to the initial effort for the development of the compact plan, would also be given authority to review and approve all proposed development outside of areas designated for growth or redevelopment as well as development of regional significance that would have a significant effect on the

⁸³ *Id.* § 2052(5)(A)–(L).

⁸⁴ *Id.* § 2052(6).

⁸⁵ *See id.* § 2053(3)(A)–(H). The legislation provides that available planning studies and reports should be considered relating to:

(A) Population and population distribution; (B) amount, type, intensity, and general location of commerce, industry, and agricultural production . . . ; (D) general location and extent of existing or currently planned transportation, utility, and community facilities; (E) amount, general location, and interrelationship of different categories of types of land use including existing zoning maps; (F) areas, sites, or structures of historical, archeological, architectural, or scenic significance; (G) natural resources; and (H) any other matter found to be important to environmental protection and future development.

Id.

⁸⁶ *Id.* § 2053(5).

⁸⁷ *Id.*

⁸⁸ Assemb. 1710, 2001 Leg., 225th Sess. § 2053(5).

⁸⁹ *Id.* § 2054(1).

compact plan.⁹⁰

The Smart Growth Compact Act provides incentives for the state to participate in the compact.⁹¹ The consistency requirements offered for voluntary participation in the compact are state agency consistency in the approval of activities affecting local governments with a compact plan,⁹² including “[p]riority funding for consolidated drinking water infrastructure projects . . . consolidated clean water and water pollution control projects . . . [and] priority status for open space land acquisition and easements” by state agencies; energy assistance; and priority funding for agricultural protection.⁹³ Incentives for participation include priority funding whenever possible to municipalities that have an approved smart growth plan.⁹⁴ In addition, the legislation offers indemnification “from the state in the event of any legal actions or proceedings brought against any local government or its agents, servants, officials, or employees that may result from the implementation of . . . [the plan].”⁹⁵ Furthermore, local governments and councils with certified smart growth plans, or a certified compact plan would be eligible for low-interest loans from a state smart growth revolving loan fund that would be created.⁹⁶

C. Quality Communities Act of 2001

At the request of the Governor, Senator Rath introduced the Quality Communities Act of 2001 on June 15, 2001.⁹⁷ This proposal would amend the General Municipal Law to establish

⁹⁰ *Id.* § 2054(2) (providing for a petition process whereby compact members could request Council jurisdiction or review).

⁹¹ *See id.* § 2055.

⁹² *Id.* § 2055(1)(A) (requiring that state government “conduct or support its activities in a manner which is, to the maximum extent practicable, consistent with smart growth principles . . . and consistent with any certified smart growth compact plan”).

⁹³ *Id.* at § 2055(2)(A)–(F). *See also id.* (funding would be restricted to projects consistent with the adopted smart growth plan, grants for the purchase of homes in older urban neighborhoods and homes within close proximity to work (subject to available funds) and within the limits of any appropriations, grants of up to ten percent to any local government agency for the design or other activities to facilitate construction projects provided for in a certified smart growth compact plan).

⁹⁴ *See* Assemb. 1710, 2001 Leg., 225th Sess. § 2055(1)(B).

⁹⁵ *Id.* § 2056(1).

⁹⁶ *See id.* § 2056(2).

⁹⁷ S. 5560, 2001 Leg., 224th Sess. (N.Y. 2001) (amended May 3, 2002).

regional economic development areas⁹⁸ whereby state agencies shall cooperate with municipalities, industrial development agencies, and county and regional planning agencies in the development of regional economic development plans.⁹⁹ A bit beyond the traditional confines of smart growth, the legislation then proposes a more controversial "Local Government Mergers Law" within the General Municipal Law that would allow adjoining units of local government to "merge their corporate structures through local initiative."¹⁰⁰ The proposal sets forth the procedure for the creation of a joint study commission on merger should there be interest in pursuing mergers by adjoining local governments.¹⁰¹ Further, it articulates in detail the items that must be included in a plan of merger, as well as the procedure for merger and the resulting continuation of services.¹⁰²

The Act would also create a new article in the General Municipal Law to allow for the establishment of municipal open space districts¹⁰³ for the purpose of preserving open space lands.¹⁰⁴ The Act is intended to promote preservation through a reduction of real property assessments for conserving open space within the established districts and it provides detailed procedures for the study and implementation of the open space plan.¹⁰⁵ The proposal also contains a penalty provision for the conversion of protected lands that were granted a reduced assessment, similar to the provisions in the Agriculture & Markets Law that provide penalties for premature removal of lands from agricultural districts.¹⁰⁶

⁹⁸ *Id.* §§ 3, 239-cc. *See also* § 239-cc(3) (defining "Regional economic development areas" as "any area targeted for regional economic growth as a result of an inter-municipal planning effort by two or more municipalities").

⁹⁹ *Id.* § 239-cc(1).

¹⁰⁰ *Id.* § 751. *See id.* (proposing this section to be one of the new additions to Article 17-A).

¹⁰¹ *Id.* §§ 751, 753.

¹⁰² *Id.* §§ 751, 753, 754.

¹⁰³ S. 5560, 2001 Leg., 224th Sess. § 239-bb (a proposal to Article 12-I of general municipal law).

¹⁰⁴ *Id.* § 239-bb(1). *See also id.* (defining open space lands in the Act as "urban, suburban and rural lands which are not intensively developed for residential, commercial, industrial or institutional use, including agricultural and forest land, undeveloped shorelines, scenic lands, parks and preserves, wetlands and water bodies").

¹⁰⁵ *Id.* § 239-bb(4)-(5).

¹⁰⁶ *Id.* § 239-bb(6). *See also* N.Y. AGRIC. & MKTS. LAW § 305(1)(d) (McKinney 1971).

D. Establishment of a State Smart Growth Office

In March 2001, Assemblyman Hoyt (D) re-introduced legislation to establish a Smart Growth Local Assistance Office within the Department of State.¹⁰⁷ Designed to provide local governments with needed technical, scientific and financial assistance, the legislation directs that the office assist municipalities with community collaborative development (including the development of vision statements and the revision of existing comprehensive plans or other plans); revisions of local plans and land use regulations where such regulations are designed to implement a certified smart growth plan or smart growth compact; and education regarding a host of innovative and flexible development, redevelopment, and conservation strategies.¹⁰⁸ In addition, the proposal provides that the new smart growth office would be charged with administering the smart growth revolving loan fund that was proposed by the Smart Growth for the New Century Act.¹⁰⁹

E. Quality Communities Planning and Development Grant Fund

In June 2001, Senator Rath introduced legislation entitled, "Quality Communities Planning," which is similar to S. 7105 (Quality Communities) except this bill adds a new section to amend the State Finance Law for the purpose of establishing a quality communities development grant fund.¹¹⁰ This bill differs from the funding approach in A. 8800/S. 5575 which sets up a revolving loan fund, as Senator Rath proposes that the fund

¹⁰⁷ See *id.* Assemb. 6807, 2001 Leg., 224th Sess. (N.Y. 2001) (amended June 10, 2002). This legislation was introduced in 1999 as Assemb. 8387, 1999 Leg., 222nd Sess. (N.Y. 1999) and referred to the Rules Committee, whereas in 2001 the bill was referred to the Local Government Committee.

¹⁰⁸ *Id.* §§ 1, 160-aaa. See also § 160-aaa(1)(C) (enumerating the tools and techniques that would be the subject of education to include transfer of development rights; incentive zoning; cluster development; real property tax incentives; conservation easements; planned unit developments; mixed use zoning; traditional neighborhood development, and open space districts).

¹⁰⁹ *Id.* §§ 3, 160-aaa(3).

¹¹⁰ S. 5527, 2001 Leg., 224th Sess. (N.Y. 2001). Due to the lateness of introduction, the bill was referred to the Rules Committee in 2001, and when the new session started in January 2002, the bill was discharged and committed to the Senate Finance Committee. The first part of the legislation is identical to S. 7105 and a new sec. 3 would authorize a new sec. 97-xxx of the State Finance Law.

provide grants to local governments.¹¹¹ Otherwise, the general purposes seem consistent with the Assembly bill, but the criteria for the types of projects that would be eligible for loans under the Assembly bill is more restrictive than the discretion given to the Secretary under the proposed grant program in the Senate Bill.¹¹²

F. Community Based Smart Growth

Created from two pieces of legislation introduced in 1998,¹¹³ A. 423 introduced by Assemblyman Hoyt,¹¹⁴ would amend the Executive Law to create local smart growth commissions and a state task force on smart growth.¹¹⁵ The public purpose of the bill states that “[l]ocal governments need to refocus on soundly planned growth, so called smart growth, through a collaborative community based effort to arrive at a workable plan for growth generated by the community and which responds to the needs of the community.”¹¹⁶ The public purpose section further articulates that programs, including infill development, the redevelopment of existing but obsolete or dilapidated development areas for both housing and community purposes, should be encouraged, and recognizes that, “[t]he inclusion of regional approaches through intermunicipal agreements is necessary to achieve a more efficient and improved quality of life when natural resource areas or infrastructure systems cross local government boundary lines.”¹¹⁷ As with other smart growth related legislation, the bill reiterates up front that “local governments must retain their

¹¹¹ *Id.* (indicating although the legislative summary of the bill from the Assembly web-site identifies S. 5527 as the same as A.8800, the two bills are not identical). See also A. 8800, 2001 Leg., 225th Sess. (N.Y. 2001). Due to the nature of the funding scheme proposed, the Senate bill does not indicate that the Secretary of State may make loans under the proposed program, but it does provide clearly for a grant program and restricts applicants from receiving a grant under this program more than once in three years. See S. 5527, 2001 Leg., 224th Sess.

¹¹² Compare S. 5527, 2001 Leg., 224th Sess. § 97-xxx(5)(c)(i)–(ii), with Assemb. 8800, 2001 Leg., 225th Sess.

¹¹³ See New York State Assemb., *Memorandum in Support of Legislation: Bill Number A. 423* (on file with author) (noting that the proposed bill was “created from S. 7253/A. 10038 and S. 7236/A. 10810 of 1998”).

¹¹⁴ See Assemb. 423, 2001 Leg., 224th Sess. (N.Y. 2001) (identifying the co-sponsors of the measure to include Members of Assembly: Higgins, Tokasz, Smith, Morelle, Gantt, Robach, Tonko, Canestrari, Grannis, Matusow and John).

¹¹⁵ *Id.* (amending the executive law).

¹¹⁶ *Id.* § 1.

¹¹⁷ *Id.*

local planning and zoning authority," but the bill admits that "... it is crucial for local governments to be sensitive to regional needs in their planning decisions to ... ensure support for regional economic growth while preserving critical regional environmental and natural resources."¹¹⁸

In authorizing the establishment of local smart growth commissions, the bill would allow for either a single local government or two or more local governments, to create by local law, a smart growth commission.¹¹⁹ Under the bill, the commission would be charged with developing, through a collaborative community process, a smart growth plan.¹²⁰ The plan would have to be adopted within sixteen months of the first commission meeting, and then forwarded to the appointing local government(s).¹²¹ To accomplish the plan, which "shall not be a technical document but rather an explicit statement of objectives and the means by which to achieve such objectives . . . ,"¹²² the commission is authorized to utilize the staff of local government, state and county agencies (to the extent feasible); hold conferences, seminars and meetings; and hold hearings.¹²³

Once the plan is received by the local government(s), the bill directs the local government(s) to prepare a comprehensive plan, or amend an existing comprehensive plan in accordance with state statute,¹²⁴ and further directs that local governments would be required to introduce any necessary local laws to implement the commission plan, all within 120 days.¹²⁵

The legislation then declares that "[i]t is the public policy of the State of New York to employ sound land use planning to govern development, redevelopment and preservation"¹²⁶ This is to be accomplished by providing for and encouraging local

¹¹⁸ *Id.*

¹¹⁹ *Id.* § 909-a(1) (providing that local governments may act jointly pursuant to existing authority in General Municipal Law Article 5-g).

¹²⁰ Assemb. 423, 2001 Leg., 224th Sess. § 909-a(1) (indicating the legislation goes so far as to limit membership on the local smart growth commission to no more than twenty-one people and suggests the types of representatives appropriate to ensure a broad cross-section of community interests).

¹²¹ *Id.* § 909-a(5).

¹²² *Id.*

¹²³ *Id.* § 909-a(4)(a)-(c).

¹²⁴ *Id.* § 909-a(6) (cross-referencing statutory sections for the preparation and adoption of a local comprehensive land use plan: Town Law sec. 272-a; Village Law sec. 7-722; and General City Law sec. 28-a).

¹²⁵ *Id.*

¹²⁶ Assemb. 423, 2001 Leg., 224th Sess. § 909-b(1).

governments to develop collaborative community-based comprehensive land use plans, which include long term predictability and coordination;¹²⁷ encouraging mixed use development, redevelopment, and infill, as well as investment in infrastructure in locally-designated growth areas;¹²⁸ encouraging development where there is adequate public infrastructure to support the development, and encouraging compact development through a variety of zoning tools;¹²⁹ “provid[ing] for effective use of land resources and preservation of open space;”¹³⁰ ensuring expedited permitting of development that is consistent with the comprehensive land use plan;¹³¹ measures should be adopted to preserve open space and park land for the purposes of protecting natural resources and, wildlife habitats and recreational areas;¹³² that farms and agribusinesses and related infrastructure should be retained;¹³³ there should be consistency, cooperation, and coordination of state and local decisions with respect to infrastructure, siting of facilities, and maintenance thereof;¹³⁴ housing needs should be considered, which include such factors as affordability in relation to where people work and recreate and proximity to commercial development, as well as facilitating a variety of transportation choices that can reduce automobile dependency and traffic congestion;¹³⁵ and encouraging cooperation “. . . to implement common local and regional goals while affirming home rule and recognizing the plans of other local governments.”¹³⁶

Since local governments could do all of the above described planning and implementation on their own initiative under

¹²⁷ *Id.* § 909-b(1)(a).

¹²⁸ *Id.* § 909-b(1)(b).

¹²⁹ *Id.* § 909-b(1)(c) (noting that to accomplish compact development, local governments use transfer and purchase of development rights, incentive zoning, cluster development, tax incentives, conservation easements, and planned unit developments).

¹³⁰ *Id.* § 909-b(1)(c).

¹³¹ *Id.* § 909-b(1)(d) (requiring an application for both state and local government permits, and providing further that a generic environmental impact statement should be prepared to further the streamlining effort).

¹³² Assemb. 423, 2001 Leg., 224th Sess. § 909-b(1)(e) (telling that preserved lands should be subject to effective stewardship, and that parkland and open space when practical should be proximate and accessible to existing and new development).

¹³³ *Id.* § 909-b(1)(f).

¹³⁴ *Id.* § 909-b(1)(g).

¹³⁵ *Id.* § 909-b(1)(h).

¹³⁶ *Id.* § 909-b(1)(i).

current statutory authority, the rest of the bill describes how the State would be involved in monitoring this program and in providing fiscal and other incentives for voluntary participation.¹³⁷ The legislation also provides that the Secretary of State shall review and approve local comprehensive plans adopted in accordance with the planning scheme set forth in the bill.¹³⁸

G. Community Based Quality Communities

Senator Mary Lou Rath (R)¹³⁹ introduced legislation in April 2002 to, among other things, establish Quality Communities Commissions and a Task Force on Quality Communities.¹⁴⁰ The Quality Community Commissions would be created by local governments acting jointly pursuant to existing authority under General Municipal Law Art. 5-g.¹⁴¹ Each Commission would be responsible for preparing a quality communities plan within sixteen months through a collaborative community-based effort and then submitting the plan to the local government or contiguous local governments for action.¹⁴² The local government action pursuant to the legislation requires local governments to "... prepare an appropriate comprehensive plan or an amendment to an existing comprehensive land use plan ..." consistent with provisions in the Town Law, Village Law, and General City Law.¹⁴³ Rather than articulating identified "smart

¹³⁷ See generally Assemb. 423, 2001 Leg., 224th Sess.

¹³⁸ *Id.* § 909-c(1).

¹³⁹ See S. 7105, 2001 Leg., 225th Sess. (N.Y. 2001) (using the "quality communities" label for smart growth, demonstrating consistency between the Republican Governor and Republican-led Senate).

¹⁴⁰ See *id.* § 1. The legislative intent provides in part:

Local governments need to refocus on soundly planned growth, so called quality communities, through a collaborative community based effort to arrive at a workable plan for growth generated by the community and which responds to the needs of the community . . . Local governments may use a collaborative community plan as a platform for the adoption of a comprehensive plan or, working with a collaborative community plan, appropriate changes may be made by local governments to their comprehensive plans to reflect community needs.

Id. See also S. 1367, 2000 Leg., 222nd Sess. (N.Y. 1999) (indicating previously introduced legislation).

¹⁴¹ S. 7105, 2001 Leg., 225th Sess. § 909-a. See also *id.* § 2 (amending the executive law by adding a new Article 41-A to indicate membership on this Commission is identical to the proposed membership on the local smart growth commission pursuant to N.Y. Assemb. 423 Leg., 224th Sess. (N.Y. 2001)).

¹⁴² *Id.* § 909-a(4).

¹⁴³ *Id.* § 909-a(6). See also *id.* (stating the proposed law further directs that

growth principles” as in A. 423, this proposal requires that the locally developed quality communities plan employ sound land use planning to govern development, redevelopment, and preservation through the following means develop comprehensive plans that include long term land use and that permits predictability and coordination, employ efficient decision-making and plan implementation; encourage mixed use development, redevelopment, and infill for the purposes of avoiding unnecessary development on undeveloped land and channeling growth to areas where there is already investment in infrastructure; use flexible zoning tools to encourage the location of land development in areas where there is already adequate infrastructure and public services; encourage the use of expedited permitting and development consistent with the plans through the use of a generic environmental impact statement; adopt measures that preserve open space and parkland to protect natural resources, wildlife habitat, and recreational opportunities; encourage the retention of farms, agribusiness, and related infrastructure through, among other things, the use of state initiated farm land protection programs; assure consistency, cooperation, and coordination of state and local government decisions on infrastructure and facility siting, as well as with State open space, transportation, industrial, and economic development investments; encourage consideration of future housing needs that promote affordability and proximity to employment recreation and commercial development, and that offer a range of transportation choices that may reduce automobile dependency and traffic congestion; and encourage regional cooperation while affirming local home rule yet recognizing the plans of other neighboring local governments.¹⁴⁴

As an incentive to participate in the development of a quality communities plan, the legislation empowers and directs the Secretary of State to review and approve comprehensive plans or amendments thereto developed through a collaborative community-based effort, as well as make comments and recommendations regarding the plans.¹⁴⁵ The Secretary is also empowered to, among other things, assist local governments with the implementation of their plans, encourage cooperation

the local government “shall prepare for introduction any local law or laws required as a result of the Commission’s plans”).

¹⁴⁴ *Id.* § 909-b(1)(A).

¹⁴⁵ *Id.* § 909-c.

between and among contiguous local governments, and assist other state agencies in identifying and evaluating their laws, rules, regulations, practices, and policies that affect the implementation and effectiveness of the new plans.¹⁴⁶

Local governments are encouraged through the legislation to submit joint comprehensive plans.¹⁴⁷ For those that do act jointly, the otherwise required twenty percent funding match from the local government(s) will be waived.¹⁴⁸ Furthermore, in dispersing the funds, the legislation directs the Secretary to allocate the funds in a fair and equitable manner, which includes considering the "initiative shown by local governments or two or more local governments acting jointly pursuant to Article Five-G of the General Municipal Law"¹⁴⁹ In addition, the Secretary is empowered, upon request of a local government, to make recommendations to other state agencies whose programs may impact the locally adopted plan.¹⁵⁰ As a further potential incentive for participation, the Secretary is directed to work with any state agency that has a ranking system for the allocation of infrastructure investment or environmental preservation to "recognize" a local government with an approved plan.¹⁵¹ The legislation also creates an inter-agency Task Force on Quality Communities to be chaired by the Secretary of State.¹⁵² The

¹⁴⁶ *Id.* § 909-c(5)-(7) (stating that the Secretary of State is directed to provide technical assistance in the preparation of the plan to local governments only upon the written request of the local government and to "facilitate consultation and coordination among local, county, regional state and federal agencies, and any regional not-for-profit entity dedicated to regional planning and collection of regional data").

¹⁴⁷ See S. 7105, 2001 Leg., 225th Sess. § 909-d (indicating that local governments are empowered under current enabling acts to develop and adopt joint comprehensive land use plans). See also N.Y. TOWN LAW § 272-a(1)(g) (McKinney Supp. 2002); N.Y. VILLAGE LAW § 7-722(1)(g) (McKinney Supp. 2002); N.Y. GEN. CITY LAW § 28-a(2)(g) (McKinney 2002); N.Y. GEN. MUN. LAW §§ 239-d, 239-i (McKinney 1999).

¹⁴⁸ S. 7105, 2001 Leg., 225th Sess. § 909-f(1)(A).

¹⁴⁹ *Id.* § 909-f(2).

¹⁵⁰ *Id.* § 909-g(4) (indicating that these sections stop short of guaranteeing state recognition and adherence to the locally adopted plan, but does provide some leverage by potentially having the Secretary of State advocate before a sister agency on behalf of the local government).

¹⁵¹ *Id.* § 909-g(5) (assuming that "recognition" implies added points in a ranking system).

¹⁵² *Id.* § 909-h. Other participants include the commissioners of environmental conservation, budget, transportation, parks and recreation, agriculture and markets, housing and community renewal, and economic development. *Id.* § 909-h(1). The Secretary of State is empowered to appoint representatives of other agencies as ad hoc members as he or she sees fit. *Id.*

general purpose of the Task Force is to provide a forum to identify ways in which the state and local governments can better work together on growth and planning issues, as well as ways to expand and encourage intermunicipal cooperative approaches to addressing these challenges.¹⁵³ The Task Force is required to report annually on the following activities it is directed to undertake:

(A) Evaluate and compile an inventory of current state, regional and local land use and infrastructure policies, planning and programs as they affect land use patterns and economic competitiveness and recommend methods for enhancing the use of these policies and programs; (B) Identify data collection and analysis, research and public information training and technical assistance needs of state agencies and local governments related to land use and planning; (C) Examine geographic information systems for application to planning and land use; (D) Examine and make recommendations concerning coordination of decisions regarding the financing and development of infrastructure and facilities to ensure coordination and cooperation between state, regional and local government entities to achieve efficient use of resources while stimulating economic competitiveness; and (E) Evaluate and make recommendations on the declaration of policy set forth in [the legislation].¹⁵⁴

This legislation would end with a sunset provision in April 2006.¹⁵⁵ Last action on the bill in 2002 was a referral, upon its introduction in April 2002, to the Senate Finance Committee.

H. Quality Communities Measuring Act of 2002

In March 2002, Assemblyman Hoyt introduced the Quality Communities Measuring Act of 2002¹⁵⁶ to provide a mechanism for benchmarking or measuring progress in achieving the objectives of any quality communities' legislation that might be

Furthermore, the legislation directs the Chair to appoint one representative from the following statewide organizations to constitute an advisory committee to the Task Force: Association of Towns of the State of New York, New York Conference of Mayors, National Audubon Society of New York State, New York Planning Federation, New York State Builders Association, New York Farm Bureau, The Business Council of New York State, Land Trust Alliance of New York State, and Environmental Advocates. The Advisory Committee may then vote to appoint additional members to the committee. *Id.*

¹⁵³ *Id.* § 909-h(2).

¹⁵⁴ S. 7105, 2001 Leg., 225th Sess. § 909-h(3).

¹⁵⁵ *Id.* § 4.

¹⁵⁶ Assemb. 10302, 2001 Leg., 225th Sess. (N.Y. 2001).

enacted.¹⁵⁷ The legislation directs the existing Quality Communities Interagency Task Force, chaired by the Lt. Governor and the Secretary of State, to prepare objectives and benchmarks for each of the recommendations contained in their report, "State and Local Governments Partnering for a Better New York."¹⁵⁸ The annual report to the governor and to the legislature is to include and contain details of the progress or failures relating to each of the identified benchmarks or measures.¹⁵⁹ The legislation calls upon the state agencies to include within the benchmarks and objectives, allocation of funding for quality community programs and projects in furtherance of the recommendation.

I. Peconic Bay Affordable Home and Smart Growth Act

The Peconic Bay Affordable Home and Smart Growth Act, introduced in March 2002 by Member of Assembly Thiele, is not a statewide smart growth bill, but rather focuses on the five towns within the Peconic Bay region of Suffolk County.¹⁶⁰ Designed to mimic the success of a 1998 act of the legislature that enabled the towns to create a Peconic Bay Community Preservation Fund to promote open space, farmland preservation, parks and recreation land, and historic preservation,¹⁶¹ this proposal would allow the towns to create a "regional affordable home revolving loan fund."¹⁶² The fund

¹⁵⁷ *Id.* § 2. See generally Patricia E. Salkin, *Quality Communities Require Sustained Leadership and Benchmarking*, EMPIRE REPORT MAGAZINE 8 (Sept. 2001) (indicating benchmarking is becoming increasingly important in the states where smart growth proposals have been enacted). Without some way of measuring the impact of the legislative approaches to accommodating and promoting growth and economic development, it is more difficult to challenge other states and localities to join the movement. *Id.*

¹⁵⁸ Assemb. 10302, 2001 Leg., 225th Sess. § 94-a(2). See also *id.* (directing that the benchmarks be organized into the following five categories: "central cities, main streets and small towns; agricultural and farmland protection; open space, heritage and critical environmental resources protection; transportation and more livable neighborhoods; and sustainable economic development").

¹⁵⁹ *Id.* § 94-a(3). In addition, the report may include recommendations for further legislative and executive action necessary to achieve greater programmatic success. *Id.*

¹⁶⁰ See Assemb. 10031, 2001 Leg., 225th Sess. (N.Y. 2001). See also *id.* § 1 (indicating that the five towns are East Hampton, Riverhead, Shelter Island, Southampton, and Southold).

¹⁶¹ See N.Y. TOWN LAW § 64(e) (McKinney 1998).

¹⁶² Assemb. 10031, 2001 Leg., 225th Sess. § 64-f. The legislative purpose explains that while there is a development boom in the Peconic Bay Region, there is a severe shortage of affordable homes for the region's middle income

would be financed through the imposition of a limited time (five years) real property tax surcharge on improved residential property, an affordable home impact fee, or both.¹⁶³ The legislation also requires that participating towns adopt a smart growth plan to insure that affordable homes are established and that growth occurs within the context of a rational community plan.¹⁶⁴ This plan is required to include, at a minimum: "(A) [e]stablishment of affordable home zoning districts where affordable home projects are permitted; (B) [e]stablishment of growth boundaries where development is encouraged; (C) [e]stablishment of greenbelt areas where development is discouraged; and (D) [e]stablishment of a five year growth management plan."¹⁶⁵

While this legislation takes a regional approach, the legislature is likely to consider its potential for replication and therefore the statewide impacts on the approaches suggested. Although the subjects of affordable housing, impact fees, growth boundaries, and greenbelts are all effectively utilized in various states and regions across the country, they all individually and cumulatively carry political baggage in New York. Therefore, without modifications, this legislation is not likely to secure passage.¹⁶⁶

In addition to these "major" smart growth proposals, legislation has been introduced to provide a "neighborhood quality-of-life tax incentive" designed to add a "quality-of-life"

and working class residents. *Id.* § 1. Residential housing starts are in the multi-million dollar range and many people are buying these up as second homes, while local residents (including young families, seniors, first time home buyers, etc.) cannot find homes under \$300,000. *Id.* As with Chap. 114 of the Laws of 1998, the participating local governments would have to put to the voters a mandatory referendum on the adoption and implementation of a smart growth plan and a local law establishing the fund and authorizing the real property tax surcharge and/or the development fee. *Id.*

¹⁶³ *Id.* § 1. See generally PATRICIA E. SALKIN, IMPACT FEES IN NEW YORK (Gov't Law Ctr. of Albany Law Sch. 1991) (indicating that this legislation is not likely to survive with the authorization for "impact fees" as the New York Legislature has had a history of refusing to authorize local governments to assess impact fees).

¹⁶⁴ Assemb. 10031, 2001 Leg., 225th Sess. § 64-f(8).

¹⁶⁵ *Id.* The law also directs that while there is no limit on the number of building permits that could be issued for affordable homes, the legislation is not authorizing any increase in the allowable density for development. *Id.* However, the bill also provides that a town may adopt a plan for managing the rate of future growth. *Id.*

¹⁶⁶ The legislation was referred to the Assembly Local Government Committee upon introduction and it was not considered by the Committee during the 2002 legislative session.

component to the real property tax law by providing incentives for commercial development that meets smart growth principles that are producing livable, sustainable communities.¹⁶⁷

V. REDEFINING REGIONALISM: CAN IT EXIST IN A NEW YORK STATE OF MIND?

Almost all of the smart growth or quality communities legislative approaches introduced have a regional or intergovernmental component. All of the bills contain approaches that have been used in various states over the last decade to address similar challenges in their jurisdictions.¹⁶⁸ New York needs to develop a consensus approach on quality communities that will best serve all of the unique regions of the state and best address the different challenges that confront each of the regions. At present, the political landscape and the legislation introduced to date reveals the following: various members of the legislature demonstrating leadership by introducing different smart growth or quality communities strategies, yet not a lot of cross-endorsing of each others' proposals; inconsistencies between the approaches suggested by the executive branch, including the recommendations of the Quality Communities Task Force that was appointed pursuant to an executive order; a Quality Communities Demonstration Grant Program that has failed to garner enough attention, prestige, or importance to attract continued funding (yet legislation has been introduced to fund similar programs); a new approach by the

¹⁶⁷ Assemb. 7807, 2001 Leg., 224th Sess. (N.Y. 2001). The quality-of-life criteria should include the following:

pedestrian-friendly site design that connects with the surrounding community; ample park, recreation or public space maintained by the developer that is open to the public and accessible by pedestrians and bicyclists; parking site design that keeps automobiles behind or to the side of the structure such that the architecture is prominent; mixed-use site plan that integrates with the surrounding land uses in a "live, work and play" environment; and architectural qualities that enhance and blend with the character of the surrounding neighborhood.

Id. § 3.

¹⁶⁸ See generally AM. PLANNING ASS'N, PLANNING COMMUNITIES FOR THE 21ST CENTURY: A SPECIAL REPORT OF THE AMERICAN PLANNING ASSOCIATION'S SMART GROWING PROJECT (1999); AM. PLANNING ASS'N, *supra* note 29; FREILICH, *supra* note 7; STUART MECK, GROWING SMART LEGISLATIVE GUIDEBOOK: MODEL STATUTES FOR PLANNING AND THE MANAGEMENT OF CHANGE (1998); Patricia E. Salkin, *The Smart Growth Agenda: A Snapshot of State Activity at the Turn of the Century*, 21 ST. LOUIS U. PUB. L. REV. 271 (2002); Patricia E. Salkin, *Smart Growth at Century's End: The State of the States*, 31 URB. LAW. 601 (1999).

Governor to address regional planning through the establishment of a Task Force on Local Government Reform, not due to report until August 2003; and the various legislative proposals that have been introduced have been sent to multiple different committees in both the Assembly and the Senate, making it difficult, if not impossible, to reconcile the proposals and attempt to secure agreement on a comprehensive "conference" approach.

With the big exception of the few instances where state authorizing legislation is needed to provide specific statutory authority, local governments in New York are already empowered to voluntarily embrace and implement a wide array of smart growth principles. This can be done through the development and revision of a comprehensive land use plan and the adoption and amendment of zoning ordinances and other land use controls to implement the plan. The state enabling legislation therefore tends to serve three main purposes: (1) providing guidance and ideas to local government officials and citizen planners (which traditionally is presented as a voluntary idea in state legislative schemes); (2) providing much needed funding to serve as the impetus for local governments to initiate the local planning reform process, including taking into account the "sense of community" that may extend beyond municipal borders (when funding is available, the state has an opportunity to require conformance with certain minimal guidelines for funding eligibility . . . while participation is still voluntary); and (3) providing other state-level incentives— such as tax relief, indemnification from lawsuits and recognition of the local plan by state agencies planning to site projects in a locality— for the purpose of enticing local governments to revisit their planning and land use control schemes.

Assuming that too many local governments in the state will fail to be motivated to act or will be unable to allocate the necessary fiscal resources to take action, state enabling legislation remains a necessary goal. With five years of legislative proposals, two executive orders, interagency task forces, and staff in many agencies and two branches of state government working on "smart growth," state government as a whole has been unable to reach consensus within government and with external stakeholders as to what the appropriate legislative solution(s) might be. As the next Legislature is seated, New York again has an opportunity to build the needed

consensus around one bi-partisan proposal that can, at a minimum, allow the State to continue the momentum built by legislation passed during the 1990s modernizing local planning and zoning enabling acts.

One approach may be for the legislative and executive branches to commission a public policy consensus initiative for the purpose of reaching consensus on a legislative approach. Representative stakeholders from the public, private, and non-profit sectors could be brought together in a forum facilitated by a trained professional for the purpose of identifying and inventorying those aspects of already proposed legislation (as well as new ideas) where there is agreement of support, identifying those aspects that are off-the-table because it is unlikely that consensus can be attained, and enumerating those items where there is no immediate agreement but where all parties agree that there is room to negotiate. It is critical that such a process be facilitated by a neutral representative—agreed to by the major parties—and not existing staff within a particular agency or legislative office that may be perceived to have an agenda. It is equally important that the parties at the table be empowered as stakeholders to agree to various provisions in potential legislation so that when the process is completed, a legislative proposal is reached that, barring potential fiscal considerations, should be more easily enacted than the legislative approaches introduced to date.

Political leadership is clearly the key to success in New York. Leadership may mean many different things, including giving up on credit or ownership of one approach for another, and allowing for a true public policy consensus initiative to emerge where the “balance of power” may be non-traditional. Short of a meaningful statewide initiative with this goal in mind, it seems unlikely that any one proposal will emerge with support over another based upon the immediate five year history with smart growth in New York. Improving and enhancing quality communities and quality of life are important values and goals well worth the investment of leadership, time, and money to continue to hone the uniquely New York style of smart growth.

VI. CONCLUSION

The report of the Quality Communities Task Force aptly recognizes that “[a] quality community can only be created when its residents, businesses and community leaders collectively

visualize and agree upon the potential of their community, adopt this idea with a plan to achieve it and then work together to harness available resources and become what they have envisioned.”¹⁶⁹ The State must factor into the equation, as well to help facilitate local and regional action by ensuring access to the techniques, technical assistance, and fiscal support needed to articulate and to realize the vision. Quality communities means sustainable communities, a goal that starts in our backyards and transcends the region, the state, and the country.

¹⁶⁹ See QUALITY COMMUNITIES INTERAGENCY TASK FORCE, *supra* note 43, at 113.