

Fall 2002

## Congress Misses Twice With The Community Character Act: Will Three Times Be A Charm?

Patricia E. Salkin  
*Touro Law Center*, [psalkin@tourolaw.edu](mailto:psalkin@tourolaw.edu)

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/scholarlyworks>

 Part of the [Land Use Law Commons](#), and the [Legislation Commons](#)

---

### Recommended Citation

31 Real Est. L.J. 167 (Fall 2002)

This Article is brought to you for free and open access by the Faculty Scholarship at Digital Commons @ Touro Law Center. It has been accepted for inclusion in Scholarly Works by an authorized administrator of Digital Commons @ Touro Law Center. For more information, please contact [lross@tourolaw.edu](mailto:lross@tourolaw.edu).

---

# *Zoning and Land Use Planning*

PATRICIA E. SALKIN\*

---

## **Congress Misses Twice With The Community Character Act: Will Three Times Be A Charm?**

### **Introduction**

Following on the heels of the release by the American Planning Association of both the Interim and Final Growing Smart Legislative Guidebooks in 2000, a group of United States Senators, led by Rhode Island's Lincoln Chafee, intro-

duced the Community Character Act of 2000.<sup>1</sup> The bill, designed "to assist States with land use planning in order to promote improved quality of life, regionalism, sustainable economic development, and environmental stewardship,"<sup>2</sup> would have provided up to \$500,000 in federal funds in grants to states for the purpose of updating land use planning legislation and integrating federal land management and state planning.<sup>3</sup> Although the bill failed to find its way onto the agenda of the Senate Committee on Energy and Natural Resources during the 106th Congress, supporters tried again with the introduction of two bills in 2001: H.R. 1433 and S. 975. While the Senate bill advanced through the Committee process in 2002, the legislation is unlikely to be considered by the full Senate during the first

---

\*Patricia E. Salkin is Professor of Government Law, Associate Dean and Director of the Government Law Center at the Albany Law School. She is the author of *New York Zoning Law and Practice (4th ed.)* (West Group), and the editor of the *Zoning and Planning Law Report* and the *Zoning and Planning Law Handbook*, both published by West Group.

<sup>1</sup>S. 2995 (introduced July 27, 2000).

<sup>2</sup>*Id.*

<sup>3</sup>The Act provided that grant funds could be used by the states to obtain technical assistance in: "(1) drafting land use planning legislation; (2) research and development for land use planning programs and requirements relating to the development of State guide plans; (3) conducting workshops, educating and consulting policy makers, and involving citizens in the planning process; and (4) integrating State and regional concerns and land use plans with Federal land use plans." See S. 2995, Sec. 4(c).

session of the 107th Congress. This column explores the origins of the legislation, analyzes the differences and similarities in the three pieces of legislation, discusses the role of the advocacy organizations in securing passage or defeating the measures, and predicts what the future might hold for federal fiscal support of state and local land use planning issues.

### **History of the Community Character Act**

The Community Character Act (hereafter referred to as the "Act") was designed to establish a voluntary incentive for states to improve planning and hence accomplish some of the goals of "smart growth" through a federal grant program. As proposed, the bills offer assistance in the form of grants for reforming and updating planning legislation of state, local and tribal governments. These grants could be used for technical assistance and support for a state's review and implementation of growth legislation.

It comes as no surprise that at least some members of Congress would be interested in

advancing the legislation. Both the House and the Senate have established bipartisan, multi-regional task forces and caucuses on the subject of smart growth. The 24-member Senate Smart Growth Task Force was established in January 1999 by Senators Jim Jeffords, then a Vermont Republican (now an Independent), and Carl Levin, a Michigan Democrat, with the overall goal of determining and promoting ways in which the federal government can assist states and localities to address growth management issues.<sup>4</sup> Senator Jefford's interest in smart growth is now perhaps more significant following his recent appointment to Chair of the Senate Environment and Public Works Committee, and this interest is compounded by the fact that the 2001 version of the Community Character Act was not assigned to the Senate Committee on Energy and Natural Resources, but rather to the Committee on Environment and Public Works.

On the House side, more than 30 members strong, the House Sustainable Development Caucus, formed at the start of the 105th Congress, is a

---

<sup>4</sup><http://www.nemw.org/SGsenate.htm> (site visited 8/02). Task Force members in the 106th Congress include 15 Democrats and nine Republicans, from 18 states.

bipartisan Congressional Caucus created to educate Congressional members and staff on what sustainable development is and where it is happening around the country.<sup>5</sup> The goal is for members to then use the knowledge “when looking at legislation to ensure that federal policies promote rather than impede sustainability efforts.”<sup>6</sup> In 1996, Congressman Earl Blumenauer (D-OR) founded the Livable Communities Task Force. With over 50 members, the Task Force supports legislation that: requires local community involvement in government decisions at all levels; provides local communities with the tools to solve their own local problems; promotes cheaper, more environmentally friendly solutions to infrastructure problems, thereby preserving and conserving resources; encourages multi-objective management; prepares communities to function in a global environment; and focuses on partnerships

among and between local government, private companies, federal government, non-profits, and citizen groups for funding solutions.<sup>7</sup> Representative Blumenauer is the lead sponsor of the Act in the House of Representatives.

### **Key Differences in the 2001 Community Character Act Approaches**

There are a number of key differences in the House and Senate versions of the Act. These are important and subtle distinctions that require attention, given the likelihood of revised legislation in 2003.

#### *Purpose of the Act(s)*

The House bill is designed “[t]o authorize the Secretary of Housing and Urban Development to make grants to assist States, tribal governments, and Native Hawaiian organizations in their efforts to develop or update land use planning legislation in order to promote more

<sup>5</sup>Caucus Information, <http://www.house.gov/meehan/sdc.about.htm>. The Caucus is co-chaired by Marty Meehan (D-MA) and Wayne Gilchrest (R-MD), with representation from more than two dozen states.

<sup>6</sup>Id. The Caucus has identified the following sustainable development issues: urban sprawl and loss of open space; transportation planning; brown-fields redevelopment and urban revitalization; sustainable taxation policies; reduction of non-sustainable subsidies; post-disaster rebuilding; watershed based planning efforts; and renewable energy and energy conservation. Id.

<sup>7</sup>Livable Communities Task Force, <http://www.house.gov/blumenauer/lctf.html> (site visited 3/9/01).

environmentally compatible and effective urban development, improved quality of life, regionalism, sustainable economic development, and environmental stewardship[.]” The 2001 Senate bill also focuses on environmentalism, and it offers “[t]o improve environmental policy by providing assistance for State and tribal land use planning, to promote improved quality of life, regionalism, and sustainable economic development[.]” Sustainability, economic development and environmental protection are common themes, and ones that have been considered “safe” to hold out as public purposes. It is interesting and timely that Congress is finally bringing back notions of regionalism and its importance in comprehensive land use planning. That the two bills sound very similar in tone and purpose is encouraging, since a compromise will likely have to be reached in conference on other substantive provisions of the Act.

#### *Level of Proposed Funding*

The first major difference between the bills is the amount of money proposed. Without a significant investment of public resources at all levels of government to support frequent planning reviews and updates, outmoded local master plans

and local comprehensive plans will continue to live among antiquated state planning enabling acts that have not been reformed in decades. A financial investment is critical to achieving any type of success in planning modernization. As proposed, the 5-year level of funding by the House is \$50 million per year for a total of \$250 million, yet the Senate bill proposes a mere \$25 million over the course of five years. Both bills require at least a 10% match of state funds. While grants would not exceed \$1,000,000 to any state, the Senate bill would allow for up to \$100,000 in additional funds for pilot projects for local governments who wish to carry out land use planning activities consistent with land use planning legislation. With lots of room to strike a compromise, the level of funding finally achieved will likely be much closer to the Senate proposal than the House version. The real key, of course, is to make certain that the Act, if passed, does in fact secure the necessary appropriation to fully fund the entire agreed upon amount.

#### *Administration of the Act*

The House bill proposes that the program be administered by the Secretary of the Department of Housing and Urban Development (HUD). This

makes perfect sense, given HUD's fiscal support of the American Planning Association's Growing Smart initiative. It also follows HUD's historical involvement with urban planning through the 701 program in the 1950s. Although the 2000 Senate bill would have also placed administration of the program with HUD, the 2001 version directs that the program be administered by the Secretary of Commerce acting through the Assistant Secretary of Commerce for Economic Development. Although the Commerce Department has also had historical involvement with planning and zoning, as the 1920s model City and State planning and zoning enabling acts were promulgated by the Department under then-Secretary Herbert Hoover, and the Act calls for sustainable economic development, it seems as though HUD has had more hands-on involvement and research in the field. However, if the goal is to secure the funding, then focus should perhaps be less upon who administers the program, and more on how the program will be structured and what the criteria for funding will be. This is critical, given the fact that the Assistant Secretary of the Economic Development Administration actually testi-

fied at the hearing before the Senate Committee in opposition to the bill. HUD Secretary Mel Martinez has also gone on record as being concerned about the approach of federal legislation that could undermine the role of local governments in local land use planning.

#### *Eligibility for the Federal Funds*

Under the recent Senate and House bills, state and tribal governments are eligible to receive funding for proposals that demonstrate that the projects to be funded promote land use planning activities that are comprehensive in nature, and that to the maximum extent possible, they: promote environmental protection; take into consideration public works infrastructure and future infrastructure needs; promote sustainable economic development and social equity; enhance community character; conserve historic, scenic, natural and cultural resources; and provide for a full range of housing options. Furthermore, proposals must promote land use plans that contain an implementation element that: includes a timetable for action and defines the respective roles and responsibilities of stakeholders; is consistent with the capital budget objectives for

the state or tribal government; and provides a framework for the siting of various infrastructure development. In addition, the proposal must demonstrate that it will result in multi-jurisdictional government cooperation (especially in the case of plans based on watershed boundaries) and that public participation will be encouraged. Furthermore, the proposal should demonstrate consideration for periodic updates of the land use plans and should include approaches to land use planning that are "consistent with established professional land use planning standards."

The 2000 Senate bill based eligibility upon a slightly different set of factors. A proposal would have had to demonstrate that the State's basic goals for land use planning legislation reform were consistent with, among other things, citizen participation (required in the development, adoption and updating of land use plans). The significant change between the two bills is that under the newer approach, citizen participation is encouraged but not required. The other factors are essentially the same.

#### *Use of the Federal Grant Dollars*

The bills would allow the federal funds to be used for

slightly different purposes. The 2000 Senate bill would have authorized funding to be used to obtain technical assistance for the following: drafting of land use planning legislation; research and development for land use planning programs and requirements relating to the development of State guide plans; conducting workshops, educating and consulting policy makers, and involving citizens in the planning process; and integrating State and regional concerns and land use plans with Federal land use plans. The 2001 Senate bill provides that funds may be used to carry out (or obtain technical assistance with which to carry out): development or revision of land use planning legislation; research and development related to land use plans and other activities that result in long-term policy guidelines for growth and development; workshops and integration initiatives as in the previous version of the bill. The bill also contains two new initiatives that allow funding to go to local governments to carry out land use planning activities consistent with land use planning legislation and funding to acquire equipment or information technology to facilitate State, tribal or local land use planning. The House bill

authorizes funding for only four activities: drafting of land use planning legislation by the State; researching and developing land use planning programs and requirements related to the development of State guide plans; conducting workshops, educating policymakers and involving citizens in the planning process; and integrating State and regional concerns and land use plans with Federal land use plans.

*Criteria for Awarding of Federal Funds*

The House bill simply authorizes the Secretary of HUD to establish a grant program that would award funding as a first priority for the development or revision of land use planning legislation in states that have inadequate or outmoded enabling legislation. After that priority, funding could be awarded for the creation or revision of State comprehensive land use plans or plan elements in those states that have already updated their planning and zoning enabling legislation. The third option allows funding for the development or revision of comprehensive land use plans or plan elements for multi-state regions.

The 2000 Senate bill was silent as to any criteria for the awarding of federal funds. The 2001 Senate legislation pro-

vides six criteria that the EDA Secretary is to apply in evaluating eligible grant applications. These include: fundamental priority for states or tribal governments with inadequate or outmoded enabling legislation; the extent to which a grant will facilitate development or revision of land use plans consistent with updated land use planning legislation; the extent to which the area under jurisdiction of the applicant is experiencing growth; the extent to which the project to be funded will protect the environment and promote economic development; and the extent to which the applicant has committed financial resources for comprehensive land use planning.

*Comparisons Between House and Senate Versions of the Community Character Act of 2001*

H.R. 1433	S. 975
\$50 million/per year for 5 years	\$25 million/over five years
HUD-administered	EDA-administered
Individual grants of \$1 million for States, \$200,000 for tribal governments	Extra \$100,000 available to each applicant for Pilot Program
10% match minimum	10% match minimum
Development or revision of state planning legislation first priority for grants	Reform of outdated legislation is designated as the "fundamental priority"
Goals of planning legislation must be consistent with citizen participation, multijurisdictional cooperation, implementational elements, and comprehensive planning	Contains similar requirements as the House bill, but adds stronger focus on environmental protection to eligibility requirements
May be used for drafting legislation, R&D, workshops and public meetings, and coordination with federal or regional programs.	Explicitly states that grants may be used for acquisition of new technologies

*Comparison between 2000 and 2001 Senate bills*

2001 Senate Bill	2000 Senate Bill
Administered by Secretary of HUD	Administered by the Assistant Secretary of Commerce for Economic Development

Expressly includes tribal governments	No mention of tribal governments
\$1,000,000 max grant (plus pilot monies)	\$500,000 max grant
Recognizes the need for affordable housing and opportunity for choice	
Stricter and more detailed eligibility and ranking requirements	

### March 2002 Senate Hearings: Highlights

A Congressional hearing on the Community Character Act was held on March 6, 2002 before the Senate Committee on Environment and Public Works.<sup>8</sup> Senator Chafee, a co-sponsor of the bill, reiterated the belief that land use control is best left to the state and local levels,<sup>9</sup> and he pointed out that “[t]hrough enactment of numerous and often-times incompatible laws regarding transportation, housing,

environment, energy, and economic development, the federal government has created a demand for state and local planning.”<sup>10</sup> Not everyone is enthusiastic, however, about the proposed Act. David A. Sampson, Assistant Secretary for Economic Development at the U.S. Department of Commerce testified, “The Administration cannot support S. 975 because it calls for resources that are not included in the President’s budget to support activities that can be accomplished through existing au-

<sup>8</sup>See [http://www.senate.gov/epw/stm1\\_107.htm](http://www.senate.gov/epw/stm1_107.htm) (site visited 8/02).

<sup>9</sup>In his statement to the Senate Committee, Senator Chafee explained, “The bill recognizes that land use planning is appropriately vested at the state and local levels . . . The bill does not prescribe any particular approach to land use planning, because each community must decide for itself what is appropriate.” See [http://www.senate.gov/epw/cha\\_030602.htm](http://www.senate.gov/epw/cha_030602.htm) (site visited 8/02).

<sup>10</sup>Id. The Senator also offered that “[t]he Community Character Act should be viewed as providing the federal payment for an unfunded mandate whose account is overdue.”

thorities and appropriations, and a centralized approach to land use planning is not the most effective solution to address issues of sprawl and unfocused economic development.”<sup>11</sup> While acknowledging that current development is occurring in a way that detracts from quality of life as characterized by traffic congestion, air and water pollution, and unfocused and unattractive development, he offered that these are best dealt with at the local level, not through an unfocused and centralized approach to land use planning. Elizabeth Humstone, Executive Director of the Vermont Forum on Sprawl testifying on behalf of the American Planning Association pointed out that “unlike the Hoover model, the Community Character Act does not suggest imposing a single model on all of the states but rather supports reform and implementation that is developed based on the unique needs and context of individual states and communities.”<sup>12</sup> She made the environmental connection in explaining the reason for the Act’s strong support, offering “it responds to widespread citizen interest in smart growth by providing critical resources to help state and local leaders, business and environmental interests, and concerned citizens bring about positive change in their communities through better planning.”<sup>13</sup> Ms. Humstone pointed out the need to promote multi-state cooperation on these issues “because natural resources, watershed, city borders, and development impacts do not stop at artificial political boundaries.”<sup>14</sup> She reminded the Committee that Environmental Protection Agency Administrator Christie Todd Whitman expressed Administration support when she remarked that “[a]ddressing

---

<sup>11</sup>Testimony of David A. Sampson, March 6, 2002; see [http://www.senate.gov/epw/Sampson\\_030602.htm](http://www.senate.gov/epw/Sampson_030602.htm) (site visited 8/02). Given the statements made by Administrator Whitman and others, one can surmise that perhaps the Department of Commerce is facing a political issue—to wit, the original Hoover model acts came from the Department of Commerce in the 1920s, and today, the reform efforts to modernize those Acts are not being lead by the Department of Commerce, but rather by the Environmental Protection Agency and by the Department of Housing and Urban Development.

<sup>12</sup>Testimony of Elizabeth Humstone, March 6, 2002 (see [http://www.senate.gov/epw/Humstone\\_030602.htm](http://www.senate.gov/epw/Humstone_030602.htm) (site visited 8/02)).

<sup>13</sup>*Id.*

<sup>14</sup>*Id.*

new environmental challenges requires us to manage all of our resources better—economic, social and environmental—and manage them for the long term. That is why Smart Growth is so important—it is critical to economic growth, the development of healthy communities, and the protection of our environment all at the same time. The Bush Administration—and the EPA especially—understands the importance of Smart Growth.”<sup>15</sup> In a letter signed by major national environmental and land use organizations, the link between land use decision-making and environmental regulation was again emphasized.<sup>16</sup> They stressed the importance of a public discussion on how the federal government can better support state and local governments’ smart growth initiatives.

Gary Garczynski, President of the National Association of

Home Builders, explained that the Community Character Act is prescriptive and intrusive in character, and for this reason it is unacceptable to the home building community. He asserted that the bill proposes unwarranted federal intrusion into state and local land use processes, and puts insufficient emphasis on the critical and appropriate role of local government in land use decisions. Instead, it emphasizes state land use plans, not state support of local land use plans. By doing so, the focus shifts to a top-down approach to planning, ignoring that local governments are the best arbiters for appropriate land use plans. Furthermore, he expressed concern about the Assistant Secretary of Commerce for Economic Development being required to make subjective decisions in areas of which he possesses no special expertise. This leads to

---

<sup>15</sup>Id.

<sup>16</sup>In a letter to Senators Jeffords and Smith dated March 4, 2002, representatives of the American Institute of Architects, the American Planning Association, the American Society of Landscape Architects, the Defenders of Wildlife, the National Association of Regional Councils, the Natural Resources Defense Council, the National Trust for Historic Preservation, the National Wildlife Federation, Scenic America, the Sierra Club, and Smart Growth America wrote, “American are increasingly aware and concerned about unplanned growth and its byproducts—loss of open space, congestion, limited housing options, strip malls, and loss of ecological biodiversity . . . . Good planning and design make good business sense, in addition to minimizing some of the harmful impacts that unmanaged growth can have on local and regional ecosystems.” See [http://www.senate.gov/epw/Humstone\\_030602.htm](http://www.senate.gov/epw/Humstone_030602.htm) (site visited 4/04/02).

a fear that by requiring the Secretary to give favor to states developing or revising plans that are "consistent with updated land use planning legislation," the federal government may be authorized to define or develop "updated land use planning legislation." It also gives rise to the fear that the Secretary may adopt a particular state's land use legislation as guidance although that state's plan may be ill-suited for another state's needs.

He also expressed concern regarding the possibility of the federal government adopting a "model" land use legislation, such as the APA manual on smart growth legislation, and that the legislation poses some possible tenth amendment issues.

#### **Other General Statements in Support of the Community Character Act**

Generally, the groups supporting the Act believe that the federal government needs to play a role in the prevention of sprawl and the promotion of smart growth. They are quick to cite the damage done by the federal government to contribute to sprawl and the ineffectiveness of current policies. They do not believe that the federal government will be

usurping land use control from the local governments, and cite the congressional findings that the land use control is best dealt with at the local level. This program is voluntary for states, not mandatory, and provides local communities with more resources to accomplish smart growth and sustainable economic development.

The National Association of Realtors supports the Act because it provides needed assistance to better plan for inevitable growth; requires planning to provide for opportunity and choice in housing; and promotes quality of life, sustainable economic development, and protection of the environment. They are particularly in favor of the provisions for pilot programs and inclusion of education as a permissible use of grant monies.

The National Multi-Housing Council offered that the Community Character Act fills the need for a federal role in preserving open space and preventing sprawl. Apartments are an important aspect of smart growth, but are often blocked under traditional zoning programs. The organization hopes that the bill will assist congress to encourage revision and rethinking of traditional zoning schemes and updating land use planning legislation.

The statement of this organization is based, however, on the assumption that the APA guidebook will not be adopted as the definitive "model."

The American Planning Association notes that the legislation would offer "vital assistance to meet the serious challenge of reforming outdated planning statutes and supporting planning as the basis for smart growth."<sup>17</sup> The Association asserts that the Act supports an array of state, regional and local efforts designed to promote improved quality of life and economic development through better planning, and emphasizes that the Act creates a partnership with the communities through incentives and not through the use of mandates.<sup>18</sup>

### **Other Statements in Opposition to the Community Character Act**

Groups opposing the bill view it primarily as a wolf in sheep's clothing. They express concern over the role, if any, the federal government should play in land use planning. They support the view that local communities would be best

served by the government taking on a role which will supplement local planning while leaving all decisions as to what best suits the community in the hands of the local planners. By taking a more proactive role in land use legislation, they assert that the potential for abuse by the federal government is sharply increased. They express fears that the "incentives" authorized by the act amount to no more than bribes to bring local land use planners in step with what the federal government believes would be the best way to grow. In this they find constitutional problems, especially those bearing on the states' Tenth Amendment rights.

Senator Inhofe (R-OK) voiced his opposition to the Act based on his view that the bill threatens the ability of local governments to make their own decisions. For this reason, he believes that the bill authorizes the federal government to overstep its bounds in contravention to the Tenth Amendment of the Constitution. Other members of Congress have taken strong action in opposition to the proposal. For example, Illinois Representative Donald A. Manzullo, Chair-

---

<sup>17</sup>See [www.planning.org/legislation/ccafact](http://www.planning.org/legislation/ccafact) (site visited 8/02).

<sup>18</sup>*Id.*

man of the Committee on Small Businesses, has been circulating a letter to state officials alerting them to the legislation and asserting that this initiative could usurp local land use control. He asserts that "[i]f implemented, such statutes would severely restrict private property use and the entrepreneurship and innovation that depends on it. Moreover, *this whole federally-influenced scheme will undermine local authority to make flexible decisions concerning economic growth and stability in your own communities.*"<sup>19</sup>

Some see the proposed legislation as a "federal zoning act."<sup>20</sup> According to the American Policy Center, the Community Character Act represents a "bold attack on our federalist society" and is "simply a bribe offered by the federal government to localities to update their zoning plans." The Center is concerned that measures promoting "smart growth" will be read as promoting "no growth."

### **The April 2002 Senate Committee Vote**

On April 26, 2002, the Senate Committee on the Environment and Public Works voted on the Act. The vote was scheduled to occur at 9:30 a.m., and to be open to the press and public. At 9:20 a.m., a senate aide brought news to the crowd that the time and place of the meeting had been changed. The new room was one to which the public was not allowed access, and the time was changed to somewhere between 10 and 11 a.m. A committee spokesperson claimed that a scheduling conflict prompted the change, while skeptics viewed the last minute switch as sneaky politics. The result was that the bill was voted out of the committee, by a vote of 12 to 7. The twelve senators voting in favor were: Jeffords (I-VT); Reid (D-NV); Baucus (D-MT); Graham (D-FL); Lieberman (D-CT); Boxer (D-CA); Wyden (D-OR); Carper (D-DE); Clinton (D-NY); Corzine (D-NJ); Chafee (R-RI); and Specter (R-PA). The seven voting against the act were: Inhofe (R-OK);

---

<sup>19</sup>Letter from Representative Donald Manzullo to Assembly Member Naomi Matusow 6/27/02 (on file with the author).

<sup>20</sup>Pat Taylor, "Congress Ponders 'Federal Zoning Act'," 7/29/02 Insight on News 24 (available at 2002 WL 8338929).

Smith (R-NH); Warner (R-VA); Bond (R-MO); Voinovich (R-OH); Crapo (R-ID); and Domenici (R-NM). Senator Inhofe submitted a written objection to the vote on the record.

Although the bill was cleared to move to the next hurdle, it is unlikely that the Senate will take up the legislation before the end of 2002. This leaves plenty of time for intense advocacy over the merits of the proposed Act in 2003.

### **The Looking Glass: Three Strikes You're Out or Three Times a Charm?**

If I had a magic looking glass, my prediction would be that some version of the Community Character Act will pass in 2003. There is a demonstrated growing interest on the part of state and local governments to both modernize state planning and zoning enabling legislation and to develop and implement local strategies designed to accommodate growth, promote economic development and enhance quality of life.<sup>21</sup> While it is true that the "devil is in the details" as to how a federal program is structured and administered, if the

stakeholders can reach agreement as to how the money should be spent in support of the pursuit of 21st-century state enabling acts and modernized local plans, the availability of the funds will help shape the future of land use controls in a proactive manner. It would be helpful if the Congress could find a way to facilitate a public policy consensus building project around this issue to bring all of the stakeholders together to negotiate the aspects of the proposals where there could be support and consensus. Sitting around a table with a goal of reaching consensus on some issues, not necessarily all, is much more effective than the unanswered potshots being made through formal testimony, prepared statements, and press releases issued by advocacy organizations.

For the proposal to move forward, there is a need to cut back on the circular arguments being made by the advocacy groups, who change positions mid-stream when the opportunity presents itself. For example, if organizations complain that local governments are unprepared to deal with growth because they lack ade-

---

<sup>21</sup>See generally Planning for Smart Growth: 2002 State of the States (American Planning Association 2002). Available at [www.planning.org](http://www.planning.org) (site visited 8/02).

quate planning, it doesn't make sense that a program that would provide the funding to enable the planning would be so opposed. Other groups, concerned over the municipal use of moratoria, assert that the use of moratoria is due to failure to plan. Yet they are concerned that the opportunity to plan will necessitate the use of moratoria, and it becomes a vicious no-win cycle of no planning/no moratoria. Lastly, while it is true that the federal government can direct state and local actions through fiscal controls, the Community Character Act is hardly a program designed to, in essence, be a federal zoning law. State and tribal governments need not apply for funding if they are not interested (and certainly many are not interested). On one hand, legislative proposals that would let the states use the money as they see fit in furtherance of better planning sounds to some as too flexible and unable to guarantee any results, yet the instant that more detailed criteria are crafted, suddenly Washington is controlling what state and local governments do. The truth in all of these arguments rests somewhere in the middle, and the fact remains that the amount of money likely to be available will help move some

states and localities forward, but the money is hardly enough alone to be responsible for an overnight evolution of land use laws. In fact, the bulk of the money is likely to be spent on studies and on the purchase of new technologies to enhance available information.

The greatest hope for passage of the Act is next year, while the issues are fresh in everyone's mind and before the legislators lose interest in an issue perceived to be passé. Furthermore, 2003 precedes an election year, and many members of Congress desire to take credit for bringing home funding to their state and region. This is one bill that can be win-win, as the positive impacts of funding could assist with easing traffic congestion, improving air and water quality, attracting jobs and enhancing quality of life.