

DELAWARE PLANNING ENABLING LEGISLATION REVIEW AND UPDATE

PROBLEM

Delaware is blessed and plagued by its small size. While it is reasonably easy to communicate between the State government, the three counties, and 57 municipalities, the converse is that solutions to problems are often piecemeal. The result is that planning, most particularly at the State government level, has grown into a confused array of authorities that are not as effective as they could be in providing services or optimizing costs to the taxpayers.

The original State Planning Act was prepared for the State by the Council of State Governments and passed in 1961. That legislation was primarily focused on planning for the State government, though the State Planning Office was authorized to provide planning assistance to the local governments.

While New Castle County and the municipalities have planning and zoning authority, Kent and Sussex Counties only got that power in the late 1960's.

Over time the original State Planning Office, as a staff agency to the Governor, was moved to the Budget Office and effectively eliminated. However it was restarted as an organization to facilitate production of the State Strategies of Investment by a committee made up of State agencies that have planning and development responsibilities and also to coordinate with the local governments. There have been a series of laws passed that focus primarily on interaction between the State and local governments. Concurrently, through the creation of State programs or in response to Federal initiatives, other State agencies have developed planning and development related programs, generally in a one off fashion; that is, a particular initiative spawns a planning staff organization separate from others in the same division or department.

Given the State's fiscal situation, the number of major capital projects in various stages of construction and planning, and the public facility needs in light of the rapid development in lower Delaware, it is appropriate to review all of the many planning authorities within the State government and determine what revisions are needed to make them more responsive to the needs of the taxpayers.

The State government cannot effectively coordinate with the local governments (counties and municipalities) until it can plan for itself in a coordinated manner.

TIMING

It is anticipated that this project will operate from March 2008 through June 2009.

There will be two phases.

The first would extend through December 2008 and involve research into existing legislation and other planning authorities to identify specific problems, develop solutions, and draft necessary legislation. This phase would be educational in that it would attempt

to involve Sierra Delaware members in the process, orient them to the planning and legislative process, meet with and obtain views of State and local officials and citizens involved with the process. It is possible that there are other groups in the State that would be interested in cooperating with this program and any such relationships would be developed during this phase.

The second phase would begin in January 2009 with the inauguration of the new Governor and seating of the new General Assembly. This phase would involve education of citizen groups to build support for the legislative package that would be developed in the first phase and would also involve lobbying in the General Assembly to get the package enacted into law. It would end with the end of the legislative session on 30 June 2009.

BUDGET

Expenses would involve meeting rooms (to the extent they could not be acquired free), mileage, printing, postage, and supplies. It may be necessary to obtain some legal services to assist in evaluations or drafting.

Specific budget information can be developed at a first meeting of the Land Use Committee.

WORK ELEMENTS

Review Titles 2, 3, 7, 9, 14, 17, 22, 25, and 29 of Delaware Code to identify State agency planning authorities. Meet with State agency personnel to identify planning mandates that are not in Delaware Code such as Executive Orders or Federal program. Agencies included would be at least State Planning, Delaware Department of Transportation (DELDOT), Delaware Department of Natural Resources and Environmental Control (DNREC) and Department of Agriculture (DDA).

Local governments are required by State law to update their comprehensive plans every five years. Many are currently in that cycle. It will be useful for Committee members to track those activities to learn more about the process. This would also provide an opportunity for participation by members who are interested in this phase of planning rather than or in addition to the legislative.

It may also be useful to become involved in a small number of local land development issues, more as an educational activity for members than as an effort to expend resources (time and effort) at the micro level.

A significant component of all of this is the cost and financing of the programs. This involves Federal funds for such things as conservation land acquisition and State funds for farmland preservation. It also involves financing to support infrastructure in general and development in particular.

The State (29 Del Code 91 subchapter 2) and counties currently have authority to institute adequate public facilities charges for the infrastructure and programs but have been

instituted by only Kent and New Castle counties. Also, the counties have mandates to develop capital improvement programs to aid in implementing their comprehensive plans while explicit State authority no longer exists. However, the whole concept of the program known as Strategies for State Policies and Spending implies the notion of State government expenditures for infrastructure. This situation must be resolved with clear capital improvements program and budget authority in State Planning.

The concept to be addressed is simple: the State government must be able to plan itself before it can logically make recommendations to the local governments. Land use must be planned, infrastructure constructed and maintained, and natural resources protected in the best possible manner no matter which level of government actually does it because it all takes place where we live and it is paid for with out tax dollars. Hence, the various levels of government need the tools (legislation) to plan all of this in a way that is cooperative, coordinated, and cost effective. An outline of specific tasks to hopefully get us aimed in that direction follow:

List programs under the Departments of Agriculture, Transportation, Natural Resources and Environmental Control, Delaware State Housing Authority, the Office of Economic Development, and the Office of State Planning.

List disconnects between statutes.

List inconsistencies and disconnects in Title 9 between the enabling legislation for the three counties.

List inconsistencies and disconnects in Titles 9 and 22 between the enabling legislation for the counties and municipalities.

Do a breakdown on disconnects by:

Municipalities, municipalities - counties, and municipalities - State government

Counties, counties - State government

State government – between agencies

Compile proposed alternatives and legislative proposals

Do a white paper on fiscal responsibility – what level of government pays for what - State, county, or municipalities.