

Rhode Island Statewide Planning Program
STATE PLANNING COUNCIL

Thursday, August 13, 2009
William E. Powers Building
Conference Room A
One Capitol Hill, Providence, RI

I. ATTENDANCE

Members Present

| | |
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| Mr. Kevin Flynn | Representing Mr. Gary Sasse, Chair, RI Department of Administration |
| Mr. Jared L. Rhodes, II, Secretary | Statewide Planning Program |
| Ms. Susan Baxter | RI Housing Resources Commission |
| Ms. Jeanne Boyle | City of East Providence, Planning Development |
| Ms. Karen DiLauro | Representing Ms. Rosemary Booth Gallogly, Budget Office |
| Mr. William Sequino | Public Member |
| Mr. Bob Shawver | Representing Mr. Michael Lewis, RI DOT |
| Mr. Henry Sherlock | Representing Mr. Steve Cardi, Public Member |
| Ms. Janet White-Raymond | Public Member |

Members Absent

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| Mr. Daniel Beardsley | RI League of Cities and Towns |
| Ms. Sharon Conard Wells | West Elmwood Housing Development Corporation |
| Mr. Timothy Costa, Vice Chair | Governor's Policy Office |
| Mr. Thomas Deller | City of Providence, Planning & Development |
| Mr. L. Vincent Murray | Town of South Kingstown Planning Department |
| Mr. Peter Osborn | Federal Highway Administration |
| Ms. Anna Prager | Public Member |
| Mr. Michael Rauh | Environmental Advocate |
| Mr. John Trevor | Environmental Advocate |

Guests

Ms. Meredith Pickering

RI Senate Fiscal Office

Staff - Division of Planning

Mr. Benny Bergantino

Senior Planner

Mr. Kevin Nelson

Supervising Planner

Ms. Karen Scott

Principal Planner

Ms. Dawn Vittorioso

Executive Assistant

II. AGENDA ITEMS

1. Call to Order

Mr. Flynn called the meeting to order at 9:07 a.m. and formally, introduced Dawn Vittorioso as the new Executive Assistant for the Division of Planning.

2. Approval of June 11, 2009 Meeting Minutes

Mr. Sherlock moved to approve the Minutes of June 11, 2009, as presented. The motion was seconded by Ms. Boyle. There was no further discussion and the motion carried unanimously.

3. Comprehensive Planning System Assessment and Recommendations Report

Mr. Nelson distributed a hard copy of the Comprehensive Planning System Assessment presentation. He began by noting that the effort is an outgrowth of *Land Use 2025*, the state's long-range land use plan. One of the recommendations of *Land Use 2025* was to engage stakeholders in an evaluation of the current comprehensive planning system and propose revisions to the Comprehensive Planning and Land Use Regulation Act if need be. The purpose of this assessment was to determine the friction points, gaps, and inefficiencies within the system and to recommend improvements. Staff has been guided throughout the process by the Land Use Implementation Committee that was established by the State Planning Council to serve in an advisory capacity as well as by the Technical Committee. Stakeholder input was facilitated through a public opinion survey, and a series of focus group discussions that were held with municipal planners, boards, and officials; State agencies representatives; and developers, consultants, and non-profit organizations. The draft report that was distributed to the State Planning Council is the result of these efforts. Mr. Rhodes encouraged members of the Council to raise any concerns on the report at any time during the meeting.

Mr. Nelson introduced the first issue to the Council - municipalities must amend their comprehensive plan to conform to any amendments to the State Guide Plan (SGP) within twelve months. He explained that the report recommends: first, better communication between the Statewide Planning Program and the municipalities regarding the drafting, approval and implications of SGP amendments; second, that if a municipality fails amend their plan if needed, then the Director may rescind state approval of the local plan if deemed necessary; and lastly, that Planning Challenge Grants be utilized help fund municipal comprehensive plan updates.

Ms. Boyle questioned who would determine consistency between the municipalities and the State Guide Plan. She further noted that her concern is that consistency in this context is subjective and is not clearly defined in the Assessment Report. Mr. Rhodes stated that the determination would rest with the Director of the Department of Administration as is currently the case. **Furthermore, the report calls for staff to work with the Council to develop a definition of consistency specific to comprehensive plans and include it in their rules of procedure.**

Ms. Boyle expressed that her concern with this recommendation is that it is a potential liability for municipalities. She cited examples where development interests work to invalidate a local comprehensive plan. She questioned whether this could be another tool used to try to invalidate the local comprehensive plan in order to move forward with a specific development. Mr. Rhodes pointed out that the rescission of State approval would not affect the validity of a locally adopted comprehensive plan as it pertains to local decisions. In addition, only municipalities have the authority to appeal State decisions regarding comprehensive plans. Developers do not. Mr. Rhodes cited a recent example where a group of property owners requested an appeal of a State approval of a local Comprehensive Plan **because they did not agree with the land uses designated for their properties on the Future Land Use Map**. The DOA's Legal Office **advised the Director that the property owners do not have standing to file an appeal and were directed to negotiate directly with Providence on their issues.**

Ms. Baxter was concerned with the use of the word "may" when referring to the Director's ability to rescind Comprehensive Plan approval. She suggests the word be changed to "will" so it can not be interpreted as non-consequential.

Mr. Nelson pointed out that the only actual change that is proposed in this recommendation is to clearly specify a potential ramification for failing to update a local comprehensive plan in compliance with a State Guide Plan amendment. The Act does not state the consequences for non-compliance. Mr. Nelson stated that the **staff believes the Director already has the authority to rescind State approval of a comprehensive plan but that authority should be made clear so as to remove any ambiguity and "close the loop" of having a requirement in the Act without a specific penalty for failure attached.**

Ms. Baxter asked about the original intention of the Act and asked if rescinding State approval was originally envisioned. Mr. Rhodes explained that he couldn't speculate on the original intention of the drafters of the Act as he was not directly involved, but noted that according to staff the Program's interpretation has always been that the State approval of a local comprehensive becomes null and void should they not be brought into conformance with amendments to the State Guide Plan within the specified time period.

Mr. Sequino questioned how often this issue arises. Mr. Rhodes stated that it has never been a problem, however, this effort seemed to provide an opportunity to resolve the uncertainty. He also stated that he understands that municipalities may not have the resources to amend and update their comprehensive plans and the Program has been looking for additional resources, like Challenge Grants, to provide more assistance.

Mr. Sherlock asked for clarification as to how State Guide Plan amendments are currently shared with municipalities. Mr. Flynn explained that a major part of this recommendation is increased communication. In the past, notice of prior amendments were mailed to municipalities to alert them of the change but did not suggest language that may need to be amended in the local comprehensive plan. As a result of this effort, the Program is now planning to become more proactive when a new State Guide Plan element is adopted by not only involving the

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municipalities in the drafting process but also by providing them with sample language where feasible that could be incorporated into the local plan in order to achieve consistency.

Mr. Nelson resumed his presentation with Issue 2 - the comprehensive plan must be updated at least once every five years. The Report recommends the Act be amended as follows:

- Require all plans to be fully updated at least every ten years with a new twenty-year horizon. The adopted plan shall supersede all previous versions.
- Replace the current five-year update requirement with a five-year midpoint assessment report outlining the status of all implementation actions.
- Require each municipality to maintain a single version of the comprehensive plan including all amendments, appendices, and supplements. The copies of the municipal plan and map(s) should also be available to the general public.

Ms. White expressed concern with the number of contextual changes that can occur within a city in a relatively short time period and specifically whether the ten year timeframe proposed would allow the municipality to account for these. Mr. Flynn clarified that local governments would still have the ability to amend their plans up to four times per year as currently allowed.

Mr. Sequino asked what currently happens when a plan is not updated at the end of five years. Mr. Flynn replied that the State approval lapses.

Ms. Baxter questioned the value of the State approval. Ms. Boyle pointed out that several grant programs provide for additional points if the local comprehensive plan has State approval.

Mr. Nelson continued his presentation with the remaining twelve issues. The comments made during the rest of the discussion are summarized as follows:

Issue 3 (the required content of a comprehensive plan) - Mr. Rhodes pointed out that an increased focus on alternative energy would be included as part of the service and facilities topic.

Issue 7 (reforming the State Guide Plan) - Mr. Rhodes stressed the importance of one of the recommendations namely, consolidating the State Guide Plan elements to make them more useful.

Issue 12 (Statewide Planning participation in the drafting of comprehensive plans prior to local adoption) - Mr. Rhodes explained that the Statewide Planning Program would like to get involved and provide technical assistance to the municipality during the drafting process. This kind of involvement would make the State approval process quicker and would also avoid having to return to the city or town council to re-approve the document if any changes were required.

Issue 14 (resolving conflicts between the actions of State agencies and municipal comprehensive plans) - Mr. Rhodes clarified that it is the intent of this recommendation to continue to develop a cooperative relationship between the State Planning Council, State agencies, and municipalities.

Mr. Nelson stated that the Report concludes with "Issues for Future Consideration". Two issues are identified as requiring additional analysis. These issues are:

- Strengthening municipal implementation of comprehensive plans.
- The requirement that a municipality conform its zoning ordinance and map with its comprehensive plan within eighteen months of plan adoption (§ 45-22.2-5(3)).

Mr. Nelson explained that Program staff have also been working on several proposed changes to the Act, which will be presented to the State Planning Council over the next several months. It is

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the intent that the proposed changes be introduced to the General Assembly during the 2010 session.

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Mr. Nelson concluded his presentation with the next steps for this Assessment Report. These include:

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- The Land Use Implementation Advisory Committee adopts a final report and submits to the Technical Committee.
- The Technical Committee modifies/endorses the report and submits to the State Planning Council.
- The State Planning Council accepts/adopts the report

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It is hoped that the draft Assessment Report will be presented to the State Planning Council by December of this year.

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Mr. Sequino raised an issue not covered in the Report concerning zoning issues between two neighboring communities, giving the example of East Greenwich and West Warwick. Mr. Flynn stated that the Act requires that communities be advised of changes to their neighboring community's comprehensive plans. Those neighboring communities have the right to object to any part of the comprehensive plan.

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4. 2009 Planning Challenge Grant Program

Ms. Scott announced that the Division of Planning in partnership with the Federal Highway Administration has released the 2009 Planning Challenge Grant call for proposals. An updated packet for the 2009 Planning Challenge Grants Requests was distributed. She reminded the Council that the purpose of the Grant Program is to fund innovative planning projects that integrate land use and transportation planning and further implement the goals outlined in Land Use 2025 and Transportation 2030. She also talked about the previous two grant rounds in 2006 and 2007 where over \$800K was distributed to state agencies, municipalities, universities and non-profit agencies for a variety of inventive and diverse projects. A complete list of previous challenge grant projects is available on the Statewide Planning Program website.

Ms. Scott next discussed the following changes for the upcoming grant round:

1. \$1 million will be made available for grant awards up to \$100K. A 20% match of the total project cost will still be required.
2. The list of eligible activities has been expanded to include comprehensive plan updates. However, it will require a 50% match for a full update. If only the land use and circulation elements are proposed for update, then the 20% match requirement will still apply.
3. The submission requirements and scoring criteria have been altered slightly to add more emphasis on grantee implementation and support for implementation of the concepts studied.
4. Consistent with Federal Highway Administration, projects on climate change, freight transportation planning and short sea shipping are encouraged.
5. The project timeframe has been expanded from twelve months to eighteen months.
6. There are several administrative requirements that have been clarified including those on procurement, process for reimbursement and eligible match activities.
7. Cash advances will no longer be permitted. All grants will be of the reimbursement type.

In addition to a more detailed RFP, a FAQ sheet detailing administrative requirements has been added. Ms. Scott specified that the grants are due on September 18, 2009 (This date has, subsequently, changed to October 2, 2009). Awards will be announced by mid October. Once

the awards are announced, a workshop will be held to overview reporting and administrative requirements and to answer any other questions raised by the grant recipients.

5. **Chief's Progress Report**

Mr. Rhodes reported that:

- The Annual Unified Transportation Work program had been approved by the Federal Highway and Transit Administrations;
- The Program's quadrennial FHWA/FTA re certification has been preliminarily scheduled for September 30, 2009;
- Hiring efforts had been resumed and application deadlines for the vacant Assistant Chief and Supervising Planner positions had recently closed;
- The next meeting of the Technical Committee has been rescheduled to September 2, 2009.

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6. **Other Business**

None

7. **Adjourn**

The meeting adjourned at 10:30 AM.

Respectfully submitted,

Jared L. Rhodes, II
Secretary

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<#>Integrated water shed and water supply ¶
<#>Energy SGP¶
<#>TDR/Growth Center Initiatives ¶
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Transportation ¶
<#>Congressional discussion with TAC on August 27, 2009 with Senator Jack Reed and Congressman Jim Langevin. ¶
<#>DOT Tiger Grant Program ¶
<#>Safe Roots - September \$2.2M mid September due early December. ¶
<#>AIPC - Viewing grants. The primary goal is consistency. ¶
¶
Grant Review/RFP Initiatives ¶
<#>DEM on-shore wind in Narragansett. ¶
<#>RIHPHC Preservation is local Historical Group. Ms. Derry Riding is heading up the project. ¶
<#>Building Houses RI ¶
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Administrative ¶
<#>Work program approval ¶
<#>FHWA/FTA recertification 9/30/09 ¶
<#>Continued hiring is almost at a close. Resumes have been reviewed for the Assistant Chief and Supervising Transportation Planner. By next meeting, we should have a decision made and will keep everyone abrupt. ¶

Attachment 1

**Statewide Planning Program
Rhode Island Comprehensive Planning System Assessment Report
PowerPoint presentation by Kevin Nelson, Supervising Planner**

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, as currently written,

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consequence for non-compliance, as it is currently written in the Act, is open for interpretation.

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Mr. Rhodes explained that this presentation is not only an overview of the Comprehensive Planning Assessment Report but of some of the legislative changes that will be proposed to clarify and amend the Act. Staff of the Statewide Planning Program have been working to prepare draft legislative changes for review by the State Planning Council. In this example,

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d that under the current law, municipalities must amend their comprehensive plan to be consistent with an updated

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Plan element within 12 months.

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This requirement is not proposed for alteration in the Report. The issue that this recommendation is attempting to address is that there is no clear penalty

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for not updating the local comprehensive plan in compliance with a state guide plan element

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specified for failing to comply to this requirement. There is a recent court ruling in which the judge suggests that there must be some ramification for non-compliance with a regulation.

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Stating that the director has the ability to rescind approval of a local comprehensive plan would remedy the situation of having a requirement without defining

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to the existing requirement that a municipality is required to conform their local plan with any state guide plan amendments within 12 months.

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Mr. Rhodes explained that this presentation is not only an overview of the Comprehensive Planning Assessment Report but of some of the legislative changes that will be proposed to clarify and amend the Act. Staff of the Statewide Planning Program have been working to prepare draft legislative changes for review by the State Planning Council and will be presented at a future meeting.

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there is a need to establish a clear penalty for inaction

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This process would include the processes working and the processes that are not working.

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| <p>Issue 3, the required elements of a comprehensive plan. The Report recommends amending the Act to include the following required topics rather than specific elements:</p> <ul style="list-style-type: none"> Goals and policies Maps Natural resource identification and conservation Parks, outdoor recreation, and open space Historical and cultural resources identification and protection Housing Economic development Services and facilities Transportation/Circulation Natural hazards, sea-level rise and climate change Land use <ul style="list-style-type: none"> Implementation | | |
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| Mr. Nelson continued with Issue 4, the comprehensive plan appeals process. The Report recommends: | | |

Repeal the current requirement for the Appeals Board and have all appeals go directly to Superior Court.
Establish a Rhode Island Land Court system to oversee all land use litigation and comprehensive plan appeals.

Mr. Flynn pointed out that the land court recommendation is long range and that Massachusetts has a similar system.

Mr. Nelson resumed his presentation without any questions or comments for the recommendations presented to address Issue 5, failure of compliance to adopt, update or amend a comprehensive plan, Issue 6, the categories of the state guide plan elements do not correlate with the categories of comprehensive plan elements and Issue 7, the state guide plan is too unwieldy and is not clear as to what is mandatory to receive state approval versus what is discretionary.

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Mr. Nelson continued his presentation without any questions or comments for the recommendations presented to address Issue 8, the State Planning Council does not have rules and regulations for the comprehensive planning process, Issue 9, the provision of technical and financial assistance does not meet levels desired by communities, Issue 10, the review process takes too long, and Issue 11, municipalities do not have a clear sense of what the state is looking for in a plan/state agency goals and policies are difficult to ascertain.

Mr. Nelson presented

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the State offers comments on a

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plan only after it has been adopted by the City or Town Council -

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. The Report makes the following recommendations:

The DOP and other State agencies should advise municipalities throughout the comprehensive plan drafting process upon receipt of a municipal request for assistance.

The Act should be amended to require municipalities notify the DOP of the scheduling of the planning body's public hearing notice.

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for state guide plan consistency

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As there were no further comments or questions, Mr. Nelson continued with his presentation and discussed Issue 13, state agencies are not submitting required reports to the director and Issue 14, resolving conflicts between the actions of State agencies and municipal comprehensive plans. Relative to Issue 14, the Report recommends the following:

The DOP will promote coordination between State agencies and municipalities as an ongoing part of its mission. For issues involving a conflict between a State-approved comprehensive plan and a State agency action, the DOP will, upon the request the affected municipality and State agency, offer its services as an informal facilitator to resolve the conflict.

In accordance with § 45-22.2-10(e), adopt a formal public hearing process to deliberate on situations where a State agency activity conflicts with a State-approved municipal plan.

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recommended to be deferred for