Draft
4/8/10

Rhode Island Statewide Planning Program
STATE PLANNING COUNCIL

Thursday, April 8, 2010
William E. Powers Building
Conference Room A
One Capitol Hill, Providence, RI

I. ATTENDANCE

Members Present

Mr. Kevin Flynn, Chair	Representing Ms. Rosemary Booth-Gallogly, RI DOA
Mr. Jared L. Rhodes, II Secretary	Statewide Planning Program
Ms. Jeanne Boyle	City of East Providence, Planning & Development
Ms. Sharon Conard-Wells	West Elmwood Housing Development Corporation
Mr. Thomas Deller	City of Providence Department of Planning & Development
Mr. Wayne Hannon	Representing Mr. Thomas Mullaney of RI DOA Budget Office
Mr. Christopher Long	Representing Mr. Timothy Costa, Vice Chair, Governor's Policy Office
Mr. Peter Osborn	Federal Highway Administration
Ms. Anna Prager	Public Member
Mr. Peter Schaefer	Representing Mr. Daniel Beardsley, RI League of Cities and Towns
Mr. William Sequino	Public Member
Mr. Bob Shawver	Representing Mr. Michael Lewis, RI DOT
Ms. Janet White-Raymond	Public Member
Mr. John Trevor	Environmental Advocate

Members Absent

Ms. Susan Baxter	RI Housing Resources Commission
Mr. Stephen Cardi	Cardi Corporation
Mr. L. Vincent Murray	Town of South Kingstown Planning Department
Mr. Michael Rauh	Environmental Advocate

Guests

Ms. Kelly Mahoney	RI Senate Policy Office
Mr. Daniel W. Varin	RI APA
Mr. Peter Dennehy	Legal Services

Staff – Division of Planning

Mr. Benny Bergantino	Senior Planner, Comprehensive Plans
Mr. Kevin Nelson	Supervising Planner, Comprehensive Plans
Ms. Derry Riding	Principal Planner, Comprehensive Plans
Ms. Karen Scott	Acting Supervising Planner, Transportation
Ms. Dawn Vittorioso	Executive Assistant

II. AGENDA ITEMS

1. Call to Order

Mr. Flynn called the meeting to order at 9:04 a.m.

2. Approval of the March 11, 2010 Meeting Minutes

Mr. Sequino moved to approve the Minutes of March 11, 2010 as presented. The motion was seconded by Ms. Prager. There was no further discussion and the motion carried unanimously.

3. Comprehensive Plan Assessment Process, Proposed Enabling Act Amendments

Mr. Rhodes began by reviewing the revisions that had been made to the draft as a result of the feedback received from the Council at their last meeting. These were as follows:

The first revision occurred in §45-22.2-9 (g). The revised language replaces the word "loss" with "rescission, in whole or in part".

> *"After an amendment to this chapter or to the state guide plan, all municipalities shall, within one year, amend their comprehensive plan to conform with the amended chapter or the amended state guide plan. Failure to do so may result in the ~~loss~~ rescission, in whole or in part, of state approval. The chief shall notify the municipality in writing of a rescission."*

The second revision occurred in §45-22.2-13 (g)(1) and mirrors the previous change.

> *"Failure to comply with this provision within one-hundred twenty (120) days of the date of the implementation schedule or the expiration of the moratorium period shall result in the denial or ~~loss~~ rescission, in whole or in part, of state approval of the comprehensive plan and of all benefits and incentives conditioned on state approval."*

The third revision deleted previous §45-22.2-10 (g)(1) "

> ~~*(1) That the program, project, or facility is necessary to meet the requirements of a federal mandate, or to meet the requirements of a federal program authorized and delegated to a state agency by state statute or executive order, or;"*~~

Lastly, Mr. Rhodes noted that section §45-22.2-9.1 had been added under the guidance of the Department of Administration's Legal Office so as to comply with the provisions of the Administrative Procedures Act.

> *(a) A decision of the chief involving the disapproval of a comprehensive plan or amendment thereto, or rescission in whole or in part, of a plan approval may be appealed by the municipality under the provisions of § 42-35, the Administrative Procedures Act, to a hearing officer designated by the director of the department of administration.*
>
> *(b) The decision of the hearing officer shall be in writing and shall include findings of fact and conclusions of law as required in § 42-35-12. If the decision of the chief is not consistent with the Act or the regulations promulgated under the Act, then the officer shall invalidate the decision, or those parts of the decision, which are not consistent. The officer shall not revise the comprehensive plan or amendment, but may suggest appropriate language as part of the decision.*

(c) Either party aggrieved by a decision of the hearing officer is entitled to judicial review.

(1) A complaint can be filed with the superior court and shall state with specificity the area or areas in which the decision of the hearing officer is not consistent with the Act or regulations promulgated under the Act.

(2) The review shall be conducted by the court without a jury.

(3) The court shall not substitute its judgment for that of the hearing officer as to the weight of the evidence on questions of fact. The court may affirm the decision or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions or decisions which are:

(i) In violation of constitutional, statutory, or regulatory provisions;

(ii) In excess of the authority granted to the hearing officer by statute or regulation;

(iii) Made upon unlawful procedure;

(iv) Affected by other error of law:

(v) Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or

(vi) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

With the formal staff presentation concluded, Mr. Deller asked who would have the right to appeal decisions of the Chief. Mr. Rhodes responded that only municipalities would have the right as is the case under the current legislation. Ms. Boyle asked if State agencies were excluded from the right to appeal. Mr. Nelson responded that they were as is the case under the current legislation.

Mr. Deller next expressed his support for the intent of what was trying to be accomplished with the revisions to § 45-22.2-13 (c) and acknowledged the difficulties presented in crafting one size fits all language for Rhode Island's 39 distinct municipalities. He then went on to note that although he was uneasy with the specific language and feared that it could be misinterpreted, he did not have a specific recommendation as to how to improve it and as such did not want to see the larger package held back as a result.

Ms. Boyle echoed Mr. Deller's concerns regarding § 45-22.2-13 (c) but also expressed support for the revisions that had been made since the last meeting. In follow-up Ms. Boyle noted the positive role that the Council debate and discussion had played and commented that the current draft, although not perfect, was better as a result.

In response to Ms. Boyle and Mr. Deller's comments, Ms. Prager suggested revisiting the draft language. Following discussion Ms. Boyle and Mr. Deller agreed that they didn't want to see the larger effort stalled as a result of their concerns but that they would meet

independently and possibly return at a later date with a recommendation for revision. Ms. Boyle then commended Staff and said she supported the remaining revisions.

Mr. Schaefer, representing the RI League of Cities and Towns, next asked the Council's municipal representatives how they would like him to vote on the proposal? In response, Mr. Deller stated that he wasn't going to instruct Mr. Schaefer how to vote, but that he personally would be voting in favor so as to assist in moving the legislation forward. Ms. Boyle also indicated that she felt the Council should support the bill given the progress that has been made with the caveat that members at some point in the future may propose further revisions to section 45-22.2-13 (c) in particular.

Mr. Trevor asked if staff had any insight as to whether the General Assembly would be in favor of the proposal. In response, Mr. Flynn said that there is always the possibility of the General Assembly rejecting the bill; however, it is unlikely because several interest groups support the legislation. Mr. Flynn then said that several avenues have been covered; RI Builders supports the bill and during the two-year process, we have worked closely with legal council.

Mr. Flynn expressed his appreciation to the Council and Staff for their support and hard work during the two-year assessment and drafting process.

At this time, there were no further comments. *Ms. Prager motioned to endorse the proposed changes to the Comprehensive Planning Act and Ms. Conard-Wells seconded the motion. The motion was unanimously approved.*

4. Chief's Progress Report

Mr. Rhodes briefed the Council on pending items for the next meeting agenda. These included the Department of Transportation's request to amend Transportation 2030 relative to the Pawtucket Station; the FFY 2011 Comprehensive Economic Development Strategy Project Priority List; and the SFY 2011 Unified Transportation Planning Work Program.

5. Other Business

Mr. Flynn noted that the Department has been working with RI Housing and other groups on potential HUD Sustainable Communities grant applications. He then announced that the Growth Smart Summit will be held on May 14, 2010, that DOP will be presenting a report on the State's effort to implement Land Use 2025 over the past five years; and that high level officials from HUD, DOT & EPA will be in attendance.

At this time, the Council began speaking about the relief efforts of the recent flooding. The Council discussed funding resources available and housing needs for individuals displaced.

6. Adjourn

There being no further discussion Mr. Deller motioned to adjourn. Ms. White-Raymond seconded the motion. The motion carried unanimously and the meeting adjourned at 9:54 A.M.

Respectfully Submitted,

Jared Rhodes
Secretary