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Collaborating to Support Environmental Conservation

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Abstract: Development law, local laws and policy that influence private land developers to appropriately develop land, affect the concerns of several groups including, private developers, municipalities, and environmentalists. By promoting environmental principles and revoking local regulatory obstacles, local governments can help encourage cooperation among these groups. This article highlights the success many New York communities have experienced in accommodating population growth while still reducing taxes and providing protection for the natural environment.

Development Law

At a recent conference at Pace University School of Law, the topic of development law was discussed. Development Law was defined as local laws and strategies that encourage the appropriate development of the land by private developers. These strategies envision environmentalists, developers and municipal leaders agreeing - in advance - on where development should occur, the standards that govern development projects, and the expeditious review and approval of projects that conform to these standards.

Development law adds incentives and mechanisms that stimulate appropriate development such as reforming local regulatory provisions that block environmentally-sensitive design, development agreements, incentive zoning, tax increment financing, strategic location of transit facilities and water and sewer services, and the transfer of development rights. Development law considers developers and banks the implementers of locally-created community development plans that are supported by citizens and environmentalists.

Collaboration

Obviously, the central question raised by this approach to development law is whether developers, bankers, environmentalists, and municipal officials can collaborate in this way. As some evidence that they can, the conference itself was cosponsored by JPMorganChase, the Building and Realty Institute, and a half dozen other associations

representing local officials, environmentalists, and their attorneys. To address this question in detail, the conference sponsors invited Martin Poretsky as its keynote speaker. Poretsky, a successful District of Columbia area homebuilder, is on the board of the Alliance for the Chesapeake Bay which helped initiate the Builders for the Bay initiative. This group is dedicated to removing local regulatory hurdles to developments that conform to environmentally sensitive site development principles. Poretsky's message was that the work underway in the Chesapeake Bay provides hope for New York Metropolitan Area watersheds. There, as here, projected population growth must be accommodated in new ways to keep pace with market demand and to preserve the sensitive ecosystem in regional watersheds.

Poretsky reported that the local regulatory reform movement in the Chesapeake Bay area was begun by the environmental community, but quickly and effectively reached out to include the development industry as a full partner. Builders for the Bay is a partnership that involves the Alliance for the Chesapeake Bay, the Center for Watershed Protection, and the National Association of Homebuilders. Its initial template for site design is the Center for Watershed Protection's 22 Principles for Better Site Design. The Builders for the Bay coalition plans to work with 12 local governments over the next two years to adapt these principles to local circumstances and to work with local officials for local regulatory reform. The revised local regulations will promote environmentally sound development, accommodating population increases while protecting environmental resources from pollution and degradation.

Site Design Principles

The 22 site design principles promoted by the Center for Watershed Protection were developed through an extensive collaborative process involving home builders, local officials, environmentalists, engineers, and environmental scientists. The Center conducted a series of workshops with these representatives over a year's time that examined new site design technologies, building costs, lending criteria, and local legal and political realities. All of these perspectives were accommodated in the 22 design principles that were adopted. Builders for the Bay was established to ensure that these principles are adopted in at least a dozen communities.

Local regulations dictate site design in new residential subdivisions and commercial site development. Regulations are found in zoning ordinances, subdivision and site plan regulations, and in ordinances designed to protect the environment, such as soil erosion and sedimentation laws or cluster development provisions. Such regulations were originally developed to accommodate a variety of interests such as smoothly flowing automobile traffic, access to fire fighting equipment, capturing the rapid runoff of storm water, and maintaining high property values. The investigations of the Center for Watershed Protection discovered that these regulations, developed gradually to meet an evolving set of challenges, do not promote environmentally-friendly design which, in turn, increases citizen opposition to developers' projects. The workshop sessions also revealed that neither banks nor builders are adverse to new

design standards, but that the inertia is found at the local level where resistance to regulatory reform is based on local perceptions that have not been reexamined recently.

Environmentally-Friendly Development

The 22 design principles that are being promoted by Builders for the Bay include standards that reduce street widths, rights of way, and length. These, along with the redesign of cul-de-sacs, reduce impervious coverage, run-off of pollutants, flooding, and land clearance. The principles encourage the use of vegetated open channels within street rights of way to convey and treat stormwater runoff. This, in turn, removes pollutants through infiltration and lowers site development costs. It also can replace expensive curbs and gutters which reduces barriers to the safe movement of wildlife.

The workshops concludes that historical parking requirements are excessive in many modern developments and the principles call for a review of parking standards to see if the required number of parking spaces can be reduced. This is especially appropriate in developments located close to transit facilities and commercial developments where shared parking arrangements can be developed. The pollution and runoff from parking can also be reduced by redesigning parking lot layouts with dedicated compact car areas, efficient parking lane design, and using pervious materials in reserve parking areas, all of which are promoted by the principles.

Stormwater can be accommodated in bioretention areas, filter strips, and other landscaped areas preserved by open-space or cluster design regulations. The principles include requiring tighter clusters of structures and greater open space, not just to enhance the sense of openness, but to minimize impervious coverage, reduce construction costs, conserve natural resource areas, and promote watershed protection. The principles encourage shorter side yard set backs and narrower frontages to reduce total road length and overall site imperviousness. Shared driveways are promoted along with the use of less pervious materials for driveway construction.

The principles promote mechanisms for the sustainable management of retained open space and community water and sewer systems. They direct rooftop runoff to pervious areas such as yards, open channels or vegetated areas to minimize use of the stormwater conveyance system and stormwater treatment management and costs.

A number of the design principles promote the proper functioning of environmental features so often affected by development. These include the promotion of vegetated riparian buffer systems along all perennial streams, floodplains, and wetlands; minimizing the clearing of dense woods and native vegetation; maximizing tree and vegetation preservation; and off-site mitigation of impacts on the watershed.

Applications in New York

New York's experience indicates that local governments are capable of adopting local regulations that are consistent with principles such as those promoted by Builders

for the Bay in the Chesapeake Bay region. An example is the innovative use of cluster developments of residential subdivisions. Local regulations can encourage or require the clustering of homes in a subdivision to protect open space, the rural character of a community, to protect critical natural resources while still providing cost cutting and affordability. Clustering allows the dimensional requirements of existing regulations to be relaxed providing an incentive to conserve the landscape. The open space preserved by clustering can be used for recreation, agriculture, or wildlife habitat. Cluster developments provide economic advantages through the reduction of roads, water and sewer lines, and public services such as snow removal or road maintenance. Clustering also reduces the need for the municipality to purchase open space or development rights.

A municipality that employs clustering must specify the particular zoning districts in which clustering is permitted or required, the circumstances under which clustering will be permitted or required, and which provisions of the zoning and subdivision laws may be altered. The extent of authority delegated to the planning board to permit or require cluster development can be limited to particular zoning districts, to certain areas in the community, or to areas with natural resource or historical characteristics; or the board may be granted the authority to accomplish certain stated purposes. Cluster development may not increase the density of the overall tract beyond what would otherwise be allowed by all other applicable laws or regulations, and such development must conform to all other requirements of subdivision approval. (See N.Y. GEN. CITY LAW §37; N.Y. TOWN LAW § 281; N.Y. VILLAGE LAW §7-738.) Incentive Zoning, however, can be used to provide greater density and to achieve affordable housing. (See N.Y. GEN. CITY LAW §81-d; N.Y. TOWN LAW § 261-d; N.Y. VILLAGE LAW §7-703.)

The Town of Clinton's residential cluster development law provides an example of effective clustering regulations. (See TOWN OF CLINTON, N.Y., ZONING Local Law No.3, § 5,16 (1991)). A stated purpose of the law is to “preserve as permanent open space agricultural land, important natural and cultural features, wildlife habitat, water resources, ecological systems, and scenic areas for the benefit of present and future residents.” The cluster development provision establishes a procedure for specifying the zoning districts in which the law is applicable and identifying the objectives to be accomplished by a cluster subdivision.

The “standards” subsection of the Clinton provisions provides the density and dimensional requirements applicable to a cluster subdivision. It also provides that the open space land of a cluster subdivision may be owned and managed by a homeowners association, and a perpetual conservation easement protecting the land from further development and subdivision may be granted to the municipality or a qualified not-for-profit conservation organization. Finally, the siting guidelines establish the case-by-case manner by which dwellings will be laid out within the cluster development, which allows design standards, such as those promoted by Builders of the Bay, to be followed.

Additional Dimensions to Development Law

The Chesapeake Bay design standards are geared to preserve the environment, lower development costs, and to reduce resistance to development resulting in the streamlining of development approvals and greater predictability for developers. Development law, the topic of the Pace Law School conference, includes more than design principles to insure that appropriate development is rewarded. Development law strategies identify areas that are particularly appropriate for development through rezoning or overlay zoning. They promote the location of water, sewer, and transportation facilities in those districts and encourage mixed-use, pedestrian friendly development and higher densities. Generic environmental impact studies are conducted on the adoption of economic development components of comprehensive plans or on the adoption of a development overlay zone. These studies can eliminate the need for costly environmental studies for individual projects, lower community resistance to those projects, and save time in the local development review process.

Local development law helps to answer the questions that are being asked in the Chesapeake Bay and the New York Metropolitan area: Where do the people go? Where does the projected increase in population live and where do these new people work? How far must they commute? Are there alternatives to the automobile? How can they be accommodated without diminishing the quality of life of our communities? Just to ask these questions is to realize the need for collaborative efforts among municipal leaders, developers, banks, environmentalists, transportation officials, scientists and engineers.

The story of the Chesapeake Bay indicates that such collaboration is possible. The design standards promoted by the Builders of the Bay indicate that there are design standards that support environmentally-friendly development that builders can endorse. New York law and local experience indicate that local regulations can incorporate such design standards here. The remaining challenge is to build the coalition that is needed to support these initiatives.