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SMART GROWTH IN NEW YORK
1999 Warren M. Anderson Legislative Breakfast Seminar Series

APRIL 13, 1999



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David Miller
National Audubon Society of New York State

Philip LaRocque
New York State Builders Association

Edward Farrell
New York State Conference of Mayors

David Church
New York Planning Federation

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**The 1999
Warren M. Anderson
Legislative Breakfast Seminar Series**

SMART GROWTH IN NEW YORK

Transcript of the Panel Presentations
Delivered at the April 13, 1999 Seminar

1999 Legislative Session

The Assembly Parlor
The Capitol
Albany, N.Y.

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The Government Law Center
of Albany Law School

WARREN M. ANDERSON

Warren M. Anderson is a distinguished alumnus of Albany Law School and an active member of the Government Law Center Advisory Board. Having served in the NYS Senate for thirty-five years, he is perhaps best known for his leadership during his tenure as President Pro Tem and Majority Leader from 1973 to 1988.

Warren Anderson began his legal career as an Assistant County Attorney in Broome County. He then joined the law firm of Hinman, Howard & Kattell where he is currently practicing law. Throughout his career he has received numerous honors and awards.

PROGRAM DESCRIPTION

In furtherance of its mission to serve as a resource to all levels of government in the resolution of specific problems, the Government Law Center is pleased to present the eighth annual Warren M. Anderson Legislative Breakfast Seminar Series. Monthly breakfast programs feature experts addressing the legal aspects of a variety of policy issues pending before the Legislature. The seminars are designed to provide access to current legal information on a given topic. The Government Law Center welcomes suggestions for future programs.

1999 HONORARY CO-HOSTS

The Government Law Center is grateful to the Leadership of the New York State Senate and Assembly for serving as honorary co-hosts of the 1999 Series:

Honorable Joseph L. Bruno

Senate Majority Leader

Honorable Sheldon Silver

Speaker of the NYS Assembly

Honorable Martin Connor

Senate Minority Leader

Honorable John Faso

Assembly Minority Leader

1999 SPONSORS

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The Government Law Center would like to thank *Senator Joseph Bruno, Assemblyman Sheldon Silver, Senator Martin Connor, and Assemblyman John Faso* for serving as honorary co-hosts of The 1999 Anderson Series.

The Center also gratefully acknowledges the speakers who participated in the April 13, 1999, program: *David Church, Edward Farrell, Philip LaRocque and David Miller.*

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DAVID MILLER

Executive Director

**NATIONAL AUDUBON SOCIETY
OF NEW YORK STATE**

Why would the National Audubon Society of New York State be interested in Smart Growth, sprawl and land use? The simple answer is that our focus is on birds, wildlife and their habitat, specifically on identifying important bird habitats in New York State. We have worked over the past several years on a program called the “Important Bird Area Program” in New York State; with the legislature on a bird area conservation law which went into effect a year and a half ago; and with the State on a bird area conservation area program that helps identify scientifically what critical bird habitats exist. We published a book called *Important Bird Areas in New York State* which identifies many of these areas. When 40% of those 127 important bird areas around New York State are currently threatened by sprawl, development, and other changes in land use, it is clear why the issue of Smart Growth means a lot to the National Audubon Society. It also is important as a quality of life issue—people want open space in their communities and

areas where wildlife will continue to be abundant as part of their lifestyles. National Audubon, therefore, hosted—with Albany Law School and many other groups, some represented on this panel—a conference at the Empire State Plaza in March 1999 that was attended by over 300 people, including local and elected planning officials, county officials, state agencies, state legislative staff, non-profit groups, and business organizations. Secretary of State Treadwell, DEC Commissioner Cahill, DOT Commissioner Boardman, Controller McCall and many other leaders in the field of Smart Growth participated. We heard horror stories about land use, but also successes of land use. We heard about opportunities of Smart Growth proposals and legislation and also about pitfalls.

One of the most important things we heard over those two days is that there was a growing consensus from a diversity of institutions represented on this panel and others on Smart Growth principles and policies. There was a general agreement—whether we were discussing infrastructure reinvestment, urban revitalization, Brownfield issues, open space, farming and farming incentives, forest products industries and incentives, tax incentives for redevelopment and other issues within our urban and suburban cores—that it be a “bottom up” regional planning process within the State to enable a grass roots-based Smart Growth effort, not a

“top-down” Smart Growth effort.

There are many themes in New York State and many programs that are keeping us on a Smart Growth path. The Agriculture and Dairy Compact, the Clean Air/Clean Water Bond Act, and the Brownfields Program are examples of that. Even some of the work here on the downtown revitalization of Albany is evidence of that. We need to look in New York State to find mechanisms to pull together the threads of what our Smart Growth successes and opportunities are as we move forward. The National Audubon Society is working with members of this panel and other groups to do just this. We are working on the Rath-Hoyt legislation and on executive orders and other legislative proposals to try and bring about Smart Growth policies for New York State. If we can move forward with some common themes and continue to have open dialogue with different parties, we believe there is a lot of opportunity to pursue Smart Growth policies in New York State.

Thank you.

PHILIP LAROCQUE

Executive Vice-President

NYS BUILDERS ASSOCIATION

It is a pleasure to be here. I have done about ten of these conferences since last September when the New York State Builders Association (NYSBA) had the first conference on Smart Growth. Traditionally and typically, the question is “What are the builders and developers doing at this table?” next to the Audubon Society, the Conference of Mayors, the Planning Federation, and so on? The first time people hear representatives of the builders speak, they often are surprised to hear that the Association and its membership have been doing Smart Growth for a number of years and have been very pro-active on the issue. We just have not called it that.

There is an opportunity here for all of us to do what is needed to grow New York State. The NYSBA represents 3,500 builders, developers, re-modelers and associates that perform about \$3 billion of primarily residential construction throughout the State of New York. We obviously are here advocating on behalf of that industry in Albany.

We also are affiliated with the National Association of Home Builders (NAHB), an organization that was represented by Gary Garczinski at the Audubon Society's Smart Growth conference last year. He recently testified on this issue before Congress and is being very well received at speaking engagements across the country. The NAHB represents 200,000 builders, developers, re-modelers and associates in the home building industry both in the single-family and the multi-family sectors. They range from the "Donald Trump" operations to the builders who are doing a few homes or remodeling projects a year.

The New York State Builders Association welcomes this renewed debate on growth policy, and encourages our members to participate in Smart Growth discussions both within our association and within our communities. Again, many of the ideas put forth by Smart Growth proponents are ideas we pushed for years. Our industry, however, is deeply concerned about the impact this debate could have on affordable housing and on the limitations that some proposals have placed on the personal liberty of families and individuals to live in the type of housing they choose. NYSBA has developed strategies to incorporate both economic and environmental concerns into growing for our future. Seeking ways to more creatively design and build residential developments and use land intelligently are our

major priorities. Sensible growth strategies that incorporate preservation of open space and farmland are of great concern to the public and, therefore, are a great concern to us because this is a market-driven economy and we have to pay attention to stay in business. The Association's goals of offering New York's residents choice and opportunity in housing, while at the same time acting as stewards of our natural resources, present many challenges which we are very eager to help solve.

New York State is in some ways already a Smart Growth state. We were the first to introduce zoning to the country. Whether you are for, against, or indifferent about it, it was started here. We have one of the strongest environmental laws of any state in the country, and an excellent cluster zoning provision that enables communities to be flexible in sub-division design. NYSBA's tools for growing smarter include the utilization of existing laws and our agenda, A Blueprint for the Future. Our legislative agenda places a heavy emphasis on Smart Growth initiatives—greater acceptance and use of existing statutes such as incentive zoning, transfer of development rights and conservation easements all will aid in growing smarter. Our blueprint includes tools to enhance growing smarter—the adoption of a uniform building code, creation of home ownership opportunities with targeted tax incentives, expedited

building permits and pre-approved building sites, use of planned unit developments, state funding increases for comprehensive planning, and training of planning and zoning boards. We also are supporting funding for much-needed affordable housing, in-fill development, Brownfield re-development with liability relief and reforming land development approvals and SEQRA through use of generic environmental impact statements and other land use approval reforms. We support using public funds for infrastructure investments and oppose the use of impact fees and urban growth boundaries that do nothing but reduce housing choice and opportunity. Incentive zoning is a great tool that simply is not used enough in this State. This tool alone could go a long way in getting us to where we want to go in Smart Growth. We need to do a better job of using this existing statute that allows builders to cluster their residential units together in exchange for leaving a portion of the land undeveloped. Marketing and financing these types of projects is very challenging to the builders and developers in our communities. Gaining local acceptance is usually a struggle as many consumers equate smaller lot sizes and mixed income developments with a lower quality of life. Single-family neighborhoods typically resist high-density developments in their communities. It is a fact of life and something we have to deal with if we are going to go forward on Smart Growth. We have to have some

backbone in our communities to allow these mixed density, mixed use programs to go forward. In addition to resistant neighbors, builders find that financial institutions regard these types of developments as risky because they are simply not that common yet in the marketplace, although there are signs that this is changing. It likely will take a generation of high density home building before consumers are comfortable with the concept of high density developments constructed next to large lot single family neighborhoods. Communities need to be aware of their right to use incentive zoning and how to establish high density bonus zoning provisions to take full advantage of this wonderful growth management tool that we have in place.

Since 1989, few local governments have taken advantage of another growth and preservation tool, transfer of development rights, which is an agreement between two property owners conveying or transferring specific development rights from one parcel of land to another. Again, this is an underutilized tool we have in place today. We need to use it better with greater frequency to concentrate development in towns and cities where infrastructure already exists. As a result, desired open space would be preserved.

Conservation easements in the DEC law protect open space and recreational, natural, agricultural, and historical resources. Through an easement, a landowner may donate land to a government unit or a non-profit land trust, while maintaining ownership and continuing to pay property taxes.

I already have mentioned some of the issues that need legislative action such as the model building code which is in the Governor's budget proposal. I urge the legislators who are here today to take a good look at that legislation. It is something that NYSBA and a number of other organizations support. A model building code is necessary if we are going to make Smart Growth work in our cities. Without it, we cannot effectively do the types of things we need to do in our cities, such as re-using existing structures—allowing loft apartments above retail spaces, for example. We can not do these things under current code. We have to get it changed to an international model code. We urge that it be put in the budget. Frankly, there is an appropriation of \$3 million primarily to provide training for local governments on the new model code for their building code enforcement officers. Another growth strategy endorsed by the Association is the creation of home ownership zones which would allow a builder to apply to a municipality for a designation of a zone for any State of

New York mortgage agency project eligible for project set aside. The zone could provide a variety of incentives through enactment of a local law including: incentive zoning, municipal installation of infrastructure through the creation of an improvement district with taxing status, and a real property abatement for future new home buyers which would not be applicable to school taxes, which I believe STAR has already addressed. Again, these incentives could be targeted in areas where you want to engage in priority growth areas: in inner cities and more mature suburbs that need some help. NYSBA urges state and local governments to encourage housing through these types of incentives in areas where growth is desired by identifying and targeting areas for growth. By offering a streamlined process that includes: pre-approved permits and acceptance of generic environmental impact statements, communities will enjoy growth where they want it. New York State could assist local communities by developing a model housing zone program which includes a fast-track permitting process and acceptance of generic environmental impact statements. We are doing these thing now in the manufacturing sector. We need to consider doing them in residential settings. If we begin by targeting it just for cities and those areas that are "Smart Growth Areas," that is fine. It is a start.

We look forward to working with various agencies and

organizations towards solutions that balance growth with everyone's concern for our environment. After all, it is the environment and economy where our children and parents must live now and in the future.

EDWARD FARRELL

Executive Director

NYS CONFERENCE OF MAYORS

The New York State Conference of Mayors (NYCOM) represents the cities and villages in New York State. Let me just talk a little bit about why we are here and what we think Smart Growth is. We are interested in the environment. No one is more interested in the environment than local officials since they are the people who take the heat most of the time when there is a controversy or an issue. I like to think of us as environmentalists. We also look at Smart Growth as an issue of growth. One of our difficulties, especially in upstate New York, is that we lack growth. We have negative growth which, obviously, is not a good thing. Those who think they are doing well defy what is reality. There was a time when only one city, Saratoga Springs, showed an increase in population. In the last census, the City of Albany held its own and actually gained slightly under Mayor Whalen's watch. The city of New York is growing because of an influx of immigration, but other cities are not doing well.

We do not look at Smart Growth as taking away private choice. If individuals or groups want to go out and build a home on a mountain top, that is fine. Subdivisions and developments, however, often involve an investment of public funds, making these activities a legitimate issue of public policy discussion. There is a finite amount of money for infrastructure development. We have an infrastructure which already exists, some of which needs redevelopment. We think it is good public policy to try and utilize some of that public investment that has been made in the past as opposed to continually making new investments further and further away from the old investment. There was an article about a month ago that looked at economic activity, specifically the top one hundred SMSA's in the country. In upstate New York, the Capital Region came in around the high 60s. But, Rochester was at 99 and Buffalo was at 98 which is basically no growth. We need to reverse this trend.

NYCOM is very interested in open space preservation. There needs to be more done in terms of tourism, and in redeveloping and creating incentives that will make people want to live in urban areas where we already have invested public funds. We look at Smart Growth as an economic development engine. If we continue building as we have been, with bigger and bigger malls being constructed further and further from our cities, that is not a good thing. Within

the next decade we are going to see many mall closures. I have seen estimates as high as 30%. The malls built in the late fifties and early sixties will be abandoned, joining the many strip malls in the suburbs and the cities that have since closed down as development has occurred further and further out. We need to redevelop our cities. The Brownfields program is not working well, especially when you have to use the Bond Act and Superfund standards which slow down the program. Cleaning up some of these industrial sites is a good idea—many of them have water, sewers and rail lines which would be of value as we redevelop our cities.

I want to acknowledge Senator Rath and Assemblyman Hoyt who are in the room and who have been at the forefront on this issue. The bill they introduced last session and are working on this year is a testament to their foresight. We know State agencies have participated, but we are anxious to hear from the Governor himself on this issue. NYCOM is ready to work together with all involved parties to promote Smart Growth and economic development in New York.

Thank you for the opportunity to be here today.

DAVID CHURCH

Executive Director

NEW YORK PLANNING FEDERATION

The New York Planning Federation is a relatively unique organization in that we represent approximately ten thousand appointed planning and zoning officials around the state. As such, “Smart Growth” is a natural interest for the Federation.

Led by the legislation sponsored by Senator Rath and Assemblyman Hoyt, today there exists an opportunity for a conversation about Smart Growth among very disparate interests. Never before have so many different groups coalesced around this issue. Senator Rath and Assemblyman Hoyt deserve the credit for sponsoring legislation that might be the catalyst to help move us toward some progress.

Planners have all too often in the past produced documents that end up being shelved. We are learning from these past experiences which, of course, is what planning is all about. For the Federation, Smart Growth is, in essence, principled sound planning that is consensus based. However, the state

is diverse. As mentioned by Ed Farrell, we have parts of the State declining in population, yet other parts of the State, such as Long Island, overwhelmed by development issues. Furthermore, development issues on Long Island differ from those in Buffalo, the Adirondacks, the Catskills, the Hudson Valley and so on. That diversity in interest and geography is a difficult thing to develop into unified public policy.

We certainly would like to see more funding for community-based planning. The Rural New York program, co-administered by the Federation with three other state-wide non-profits for the past five years, uses modest private funds from the J.M. Kaplan Fund, and other foundations and corporations, to award small grants to community-based organizations and municipalities to do, at the local level, what Smart Growth calls for. We have been overrun with applications for the grants, without any promotion or marketing of the program. This indicates an enormous financial need for local officials, activist groups, and non-profit groups at the community and regional level to help build their capacity. We would like to see some sustained state-level funding for similar community-based efforts.

There has been progress, but a great need still exists for better state-agency consistency. Lack of leadership has been a concern. Too often one agency, for example, is doing

something that is uncoordinated or contrary to another agency; this is demonstrated in local jurisdictions. In Orange County, for example, there is a debate about building a new Thruway exit at Sterling Forest. Two state agencies are actively trying to acquire the lands, and a third state agency is actively seeking to add a Thruway exit to spark development which would potentially raise the value of the land. Local committees may be trying to revitalize and make their downtown areas pedestrian-friendly, and find they must deal with a fairly-aggressive DOT trying to clear out the pedestrians for active vehicle movement. This kind of conflict seems to take place much too often. Legislators in New York State have given local officials a plethora of tools to use, such as TDR or incentive zoning, that is probably unrivaled in any state in the country. The legislature should be applauded for allowing us to do things that are openly debated in other states; but there is still much modernization to do. The current building code exists as a real obstacle to the revitalization and improvement of our historic hamlets and villages. This has been noted by those in the private sector. There should be an improved effort to provide incentives and encourage efforts for “Fast Track Permitting” to foster greater activity locally. We need to continue supporting regional demonstrations and experiments: The Tug Hill Commission, The Catskill Watershed Corporation, The Hudson River Valley

Greenway, the Long Island Pine Barrens Commission, etc. These regional efforts have grown locally from the bottom up. We need to sustain them so they can actually progress and achieve real results.

Do we need a statewide main street or downtown program? About two-thirds of the states in this country have some kind of state main street program being initiated directly by state government or with state government support of non-profit efforts. We have struggled in that arena since the time when the Department of State briefly had a program. The Conference of Mayors has taken the lead to provide some of that support by sponsoring a statewide conference and other initiatives. We need focused efforts that provide resources and assistance on main-street, downtown and neighborhood redevelopment.

Lastly, we are in an information age and, as such, we need to build on the initiatives of the Geographic Information Systems (GIS) clearinghouse and the Office of Technology to provide computer-based information that is both free and accessible to a variety of decision makers, so we all can be well-informed and on the same page.

Thank you.