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September 12, 2007

Ben Spinelli, Executive Director
Office of Smart Growth
Department of Community Affairs
101 South Broad Street
PO Box 204
Trenton, NJ 08625-0204

Re: Plan Endorsement Guidelines

Dear Mr. Spinelli

It is our understanding that the "plan endorsement guidelines" will again be scheduled for consideration by the full State Planning Commission at the scheduled September 19 meeting. The purposes of this letter are again to summarize and outline our thoughts and concerns regarding this proposal, as well as seek clarification on a number of these issues. We also ask that you reference our July 11 letter on these same topics.

COAH Petition and Wastewater Management Plan Requirements

First, the draft guidelines require a petition for substantive certification from the Council on Affordable Housing (COAH.) Our July 11 letter details why this requirement is problematic and unworkable. While the League continues to argue that there should be no direct regulatory linkage between plan endorsement and COAH certification, consistent with the plain language and legislative intent of the State Planning Act and the Fair Housing Act, we do see the logic in establishing an integrated process in which municipalities can work simultaneously with the OSG, COAH and the DEP.

We fail to see, however, how the COAH and wastewater management plan requirements necessarily accomplish this. In fact, we would be concerned that such requirements on the front end of the PE process could actually undermine integration of these processes, and discourage municipalities from pursuing plan endorsement.

Furthermore, we believe local governments are entitled to some clarification on some points. For instance, over 200 municipalities filed COAH petitions based on the third round growth share regulations. Right now, the agency is under a December 31 deadline to pass new regulations to address the concerns of the Appellate Division. Thus, these 200-some municipalities will need to either amend or resubmit their petitions, thus delaying their requirement to seek plan endorsement within three years. At what point can these municipalities proceed with plan endorsement? If a municipality must re-petition, can it proceed with PE? If a municipality must submit an amended petition, can it proceed with PE?

Additionally it is indicated that a "wastewater management plan" is required as part of the plan endorsement petition. Again, placing another cost and labor-intensive requirement on the front end of the process is a powerful distinctive to municipalities and is all the more unfortunate for the fact that wastewater management decision should be part of, not prerequisite to, good

planning. We believe this requirement is ill-conceived and that it forces planning to take a back seat to regulation. Certainly municipalities need to give considerable thought to wastewater management early in the PE process, but a finished WMP must not be required before the most substantive PE work begins.

Plan Endorsement Advisory Committee

The new guidelines require the appointment of a plan endorsement advisory committee. Since existing law allows the creation of an advisory committee (local ordinance in accord with the Municipal Land Use Law), we recommend the advisory board shall be created "in accordance with N.J.S.A. 40:55D-1 et. seq., the Municipal Land Use Law Chapter 291, 1975, Sec 40:55D-27A, that is "To assist or collaborate with the planning board in its duties." By law, the planning board is responsible for master planning and must not be an afterthought in the PE process.

In addition, the follow-through with the governing body and the State should be done by the planning board. Making an advisory board part of the planning board process, will reduce redundancy, cost and time. It will ensure that the decision-makers are all in agreement, that the public hearing process has been properly obeyed and that the principles of PE are immediately integrated with understanding into the application hearing process. In addition, the planning board already operates under firm legal and ethical dictates.

Benefits

While we appreciate that the explanation of benefits has evolved, it remains nebulous and insufficient to attract much interest. Municipalities have engaged in three rounds of cross acceptance. We appreciate and respect that the State Planning Commission is committed to the plan and to a cooperative and integrative relationship between the Office of Smart Growth and municipal governments. It is now past the time for the respective agencies to do the same. One such way would be a definitive statement of the benefits of plan endorsement.

We appreciate the hard work you and your staff have done on this, and compliment you on continuing to move the ball forward. On behalf of municipal governments in this State, and those who will be asked to engage your office and implement the State Plan, we ask for consideration of our comments above.

Very Truly Yours,



William G. Dressel, Jr.
Executive Director

cc: The Hon. Charles M. Kuperus, Secretary, Department of Agriculture
The Hon. Charles Richman, Acting Commissioner, Department of Community Affairs
The Hon. Lisa Jackson, Commissioner, Department of Environmental Protection
The Hon. Kris Kolluri, Commissioner, Department of Transportation
Gary D. Rose, Chief, Office of Economic Growth