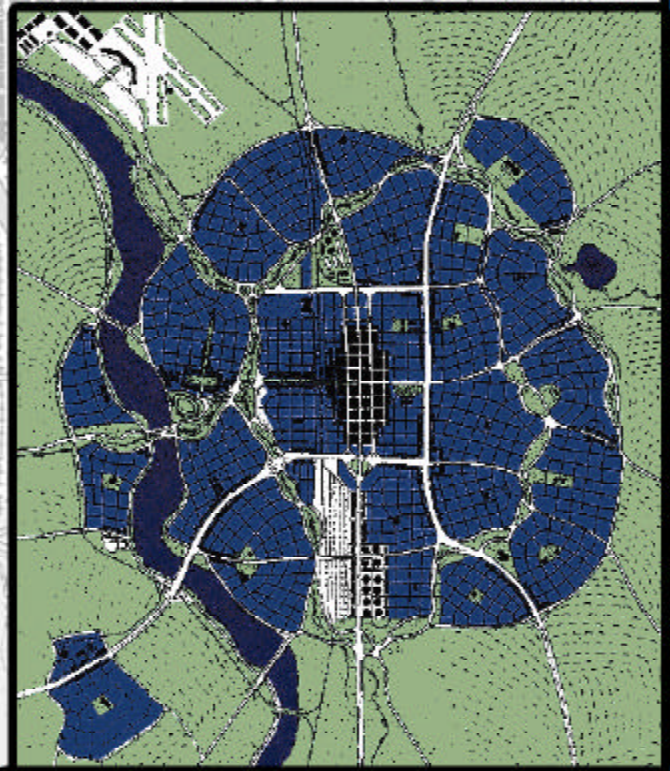




SMART GROWTH IN NEW YORK STATE: A DISCUSSION PAPER



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Introduction

“Smart growth” is a frequently used term that is often defined in different ways by different people. It is hard to argue with the core idea of smart growth – that there are connections between development patterns and our quality of life, economy and environment, and that growth should improve rather than harm our communities. However, as a discussion progresses toward more specific definitions and policies, there can be many points of contention.

For example, many define smart growth as directing development to existing communities, while discouraging continuing development in outlying areas. Others would not support this goal, or would differ over how to implement it. Another common definition of smart growth is that it is more town-centered, more pedestrian- and transit-oriented, and provides a greater mix of housing, commercial and retail uses than current development patterns do. The smart growth movement, in other words, is premised on dissatisfaction with current development practices. Ironically, dissatisfaction is sometimes greatest in growing and economically successful areas.

This paper is intended to help stimulate a vigorous debate on smart growth in New York State by providing a general background and helping to define major issues. New York has a unique urban and natural heritage, and a rich diversity of communities, many of which need to be brought back to a healthy condition. These resources need to be conserved and developed wisely, in an economically sustainable and environmentally sound manner.

Most of our cities – the traditional population, business and cultural centers – are losing people and jobs, and serious fiscal, economic and social problems result. At the same time, many other communities are experiencing rapid and often unwanted growth and development. Much of this new development is low-density and occurs at the fringe of settled areas, consuming forest and farmland. A recent study on Upstate New York found that this pattern of sprawl is accelerating even as population growth slows, and that it is undermining the region’s quality of life and economic health.

Because growth occurs across municipal borders, many smart growth principles involve regional planning and solutions. These solutions may be difficult to achieve given the fragmented structure of land use, transportation, and economic development planning, as well as the tendency for local governments to compete for relative advantage. In other states where reforms have been implemented, state governments have played a leading role in promoting change. While it is true that positive initiatives are taking place in many communities across New York State, there are also many problems. Without major changes in approach, development will continue in the current sprawling pattern.

To say that choices made today have ramifications extending far into the future is a platitude, but it is nonetheless true, and it is particularly true of land use and development decisions. Given current economic and fiscal challenges, the temptation is to view any development as positive, and some may think that smart growth is an issue New York State should focus on later. This thinking misses the point that smart growth is an economic and fiscal issue, as much as it is a quality of life and environmental issue.

Smart growth is an economic and fiscal issue, as much as it is a quality of life and environmental issue.

Local fiscal conditions are driven by local tax bases and service needs, both of which are heavily affected by the type of development that occurs. Development patterns drive the creation and maintenance of public infrastructure, and the efficiency of transportation and government services. Economic growth is dependent, among other things, on the availability of property for occupation or development, transportation systems, and local taxes. Business location decisions have also long been known to be influenced by quality of life, as well as the availability of a good workforce. Given these interrelationships, the question is not whether governments can afford to focus on smart growth – it is whether they can afford not to.

Many states, including some of our neighbors, have developed aggressive smart growth agendas. Certainly aspects of smart growth will differ from community to community, and few, if any, would suggest that there should be a standardized approach. That proposition, however, should not be used to argue against state-level action. In fact, it is generally held that state-level leadership and actions are needed to successfully counter current sprawling growth patterns, as well as to effectively address various other smart growth issues. To develop a successful approach here, New York State must address what smart growth is, as well as what it is not.

Sprawl and the Need to Guide Development

Two million square feet of retail space, 300 miles of new roads and hundreds of houses have been built in the newer suburbs of Monroe County in the past five years, even though the population has remained virtually unchanged. This has left Rochester and its older suburbs with two million square feet of vacant retail space and empty homes while Monroe County residents commute an extra 3,000 miles per family per year and pay higher taxes for the roads on which they commute.¹

Over a period of 35 years, Clifton Park in Saratoga County has gone from a rural town to one where two-thirds of the land is covered by homes, schools, highways and shopping centers. Interstate Route 87 (the “Northway”) is the major commuting route linking Clifton Park to Albany. Despite lane additions, the route is plagued by daily traffic jams and seemingly never-ending construction projects. This commute – which should be a 30-minute drive – often takes more than an hour. The growth in Clifton Park which has spurred a variety of responses from the Town, including a building moratorium and an open space plan is in stark contrast with the situation in the City of Albany, where a recent survey revealed 800 vacant buildings.

Monroe County and Clifton Park are not anomalies. This continuing dispersion of population and development – “sprawl” as it is termed – has become a national issue. All over the country there are suburban towns and rural communities experiencing rapid development at the same time the population in central cities and older inner-ring suburbs declines. Rapid and sometimes haphazard growth can create a number of problems in the places where it occurs, as does the loss of population and abandonment of properties in other areas. State and local taxes pay for new sewers and roads at the same time existing infrastructure is underutilized elsewhere, and fiscally depressed areas look to the State for assistance. Vacant residential, commercial and industrial properties are eyesores that have a variety of negative economic, fiscal, social and environmental impacts.

¹ City of Rochester website (<http://www.cityofrochester.gov/mayor/sprawlrs/reality.htm>); this data is from 1998, and the trends may have even accelerated since that time.

For cities – the historic population, business, educational and cultural centers – a spiral of decline can develop as population and businesses leave. This pattern often results in city governments without resources sufficient to support public infrastructure or the needs of remaining residents. However, some of the greatest concerns about sprawl exist among residents of growing suburban and rural communities, where continuing, poorly planned development can damage the quality of life.

In growing areas, sprawl causes transportation problems, environmental degradation, increasing local taxes for expanded services (particularly schools), and the loss of farmland, natural areas and other open space. These pressures are being felt particularly in rapidly growing areas like the Hudson Valley, where local governments and regional organizations are looking for ways to preserve quality of life and ease transportation difficulties while promoting economic prosperity.

A recent Brookings Institution study on Upstate New York found that sprawl – defined as the continuing urbanization of forest and farmland at the fringe of metropolitan areas – is accelerating even as population growth declines, and that it is undermining the economic health and quality of life in the region. According to the study, “Sprawl has been shown fairly consistently to degrade wildlife habitat, threaten agricultural productivity, and raise the cost of public services at all levels of government.”² The study documents how Upstate land has been developed at 12 times the rate of population growth in the last two decades, and new housing units are being developed about twice as fast as new households are created. This occurs at the same time “brownfields” (environmentally compromised industrial/commercial sites), “grayfields” (empty malls, failed office complexes and other unused or underutilized commercial properties), and vacant housing all proliferate in cities and older suburbs.

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Under various names, sprawl has long been considered a local fiscal issue. Among developing bedroom communities, for example, it is an axiom that new residential development does not generally pay its own way (meaning growth in the costs of services exceeds the growth in taxable property). There are countless examples of local communities seeking to stop new residential projects, fearing both an adverse fiscal impact and erosion in the quality of life.

Sprawl is also increasingly being discussed as an economic development concern. National leaders in business and government have acknowledged this issue, as have a number of governors. Local leaders are also increasingly making smart growth an explicit part of their agenda. For example, the Nassau County Executive has also made it an integral part of his economic development agenda, saying he wants to build a county-wide consensus on smart growth.³

² “*Sprawl Without Growth: the Upstate Paradox*, Rolf Pental, Brookings Institution Survey Series/Center on Urban and Metropolitan Policy (October 2003), p. 2

³ See for example, Nassau County Executive Thomas R. Suozzi’s 2003 State of the County address (available online at: <http://www.co.nassau.ny.us/Exec/TSindex.html>)

Big city mayors have long complained about both the fiscal and economic impacts of population and job losses associated with sprawl. The City of Buffalo, for example, raised smart growth in its four-year financial plan as a fundamental issue connected with the City's long-term financial viability, stating that "no plan to address [the City's] financial straits is complete until and unless it addresses how sprawl has contributed to [its] troubled financial condition."⁴ Mayor Johnson of Rochester has become an outspoken advocate of smart growth policies and an equally outspoken critic of urban sprawl and the devastating effects of disinvestment on urban areas. He is also an ardent proponent of regionalism, promoting collaboration among municipalities within their regions to increase economic competitiveness.⁵

Defining Smart Growth

Like many other reform terms, there is no universally accepted definition of what "smart growth" is. However, an underlying concept in almost all definitions is that new development should be planned and beneficial rather than haphazard and damaging. While smart growth is usually associated with an anti-sprawl theme, the term is also used to describe any policies or approaches that help communities develop in ways they consider positive.

Various ideas advanced under the rubric of smart growth cover a wide spectrum, ranging from rehabilitation of city, town and village centers while strictly limiting peripheral growth – to supporting any growth where the value of more development is perceived to outweigh potential negative effects. In short, everyone is *for* smart growth, but it may be defined very differently depending on the perspective of the user.

[Smart Growth is]development that serves the economy, community, and the environment. It provides a framework for communities to make informed decisions about how and where they grow.

- International City/County Management Association (ICMA)

The International City/County Management Association (ICMA) has offered a broad definition of smart growth, calling it "development that serves the economy, community, and the environment. It provides a framework for communities to make informed decisions about how and where they grow."⁶ This definition provides room for many different interpretations and approaches.

A number of organizations have been formed to advance the smart growth agenda. One particularly influential group is the Smart Growth Network (SGN), which is a partnership of approximately 25 organizations (including the ICMA, which serves as the organizational "home" for the network). The network was organized in 1996, when the U.S. Environmental Protection Agency joined with several non-profit and government organizations in response to increasing community concerns about the need for new ways to grow that boost the economy, protect the environment, and enhance community vitality. The partner organizations include environmental groups, historic preservation organizations, professional organizations, developers, real estate interests, and government entities.

⁴ City of Buffalo Original Four-Year Financial Plan," p. 45 (available at <http://www.bfsa.state.ny.us/Links.html>)

⁵ "Metropolitan Pressure Points," Mayor William A. Johnson, Jr. *Planning Commissioners Journal* (Number 32, Fall 1998)

⁶ *Getting to Smart Growth: 100 Policies for Implementation* Smart Growth Network/ICMA (2003), p. i. ICMA is the professional and educational organization for chief appointed managers, administrators, and assistants in cities, towns, counties, and regional entities. Established in 1914, ICMA provides technical and management assistance, training, and information resources to its members and the local government community. More information is available on its website (icma.org).

The Smart Growth Network has promulgated ten principles for smart growth that help to define the term, at least from the perspective of its supporting organizations. According to the SGN principles, smart growth policies should:

- Strengthen and direct development toward existing communities,
- Preserve open space, farmland, natural beauty and critical environmental areas,
- Mix land uses (residential with retail and business),
- Take advantage of compact building design,
- Foster distinctive, attractive places with a strong sense of place,
- Create walkable neighborhoods,
- Provide a variety of transportation choices,
- Create a range of housing opportunities and choices,
- Encourage community and stakeholder collaboration, and
- Make development decisions predictable, fair and cost-effective.

The SGN principles are explained in great detail in a number of their publications and many examples of successful policies are provided.⁷ A recent SGN publication stresses that successful approaches need to incorporate many of these principles and notes that many initiatives have been incorrectly characterized as smart growth in order to capitalize on the popularity of the term. Examples of this include directing growth away from certain areas without identifying parcels appropriate for development, high-density projects without a mix of uses, and large-scale revitalization without affordable housing.⁸

Thus, while the definition of smart growth may be somewhat in the eye of the beholder, it is generally acknowledged that there are a lot of problems to address, and that development continues to occur in ways that are not beneficial. The existence of the smart growth movement and the term itself imply that many development decisions have not been all that smart.

Smart growth is generally associated with various ways of preventing or mitigating the negative effects of sprawl, redirecting growth toward established communities and building more compact neighborhoods. While there is certainly debate on the issue, sprawl is often described as the direct result of long-standing public policies, including tax laws, highway subsidies, most zoning laws, and a system of dispersed local governments and planning. From this viewpoint, these systems are themselves the problem, and solutions require basic changes. Most zoning laws, for example, focus on minimum lot sizes, setback and parking requirements, all of which contribute to low-density development and sprawl.

Many of the seminal concepts behind smart growth were developed as part of a design movement known as “new urbanism.” The group representing this perspective – the Congress for the New Urbanism (CNU) – was one of the original members of the SGN. Founded in 1993, CNU seeks to reform all aspects of real estate development, in part by altering the way regional and local plans and land use controls affect public and privately built infrastructure. CNU views disinvestment in central cities, the spread of placeless sprawl, increasing

⁷ A complete description of the ten principles, as well as a wealth of other information on the organization and the reference materials it provides is available from the Smart Growth Network website (smartgrowth.org).

⁸ Getting to Smart Growth II: 100 More Policies for Implementation, Smart Growth Network/ICMA (2003)

separation by race and income, environmental deterioration, loss of agricultural lands and wilderness, and the erosion of America's built heritage as one interrelated community-building challenge.⁹

An organization created by architects and designers, CNU is concerned with building design as well as patterns of development, and it seeks to address the dissatisfaction many express with the current "built environment" – including streets, neighborhood layout, public spaces, and architectural design of public and private buildings. The group promotes the creation of walkable neighborhoods that contain a diverse, balanced range of housing and jobs, and supports strong regional planning for open space and appropriate architecture and planning.

In many ways, CNU is more specific than SGN in describing what sort of growth is consistent with new urbanist principles. For example, CNU does not support new projects that are gated, lack sidewalks, or have a tree-like street system, rather than a grid network. They believe that projects should connect well with surrounding neighborhoods, developments, or towns, while also protecting regional open space, and they rule out "single-use" projects that are just housing, just retail, or just office. Under CNU principles, various types of buildings should be seamlessly integrated, from different types of housing, to workplaces, to stores. Projects should have a neighborhood center within that is an easy and safe walk from all dwellings in the neighborhood. Buildings should be designed to make the street feel safe and inviting, by having front doors, porches, and windows facing the street – rather than having a streetscape of garage doors. Neighborhoods should include formal civic spaces and squares. Finally, CNU urges a "popsicle test" – meaning that an eight-year-old should be able to safely bike to a store to buy a popsicle.

Rather than approaching every new real estate development as a separate entity, CNU and others advocate planning neighborhoods and taking steps to ensure that new development is appropriately connected to the existing town layout, and meets certain standards. This is sometimes referred to as traditional neighborhood development, or TND. The "rules" include that a neighborhood should be laid out on a network (often a grid) that provides alternative routes to every destination. Streets within a neighborhood are to be suitably narrow and provide for parking, trees and sidewalks. There should be a mixture of large and small dwellings, outbuildings and shops and offices, all of which are compatible in size and disposition on their lots. Civic buildings for education, community meetings, religion and culture should serve as landmarks by being located at public squares and the termination of street vistas.

In essence, TND advocates a return to standards of neighborhood construction that preceded the almost complete reliance on automotive transportation that is now the rule in many suburban communities. In a TND neighborhood, walking is a viable alternative, and children and others can go about daily tasks without being dependent on automobile transportation.

⁹ A complete description of this organization is available on its website (cnu.org), from which this extract is drawn. Another useful source for understanding the concepts advanced by the organization is *The New Urbanism: Toward an Architecture of Community*, by Peter Katz, Vencine Scully Jr. (McGraw-Hill, 1993)

It must be pointed out that in many ways current building codes, zoning ordinances and transportation standards conflict with this type of development. Minimum lot sizes and setbacks required by zoning laws are a prime example, as are prohibitions on mixing residential and commercial uses. Traffic engineers have also long focused on safety as being related to the width of roadways and the absence of trees or other objects with which vehicles can collide. However, there is growing evidence that wider roads in residential areas are actually less safe, because they encourage speeding. “Traffic calming” is a term referring to techniques that help slow traffic (such as narrower, treed streets with sidewalks) and situations that make for a more pedestrian-friendly environment (such as sharp angles, rather than rounded turns at four-way intersections).

A variety of books have been written on the concepts advanced by the new urbanists. One of the most popular is *Suburban Nation*¹⁰ written by architects Andres Duany, Elizabeth Plater-Zyberk, and Jeff Speck. This book provides a compelling narrative, describing how current land use and building practices have produced sprawling residential subdivisions that are economically and environmentally unsustainable. The authors contend that such development patterns have destroyed the traditional concept of neighborhood, eroding safety, citizenship and other values. The impact of complete automobile dependence that is a consequence of the way developments have been built is described, including social isolation, the necessity of driving children to every event, bored teenagers, stranded elderly, and weary commuters. The once common pleasure of meeting neighbors on the street is much less likely when every outing requires a car trip (and the likelihood of running into people you know at a regional mall is much lower).

James Kunstler is another influential author who has written several books indicting current land use, transportation and building practices. Kunstler describes a “tragic landscape of highway strips, parking lots, housing tracts, mega-malls, junked cities, and ravaged countryside” that is “not simply an expression of our economic predicament, but in large part a cause.”¹¹ While Kunstler’s contentions are fervent, he is not alone in his thinking. His books have struck a chord among a large group of people who are looking for a more pleasant physical environment and a restored sense of community.

Smart Growth and Regionalism

Because sprawl occurs across metropolitan areas with many different local governments, smart growth is often associated with regionalism, or ways to foster cooperation around shared regional goals. Many of the major smart growth concepts, such as that growth should be directed to existing communities, involve regional planning and solutions. The fragmented structure of local land use regulation is a fundamental challenge to a true, regional smart growth agenda, as is the natural tendency for local governments to compete for relative advantage.

Most local governments rationally want to maximize their tax base and minimize their service needs, and these specific goals often supersede regional concerns. Many communities, for example, do not want high-density or affordable housing constructed within their borders, fearing that this type of growth will cost more in services

¹⁰ *Suburban Nation: The Rise of Sprawl and the Decline of the American Dream*, Andres Duany, et al; North Point Press (April

¹¹ *The Geography of Nowhere*, James Howard Kunstler, Simon and Schuster (1993). See also, *Home from Nowhere* Simon and Schuster (1996).

than it will produce in tax revenues or detract from a perception of exclusivity. The question for an individual local government often is not whether there is an adequate supply of such housing available within the region – it is whether such development should take place within its borders. One of the primary results of urban flight and sprawl is the mismatch between need and fiscal capacity in cities and other core communities.

Regional solutions, however, are often as much about efficiency as equity. A 2001 report from a University at Buffalo professor, *Regionalism on Purpose*, describes mushrooming interest in regionalism to deal with border-crossing problems including sprawl, sluggish economies, uncoordinated land use policy, environmental decline, and intraregional inequities in housing, education and fiscal capacity. The report describes the history of regionalism, as well as the philosophical, political, and practical challenges, using case studies of the major efforts around the country.¹²

In a “home rule” state such as New York, with land use planning and control powers disbursed among more than 1600 municipalities, it can be very difficult to develop regional solutions to sprawl and other smart growth issues. The complex local government structure found in New York and other Northeastern states may have made sense at the time it was designed, when cities were the population centers, and the natural economic and social communities were generally encompassed within a single municipality. In today’s environment, where the vast majority of people live and work within metropolitan areas encompassing many local governments, and where economic, fiscal, social, transportation and environmental issues all cross municipal borders, it is evident that regional solutions are needed for many problems.

While there are many examples of cooperation among local governments, there is also a tendency to compete, and it is important to understand the pressures facing local decision makers in considering the ways that regional smart growth goals can be achieved.

A recent book from two prominent New York State academics, *Regionalism and Realism*, examines the history of state and local governments in the tri-state region, analyzing various approaches to regionalism. Among the book’s major conclusions is that acting regionally is almost always up to state (not local) governments. Only state governments, it is noted, can “control both the political and financial incentives and disincentives that can influence whether local jurisdictions collaborate or go it alone.”¹³

Many smart growth principles cannot be implemented piecemeal in each municipality, and encouragement alone is simply not enough to promote systemic change. Successful smart growth initiatives often need at least a regional focus, and usually state-level changes are necessary in order to significantly alter current patterns of development. A subsequent section of this report discusses reforms taking place in other states.

Points of Contention

Smart growth has many proponents, but it also has its share of critics. Even among those who support smart growth as a concept, there are many differences in approach.

¹² *Regionalism on Purpose*, Kathyne A. Foster, Lincoln Institute of Land Policy (2001)

¹³ *Regionalism and Realism*, Gerald Benjamin and Richard P. Nathan, A Century Foundation Book, Brookings Institution Press (2001), page 259.

A major criticism of smart growth is that it seeks to substitute a certain set of judgments for the natural products of free enterprise and local control, which ultimately reflect the choices of citizens with regard to where and how they live, work and travel. Another argument has been that smart growth proponents are unrealistic and that the policies they advocate and the type of development they wish to encourage are simply not possible on a large scale, given current economic and social realities, and the need to accommodate continuing population growth.

For example, a recent academic study concurs that sprawl is ubiquitous and continues to expand (in agreement with smart growth advocates). The authors conclude, however, that rather than being the result of government policies or poor planning, sprawl is the “inexorable product of car-based living [and] the primary social problem associated with sprawl is the fact that some people are left behind because they do not earn enough to afford the cars that this form of living requires.”¹⁴ Some argue that suburbanization is, in fact, an effective “congestion reduction mechanism” that shifts road and highway demand away from densely developed inner cities.¹⁵

It is inarguable that sprawl is a result of choices made by citizens in the automobile age. On the other hand, real estate development occurs under rules specified by three levels of governments, and development decisions can therefore hardly be said to occur in a free market. For example, subsidized highway construction and national energy policy are major causative factors in current “autocentric” development patterns.

It should be pointed out that choices made in a market situation show only what people prefer among the available alternatives. Real estate developers (i.e., the creators of the choices) are striving to maximize profits within an environment defined by government policies. Most land use controls prohibit high density development or mixed use at the same time that endless outward expansion is not only allowed, but subsidized by debt-funded highway projects and other public infrastructure. In this environment, sprawling growth will occur. In fact, under the zoning regulations found in most growing areas, it is all but impossible to build the compact traditional neighborhoods that were the accepted pattern for growth in the earlier part of the 20th Century.

Smart growth advocates point to the high market values of either well-preserved traditional neighborhoods or newly constructed communities following traditional neighborhood design principles as evidence that this type of development would be preferred by many – if only it could be built. From this standpoint, the struggle is not to change preferences, but to change the land use regulation and development system in ways that would allow such choices to be made available to consumers.

At least one survey by a market research firm has found that homebuyers are not satisfied with the type of development currently found in conventional suburbs, and would prefer the town model typical of pre-1950 development patterns (i.e., traditional neighborhood design). For example, by large majorities, consumers preferred a town center surrounded by a village green, shops and civic buildings, narrow streets in a grid pattern, and a less automobile-centered environment.¹⁶

¹⁴ Sprawl and Urban Growth, Edward L. Glaeser and Matthew E. Kahn (May 2003). NBER Working Paper No. W9733. (<http://ssrn.com/abstract=412880>)

¹⁵ *Alternatives to Sprawl*, Lincoln Institute of Land Policy (1995); available online at: (<http://www.lincolnst.edu/pubs/pub-detail.asp?id=864>)

¹⁶ *Why Smart Growth - A Primer*, International City/County Management Association, p. 25 (http://www.epa.gov/livability/pdf/WhySmartGrowth_bk.pdf)

Another fundamental conflict is whether regional choices should supersede local choices. There are many regional efforts consisting of cooperative, often voluntary efforts that many would argue are quite successful. It is also extremely difficult for any level of government or community to cede powers currently held. There are strong philosophical underpinnings to this issue. As described in *Regionalism on Purpose*, regionalism faces “the classic dilemma of a diverse and democratic society: how to realize the common good while safeguarding individual freedoms.” In this context, “individual freedom” is that of individual municipalities being in control of their destinies (even if this limits the ability of the region as a whole to shape its destiny).

Academic studies, as well as public leaders, have often concluded that because of this conflict, as well as political and practical realities, that the most productive direction for the State to take on regionalism is to encourage regional cooperation, possibly through financial incentives.

Land Use Regulation

In New York State, virtually all land use *regulation* takes place at the municipal level (i.e., in a city, village or town government).¹⁷ Land use *planning* is also primarily a municipal function. While State law provides for certain planning functions at the county or regional level, these mechanisms are largely advisory, whereas municipal planning is directly related to land use regulation.

The most common method of municipal land use control is to adopt “zoning” laws, which regulate the use of land by area or district, including the type of development that can occur (e.g. residential or commercial), as well as the density of such development (multifamily vs. single family, acres per building lot, etc.) and the siting requirements (building height, access, parking requirements, etc.).

Zoning is typically implemented through two components: a zoning map and zoning regulations. The map divides a municipality into various land use districts, such as residential, commercial, and industrial or manufacturing (or even more specific designations such as high-, medium-, and low-density residential, general commercial, highway commercial, light-industrial, heavy-industrial, etc.). Zoning regulations commonly describe the permissible land uses in the various zoning districts on the map and also include dimensional standards for each district, such as building heights, minimum lot sizes and distances (setbacks) from buildings to property lines and/or the street, as well as the steps necessary for approval of certain types of use. For example, a single family home may be permitted “as-of-right” in a low-density residential zoning district, meaning no further approvals are needed as long as the basic requirements are met (other than a building or zoning permit). For other types of properties (usually larger and more complex, such as shopping centers, office or apartment complexes), or subdivisions (plans to subdivide and develop larger parcels of land), additional procedures and reviews are typically required.

¹⁷ The State Constitution (Article IX, Section 2) as well as various enabling statutes, gives individual city, town and village governments the power to control land use, including the power to decide whether to control use and to determine the nature of the controls. While a comprehensive examination of land use regulation is beyond the scope of this report, an excellent description, including the legal basis for these powers, can be obtained in the *Local Government Handbook (5th Edition)*, published by the NYS Department of State (January 2000) and available online (www.dos.state.ny.us/lgss/pdfs/Handbook.pdf).

Local governments are empowered to create planning boards, to which planning and regulatory matters can be referred prior to action by municipal legislative bodies. For example, planning boards often play an important advisory role in preparing and amending comprehensive plans, zoning regulations and long-range capital programs. Certain regulatory functions such as subdivision approval and site plan review (e.g., of the layout and design of a shopping center, apartment complex, or office building) can also be delegated to planning boards.

State law provides for municipalities to prepare and amend a comprehensive plan, which generally forms the foundation for land use controls. Since each municipality chooses its own approach to land use regulation, the form of each plan will be unique. Some plans consist of only a few pages, while others are thick volumes with heavily detailed maps and illustrations. Professional planning firms are often used to help carry out this function.

Comprehensive planning is not required, but has been broadly promoted by State government as an invaluable tool for communities because it can provide a basis for all local efforts to guide development of the built environment, as well as preservation of natural areas and open space. This includes land use controls where they are imposed, but also public investments in roadways, sidewalks, sewer and water systems, parks and other amenities. Public participation is an important component of the planning process, and can occur formally through hearings and informally through workshops and informational sessions. Comprehensive planning is a very good way to review a community's land use strategy in a smart growth context. Many communities do not have comprehensive plans (about 40 percent, according to a 1999 study¹⁸); among those that do have plans, most were prepared decades ago and are severely out of date.

There are other laws and tools that can be used to regulate and influence development, including building codes, architectural design control, historic preservation, environmental review, open space preservation, agricultural protection, and sign control.

Within the context of a zoning law, there are also a variety of alternative techniques available (i.e., other than dividing a community into various use districts via a map). These include the following:

- Cluster zoning – a variation of traditional subdivision approval that allows higher density construction within a portion of a property being subdivided.
- Incentive or bonus zoning – allows developers to exceed dimensional, density or other limitations of zoning regulations in exchange for providing various amenities such as a park or plaza.
- Planned unit development (PUD) – a zoning technique that provides for development of a large tract of land as a “unit” that allows mixed use and density within a single area).
- Floating Zones – an approach that allows definition of a zone that is not mapped, but “floats” in the abstract until a large scale development proposal is made (PUD is often a form of floating zone).

¹⁸ *Land Use Planning and Regulations in New York State Municipalities: A Survey*, NYS Legislative Commission on Rural Resources (1999). According to this report, 84 percent of cities; 58 percent of towns and villages; and 59 percent of all municipalities have written comprehensive plans.

- Performance zoning – this form of regulation establishes performance standards, usually in terms of impact on the community such as traffic, noise, scenic and visual quality impacts.

Transfer of development rights is another innovative technique that can be used to help preserve areas in which development should be avoided, such as agricultural land or water supply protection areas. Under this approach, the right to develop properties in a protected area is exchanged for the ability to develop land in a target area more intensively than the law would otherwise allow. Sale of development rights is another option. For example, an agreement between the State and the International Paper Company to preserve nearly 260,000 acres in the Adirondack Park through working forest conservation easements was recently announced.¹⁹

A moratorium on development can be used to temporarily halt new land development projects while a municipality's comprehensive plan, land use regulations or both are revised. This is considered an interim development regulation to restrict development for a limited period of time (and the courts have placed strict and detailed guidelines on their use).

To many advocates, the current approach to land use control stands directly in the way of smart growth. This problem, however, has two distinct aspects, one of which is very difficult to change and another which may not be. The more difficult thing to change (because many would argue that it should not be changed) is the almost exclusive location of land use control at the lowest level of government (i.e., the municipal level), and the inherent weakness of regional planning that results. This conflict is at the heart of the smart growth/regionalism connection previously discussed. However, it is a difficult and controversial issue because the potential positive of coordinated planning (if, for example, land use decisions were subjected to greater county or regional control), is countered by the negative of weakening the powers currently enjoyed by municipalities which, it can be argued, are closer to those affected, and therefore more accountable. This is a difficult theoretical and political issue of great controversy.

However, a second and equally important aspect of land use regulation is that the majority of present zoning laws tend to reinforce sprawling growth patterns and prevent the construction of the traditional walkable, mixed-use, attractive and compact neighborhoods that smart growth advocates and new urbanists promote. This is a problem that individual communities can address on their own, and the tools to do so already exist. An aggressive statewide public information and education campaign could therefore be very effective at bringing about change.

The preponderance of current zoning laws, for example, focus on minimum lot sizes, setback and parking requirements, all of which contribute to low-density development and sprawl. These zoning techniques are often used to prevent large-scale development from taking place, or to prevent other types of development from occurring. Unfortunately, this approach to zoning is a major factor causing sprawl, because it causes developments to use more land per housing unit. Under this approach, piecemeal, developer-proposed subdivisions are the norm for new housing, and when land runs out or becomes scarce in one community, the development "leapfrogs" to further out communities.

¹⁹ NYS Governor Pataki's press release of April 22, 2004 (<http://www.state.ny.us/governor/>)

While conventional zoning codes more often than not stand in the way of smart growth development, there are many creative approaches that can be used, including those described above. Planners and architects have developed new types of codes that encourage adaptable, mixed-use, pedestrian-friendly communities. Architectural reviews and other tools can be used to ensure quality construction that is consistent with a community's character.

Planned traditional neighborhood development generally will not happen under typical approaches to zoning. However, it can be accomplished using a variety of techniques such as those described above. The Smart Growth Network, for example, has compiled a library of successful zoning codes built on these and other techniques (*Smart Growth Zoning Codes*) as well as a number of other resources.

While the NYS Department of State provides a number of training opportunities and reference materials on zoning law and issues, including the creative techniques described above, none of their courses or reference manuals are directed specifically to the topic of smart growth or traditional neighborhood development.

Smart Growth in the Empire State

A variety of activities related to smart growth have been taking place in New York for some time, and it is useful to consider these efforts in the context of thinking about what else could be done.

Historic Preservation and Environmental Review

To the extent that it exists, the roots of smart growth planning at the State government level in New York can be traced to two significant pieces of federal legislation: (i) the National Historic Preservation Act of 1966, that required federal agencies to take into account the effects of their undertakings on historic properties, and (ii) the National Environmental Policy Act (NEPA) of 1969, that required examination of environmental impact from many points of view. It was during this era that New York State made a formal commitment to historic preservation and environmental soundness, creating the Historic Trust Office to administer a state program similar to the National Historic Preservation Act. That office later expanded to include many preservation activities and eventually became part of the State Office of Parks, Recreation and Historic Preservation (OPRHP). In 1978, the **State Environmental Quality Review Act (SEQR)** was enacted, which looks beyond historic impact and requires all state and local government agencies to consider environmental impacts equally with social and economic factors during discretionary decision-making.

Improvements in Municipal, County and Regional Planning

In the 1990s, the New York State Legislative Commission on Rural Resources and its Land Use Advisory Committee successfully advocated for a series of planning reforms that included: the establishment of a statutory procedure for preparing and adopting local comprehensive plans and definitions of what those plans should contain; encouragement of coordinated planning between local jurisdictions and state agricultural districts; a statutory framework for intermunicipal cooperation in planning; and the authorization for local governments to award incentive zoning credits or bonuses to developers who provide communities with qualifying benefits.

New York's counties have the statutory power to create planning boards and prepare a county comprehensive plan. The plan should include goals, objectives, principles, policies and standards upon which proposals for immediate and long-range development of the county are based. Despite encouragement from the State to prepare comprehensive plans, fewer than half the counties in the State have such plans; many were adopted years ago and are undoubtedly out of date,²⁰ as are many municipal comprehensive plans.

In New York State, municipalities also have the authority to create regional or metropolitan planning boards. Regional councils have been created in 45 of 62 counties and are collectively represented by the New York State Association of Regional Councils (NYSARC). A regional council is another vehicle for promoting regional planning and fostering smart growth. These councils are designed to promote inter-county cooperation for common and cross-boundary issues, and to develop and execute strategies that positively contribute to the region's well-being.

The regional councils were created to provide a comprehensive planning mechanism for coordinated growth and development. This includes promoting the region, and providing services such as economic development, land use, transportation, environment and water resources management, human resources management and regional data services. However, regional councils may only suggest; they lack the statutory power to compel local governments to cooperate.

While State law does require certain municipal zoning matters be referred to county planning boards or regional planning councils where they exist, the circumstances under which this occurs are limited (generally referral occurs when a proposed zoning matter affects property within 500 feet or more of a boundary or certain highways). The municipality, moreover, can override the county or regional planning body's recommendation in most cases.

Some of the most active regional planning agencies are non-profit organizations without any statutory power. For example, the Mid-Hudson Pattern for Progress is a non-profit public policy research and planning institute that has been very active in promoting smart growth topics in the Hudson Valley. Its mission is to "preserve and promote the social, economic and natural environments of the region by building a consensus for a pattern of growth that will ensure a high quality of life through the balance of a healthy environment and a vibrant economy."²¹

Quality Communities

A "Quality Communities Interagency Task Force" was formed by executive order in 2000, composed of staff from various executive branch agencies and chaired by the Lieutenant Governor. Interestingly, although the Quality Communities (QC) effort was fundamentally concerned with issues related to smart growth, the term itself was not used. The Task Force was to "study community growth in New York State and develop measures to assist those communities in implementing effective land development, preservation and rehabilitation strategies that promote both economic development and environmental protection."

The Task Force had a very broad charge, seeking to deal with issues such as revitalizing central cities, main

²⁰ A County Comprehensive Plan survey from the Department of State (January 2003) shows that only 13 counties are known to have comprehensive plans, and of these, 8 were adopted in the 1970's or before. In this survey, 17 counties stated they did not have comprehensive plans; the situation for a number of counties is unclear.

²¹ The website for the Mid-Hudson Pattern for Progress contains a full description of the organization's activities (pattern-for-progress.org).

streets and small towns; agriculture and farmland protection; conservation of open spaces and other critical environmental resources; transportation and more livable neighborhoods; and sustainable economic development. The QC Task Force issued a report²² including 41 recommendations that were referred to a permanent interagency work group formed in April 2001. Most of the recommendations, however, only endorsed good practices – they did not call for changes in New York State policies or statutes to address smart growth issues.

The QC recommendations are aimed at very positive goals, such as using technology to distribute information and create development tools, promoting open space conservation, renewing agriculture, promoting shared services and encouraging sound transportation planning. There are many success stories within the recommendations, such as a pilot program to show local governments how to implement transfer of development rights.

The Quality Communities Demonstration Program, which provides grants to support planning initiatives, has benefited many communities. Other initiatives, such as the acquisition of forest and parkland, are also extremely positive, and have received greater attention as a result of being a focus of the QC effort.

However, many of the QC recommendations, while promoting positive goals, do not acknowledge that significant changes in current practices may be needed to accomplish these goals. For example, the report recommends coordination of highway improvement projects with community development plans, but it does not recommend any changes in State or local planning practices. From a smart growth perspective, there is no comprehensive transportation plan that attempts to connect road construction decisions with abandonment of downtown residential and commercial centers and the extension of suburban sprawl.

The QC working group, which is co-chaired by the Lieutenant Governor and Secretary of State, has a Quality Communities Clearinghouse web site (<http://www.dos.state.ny.us/qc/>) that refers to a variety of reference materials and funding sources, and which describes a large number of accomplishments including: cooperation and coordination among state agencies, training on planning and zoning for local officials, environmental protection measures, preservation of forest land and historic structures, and many more. Many of the accomplishments are the result of long-standing programs that are now included under the QC umbrella. QC also issues a newsletter that describes various projects and provides other relevant information.

The original Task Force report also called for the State to adopt a set of uniform “Quality Communities Principles” that all executive agencies would be directed to use as a guide for the allocation and administration of state resources. This concept is similar in approach to various recommendations from smart growth advocates, because it is believed that state actions are often either out of synch with, or even in direct opposition to, smart growth goals. However, the QC principles are all very general, and while positive, they could be said to have been in general use even before the Task Force met. The principles are:

- Revitalize our Downtowns and City Centers,
- Promote Agriculture and Farmland Protection,
- Conserve Open Space and Other Critical Environmental Resources,
- Enhance Transportation Choices and Encourage More Livable Neighborhoods,

²² The report is available from the Department of State, the Lieutenant Governor’s Office, or online at: http://www.state.ny.us/litgovdoc/cover_pdf.html

- Encourage Sustainable Development,
- Strengthen Intergovernmental Partnerships, and
- Help Create, Implement and Sustain the Vision of a Quality Community.

There are, of course, many improvements included within the principles and related recommendations, some of which are currently being implemented. From a smart growth perspective, however, the principles do not effectively describe either a full or a specific enough agenda (as do, for example, the Smart Growth Network principles). While some Quality Community goals are similar to SGN goals, they do not generally call for the State to make any changes that would, for example, direct growth to existing communities or take advantage of compact building design. This should not be read as a failure of the QC effort, however, as it clearly was not an explicit part of the agenda set by the Governor. In fact, the QC efforts continue to avoid use of the smart growth term, without, it might be noted, actually articulating why the term is objectionable. This approach makes it more difficult to tie into national efforts, or to promote practices that are being advanced under the heading of smart growth elsewhere.

The Smart Growth Network principles, in comparison, outline a clear smart growth agenda that would be a dramatic change from current practices. The SGN principles are used by many state, local and regional smart growth groups to help define and clarify their goals, and a variety of publications expand on the principles, providing specific policies and steps for implementation.

Local Government Perspectives

Many local government leaders strongly support smart growth principles, but there is by no means unanimity in this regard. While smart growth initiatives can be popular, and the term is often used to describe local initiatives in a positive way, the linkage with regionalism and the contention that parochial views from local governments regulating land use are a large part of the problem tend to make it difficult for many local government officials to support smart growth in an unqualified manner.

New York's local government associations (NYCOM, NYSAC and the Association of Towns) do not track their members' smart growth initiatives, per se. However, they do have opinions on what the State should or should not do to help municipalities with smart growth. They are strongly opposed to any legislation that would restrict local decision-making or involve new State mandates. They argue that differing types of communities across the State require individualized approaches to development, and that local governments should be allowed to control their own destinies. However, the associations do support increased State funding to local governments for smart growth, such as that provided through the Quality Communities Demonstration Project, as well as money for the purchase of development rights, and tax credits for rehabilitating historic buildings.

The NYS Conference of Mayors and Municipal Officials (NYCOM) has put forth a group of "Smart Growth Economic Development Proposals," which call for incentives to locate businesses and people in urban areas, State support for property tax relief, regional economic development and tourism plans, brownfield remediation and open space preservation. NYCOM has also been very active in promoting "Main Street" redevelopment and rehabilitation of brownfields (properties with pollution problems from previous industrial and commercial uses that have fallen into disuse). NYCOM has training programs for their members on these and other issues.

Current Legislation

A variety of bills have been offered recently to address smart growth issues, including legislation to establish smart growth task forces, commissions and offices, and a revolving loan fund. Another proposal would provide tax exemptions for development projects meeting certain quality-of-life criteria, such as pedestrian-friendly design, mixed-use, parking kept behind buildings, and architectural qualities that enhance neighborhoods. Many of these proposals have been one-house bills, and none to date have been successful. However, this year there are several major smart growth bills with sponsorship in both houses that may have a better chance of enactment. These measures could provide a fundamental turnaround in State policies, helping to counter current sprawling growth patterns. A short description of each follows.

The State Smart Growth Public Infrastructure Policy Act (A. 8651 DiNapoli, Hoyt, Brodsky et al./S. 6255-A LaValle) – This bill would require State agencies and authorities to fund infrastructure in a manner consistent with smart growth principles. The principles enunciated in the bill include a priority for projects or actions that maintain or improve existing infrastructure or preserve agricultural land, forests, water, air quality, recreational and open space; as well as others to foster mixed-use and compact development, downtown revitalization, brownfield redevelopment, enhancement of public spaces, a diversity of housing in proximity to places of employment, recreation and commercial development, and the integration of all income and age groups. The principles support improved public transportation and reduced automobile dependency, as well as municipal, intermunicipal and regional planning.

Each infrastructure agency (including the Departments of Environmental Conservation, Transportation, Health, Economic Development, and the State Education Department, Housing Finance Agency, Environmental Facilities Corporation, Dormitory Authority, and Thruway Authority) would be required to give funding priority to existing infrastructure and projects that are consistent with these principles, as well as with local governments' plans for development. Each agency would also have to establish a smart growth advisory committee.

The bill's purpose is to "augment the State's environmental policy by declaring a fiscally prudent state policy of maximizing the social, economic and environmental benefits from public infrastructure development through minimizing unnecessary costs of sprawl," including environmental degradation, disinvestment in urban and suburban communities and loss of open space. It states that sprawl is "facilitated by the funding or development of new or expanded transportation, sewer and . . . other publicly supported infrastructure inconsistent with smart growth." The sponsor's memorandum states that infrastructure funding decisions in New York State have supported a pattern of settlement and land use which necessitates expansive and expensive infrastructure resulting in new roadways, water supplies, sewer treatment facilities, utilities and other public facilities at great cost to the taxpayer and the ratepayer. With this pattern of dispersed development, public investment in existing infrastructure located in traditional main streets, downtown areas and established suburbs has been underutilized and those areas have suffered economically.

The Smart Growth for a New Century Act (A. 8652 DiNapoli, Hoyt, Brodsky, et al./S. 5483 LaValle) – This bill creates an optional process for communities to create smart growth plans that adhere to certain principles; development projects consistent with those plans would be eligible for low-interest loans through a smart growth revolving loan fund, as well as being eligible for property tax exemptions and priority for state financial assistance. A process is created under two or more individual municipalities can develop a shared

vision by creating a “smart growth compact” using a public discussion process and special councils. The plan would have to adhere to a series of principles, including conservation, accounting for and minimizing social, economic and environmental costs of new development, providing transportation and housing choices, and supporting mixed-use and integration of income and age groups. Local plans would be reviewed by a state-wide smart growth review panel. Development projects in a compact area that are not consistent with smart growth compact plans would then not be approved by any government entity or supported by state financial assistance. Each municipality’s land use regulations would have to be consistent with the compacts. The bill also creates an office of local assistance within the Department of State to provide technical, scientific, and financial assistance to localities for smart growth planning.

The Community Preservation Act (A.10053 DiNapoli/S. 6949 Marcellino) – This bill would authorize towns in New York State to adopt, after a local referendum, a real estate transfer tax of up to 2 percent for the purpose of establishing a community preservation fund to be used for conservation. The bill is based on the successful effort of five towns at the east end of Long Island in establishing a community preservation fund to protect drinking water, conserve parkland, safeguard habitats and help halt sprawl into pristine, green locations. It would allow communities across the State to establish their own voter-approved community preservation funds. Currently, municipalities must get specific legislative approval before asking their voters for a tax on real estate transfers for preservation purposes. The bill contains a provision to provide an exemption equal to the median residential sales price in the county (thus exempting more affordable, existing housing from the transfer tax).

Progress in Many Areas

Many individual local governments and regional groups in New York State are making progress in dealing with problems related to growth. The discussion presented in this paper, while alluding to areas where improvements could be made, should not be interpreted to be dismissive of these efforts. Those who believe that smart growth issues can be dealt with locally often point to these successes as evidence that progress can be achieved without any further state-level changes. The successful examples provided below are presented for illustration. It would not be possible in a report of this size to comprehensively list all local successes, and we have chosen just a few examples.

Onondaga County Settlement Plan

The Onondaga County Settlement Plan is an application of new urbanism principles put together over a two-year period beginning in 1999. It is a regional plan prepared for the joint Syracuse-Onondaga County Planning Agency by pioneering architect Andres Duany. The Plan’s intention is to “encourage and enable municipalities in Onondaga County to improve their residents’ quality of life through a renewed emphasis on neighborhoods.” Specifically, the Plan began by acknowledging that the County’s greatest strength was its tradition of historic neighborhoods, and then focused on providing the tools that could most effectively reinforce that tradition.²³ The Settlement Plan was preceded by the 2010 Development Guide, adopted in 1991, which laid out a policy

²³ *Onondaga County Settlement Plan - The Regional Plan and Pilot Projects*, Duany Plater-Zybeck & Company (2001), available at: <http://www.syracusetheandnow.net/SettlementPlan/Regional%20Plan%20Final.pdf>

under which Onondaga County would use its responsibilities for roads, water supply and wastewater treatment to direct growth to existing urban areas and community centers and to avoid unnecessary new infrastructure costs. Specifically, the Guide made it County policy not to extend water and sewer lines to serve new residential development.

As described in the Settlement Plan, Onondaga has experienced two forms of growth: traditional neighborhood development and suburban sprawl. The dominant model until World War II was the traditional neighborhood, which is characterized by mixed use (e.g., shopping and residential), pedestrian scale, and clear identity. The dominant model since that time has been suburban sprawl, characterized by the strict separation of land uses, an environment unfriendly to pedestrians, and a complete dependence on automobile transportation. The traditional neighborhood model – represented by the villages, hamlets and city neighborhoods – is associated with a high quality of life, while suburban sprawl is associated with erosion in this quality of life, increased traffic, inner-city deterioration, and a general sense of placelessness.

The Settlement Plan consists of a regional plan, pilot projects, traditional neighborhood development (TND) guidelines and codes. It is important to understand that the post-war sprawl occurred under existing zoning and subdivision regulations that effectively outlawed traditional neighborhood development. The Settlement Plan accordingly provides descriptive guidelines for traditional neighborhood development, as well as a prototypical traditional neighborhood zoning code, which can be adopted by municipalities in the area.²⁴ Syracuse has used the prototype TND zoning code in its lakefront area and two suburban towns, Dewitt and Tully, are in the process of incorporating elements of TND within their existing zoning laws and comprehensive plans. Design and planning projects for seven pilot neighborhoods have been well received, and some have had development projects start already. For example, the Village of Liverpool, currently cut in half by a six-lane road is to become a revived, pedestrian-friendly Main Street area with connections to Onondaga Lake Park. The plan includes redesign of the Lake Parkway from a high-speed commuter road to a naturalized parkway. A new urbanist neighborhood project is also under construction in a pilot project in the Town of Camillus.

Genesee County Smart Growth Plan

The Genesee County Smart Growth Plan, enacted in 2001, was designed to prevent sprawl from occurring in connection with the extension of public water to many areas. Under a plan to obtain water from the Monroe County Water Authority, a pipe system is to be installed that follows almost every State highway in the County. While the system was needed to meet existing needs, the fear was that wide availability of public water could spur sprawling development across the County, destroying its rural character, even as its villages and hamlets continued to decline.

Genesee's Smart Growth Plan protects farmland and the rural character of the area by using several zoning techniques that the County Planning Department is working with local governments to adopt (including cluster zoning), as well as a water hook-up policy that effectively prevents sprawl. Under the plan, hook-ups will be restricted to existing development (before enactment of the plan) and future development that is located within predetermined and mapped development areas surrounding villages and hamlets. The idea is to target

²⁴ The traditional neighborhood guidelines, codes, and other reference materials are available online: <http://www.syracusetheandnow.net/SettlementPlan/SettlementPlan.htm>

development of new homes and businesses in development areas served by public water, building up existing villages and hamlets while protecting farmland from sprawling development. This plan is almost equivalent in impact to an Oregon-style urban growth boundary (see below), and is accomplished using existing zoning techniques, as well as a very specific water hook-up policy.

Activities in the Capital District

Actions in a variety of Capital District communities illustrate how smart growth issues are being advanced. In rapidly growing successful suburbs, town governments are taking steps to protect themselves from the effects of sprawl. In Clifton Park, for example, the town has created a plan for saving selected open spaces before they are developed, and put a moratorium on building in the Western section of town. In the Town of Bethlehem, a moratorium on new residential construction has been adopted (applied to new projects of four or more units), while the town works on its master plan. Albany is trying to lower the number of vacant buildings and revitalize low-income neighborhoods by offering financial incentives to homebuyers, encouraging city police to live in the neighborhoods and preserving historic structures.

On a regional level, the Center for Economic Growth (CEG), a business-supported regional economic development organization, has been leading efforts to shape a regional development strategy, in connection with promoting “Tech Valley” – high-tech manufacturing in the Capital and Hudson Valley Regions. In addition to traditional economic development goals, CEG is working with community leaders on what is in essence a smart growth agenda, creating urban centers that are cultural hubs and regional magnets for young technology workers, creating and maintaining infrastructure that supports sustainable residential and commercial development patterns that balance growth with quality of life. This effort has also been supported by the State Pension Fund Upstate Venture Capital Investment Fund, which has made a \$55 million commitment to two Capital Region-based private equity partnerships that will establish and expand high-tech start-up companies in Upstate New York.

Lessons from Other States

A variety of state-led smart growth initiatives are taking place across the nation, including our neighboring states. While several pieces of legislation have been proposed, and the Quality Communities Task Force effort is ongoing, New York State really has no corresponding effort.

Smart growth is a broad and complex topic, and there is, and will continue to be, debate about what state governments should do to promote it. At a minimum, however, to provide effective leadership in this area, state governments must address the term – smart growth – or efforts to promote various approaches associated with the national smart growth movement will be handicapped. A successful effort must provide guidance to local government officials and encourage strong regional cooperative efforts, even as changes in law or procedures are considered. Our neighboring states are actively involved in such efforts.

Many have concluded that regional action is a necessary condition for a truly successful smart growth initiative. Researchers and others have also concluded that regional reforms generally only occur when initiated by state governments, which can control political and financial incentives and disincentives and set the rules under which local governments operate. Among the things state governments can do to encourage regional action are: adopt rules to reorganize particular governmental operations, require or encourage certain levels of cooperation, remove legal and other barriers to cooperation, finance studies that advance regional cooperation, tie state aid or reimbursement formulae to regional approaches, or establish subsidies that reduce local costs for services only if delivered on a broad geographical basis. More subtly, states can act in ways that change the political environment, altering citizens' expectations of their local governments.²⁵

Following are some examples of activities in Oregon, considered by many to have the most advanced state smart growth program, and our neighboring states of New Jersey and Connecticut.

Oregon

To supporters and detractors of smart growth alike, Oregon is the quintessential model. During the 1960s and '70s, when Oregon's population was increasing considerably, the impact on its environment and economy became major issues of concern. Wanting to preserve its natural resources, including its environmentally based forestry and farming industries, the state required cities and counties to adopt comprehensive land use regulations. While Oregon does not have one formal land use plan with which all municipalities must comply, it has established statewide standards (statutes, planning goals and administrative rules) against which local land use plans are reviewed.²⁶

A key element of Oregon's land use policy is the requirement that every city and major region delineate an urban growth boundary (UGB) within which development and publicly funded infrastructure expansion are to be confined. Supporters emphasize that the UGB is not a device to stop growth, but a means of allowing a community to define the territory within which it can reasonably provide public services economically. Land outside the UGB is generally used for forestry, farming or low-density residential development, but will not have urban services, such as sewers, extended there. Proponents describe immense benefits of UGBs, especially environmental protection. Critics say the UGB system drives up land prices within the boundary area and stifles growth. UGBs can be expanded, provided that modifications adhere to statewide land use and planning laws. This type of smart growth approach is remarkably effective at reining in sprawl, while allowing for planned expansion.

New Jersey

New Jersey's Governor has made smart growth a major goal, declaring in his 2003 State of the State address that there is "no single greater threat to our quality of life than the unrestrained development that is driving up property taxes, crowding our schools, and threatening our water supply." New Jersey's Office of Smart Growth is charged with implementing the New Jersey State Development and Redevelopment Plan, which calls for preventing pollution, traffic congestion, and sprawl, while developing economic vitality and building a better quality of life.²⁷

²⁵ *Regionalism and Realism*, Gerald Benjamin and Richard P. Nathan, A Century Foundation Book, Brookings Institution Press (2001).

²⁶ *Oregon's Statewide Land Use Planning Fast Facts*, p. 1 <http://www.lcd.state.or.us/fastpdfs/fastfacts.pdf>

²⁷ New Jersey Department of Community Affairs, Office of Smart Growth website:
<http://www.nj.gov/dca/osg.team/executivedirector.shtml>

The Transfer of Development Rights bill recently passed in New Jersey is designed to steer developers toward the village centers and away from farmland. According to one observer, the law lets municipalities effectively set growth boundaries so preservation areas can be established where they could not have been before. New Jersey also has a Business Employment Incentive Program that offers businesses 80 percent of personal income tax withholdings from new jobs added in targeted “smart growth” urban communities or distressed municipalities, with businesses creating jobs elsewhere eligible for 50 percent of such withholdings.

Connecticut

Connecticut is now deliberating the fifth five-year update of a conservation and development plan first adopted in 1979. The new plan includes six growth-management principles and is described as being more prescriptive than previous plans for the state’s 169 municipalities and 15 regional planning organizations. The draft plan lists the following principles:

- Redevelop and revitalize regional centers and areas with existing or currently planned physical resources
- Expand housing opportunities and design choices to accommodate a variety of household types and needs,
- Concentrate development around transportation nodes and along major transportation corridors to support the viability of transportation options,
- Conserve and restore the natural environment, cultural and historical resources, and traditional rural lands,
- Protect and ensure the integrity of environmental assets critical to public health and safety, and
- Promote integrated planning across all levels of government to address issues on a statewide, regional and local basis.

The proposed plan is augmented by a “locational guide map,” and strongly supports regional efforts, stating: “Creating an ethic of regional coordination is key to the successful implementation of all the growth management principles . . . Regional coordination is about pragmatic, rather than political, solutions to the mounting fiscal burdens on Connecticut taxpayers.” Among its references, the draft plan lists the recent report by a Blue Ribbon Commission on Property Tax Burden and Smart Growth Incentives, which confirms other study findings that “current patterns of development in Connecticut are not sustainable.” The Commission defined smart growth as “a comprehensive planning process that encourages patterns of development that can accommodate and sustain economic growth while at the same time limiting sprawl, reducing transportation congestion, protecting natural resources, preserving the traditional character of communities and ensuring equitable access to affordable housing, jobs and community services.”²⁸

The Connecticut Conference of Municipalities (CCM) has taken a strong position in favor of smart growth. Based on concerns about sprawling growth, resulting property tax increases, erosion of the environment and quality of life, and a negative impact on economic development, CCM formed a smart growth task force that produced 10 specific principles for smart growth in Connecticut. CCM is urging the Connecticut state government

²⁸ Connecticut Office of Policy & Management (12/2003), (www.opm.state.ct.us/)

to take steps to implement a smart growth policy, including (1) obtaining the information needed to know where land use is today and where it is heading, (2) developing consensus on short- and long-term goals and actions, and (3) devoting state, local, private-sector and other resources to make smart growth work.²⁹

Support is growing for steps to rein in sprawl, according to a *Hartford Courant* editorial urging passage of a sound anti-sprawl bill that would encourage development in urban areas, which already have an infrastructure of roads, sewers, schools and public safety services. The bill would allow for improved planning, call for a study of sprawl, and allow big cities to adopt a split-rate property tax system with land taxed at a higher rate than buildings.³⁰

Smart Growth and Economic Development

Many local, state and national leaders have said that smart growth and economic development should complement one another, and be viewed as mutually reinforcing, rather than conflicting goals. Opponents of smart growth, on the other hand, often argue that it stands in the way of economic development.

There are two basic aspects to the relationship between smart growth and economic development. The first is smart growth's potential impact on local fiscal conditions (which in turn affect local economies) and the second is the direct effect that smart growth can have on business conditions by improving an area's quality of life (including the environment, housing, cultural and recreational opportunities), transportation system, and economic profile (synergistic businesses or industry clusters within a region, for example).

The impact of growth patterns on local fiscal conditions has been acknowledged and discussed long before the smart growth term was used. Development patterns obviously affect local tax bases and service costs, which in turn affect local tax rates. While there is some disagreement over the extent to which local taxes influence business location decisions and/or economic growth, and whether the effects of good government services or a well-educated workforce outweigh higher taxes, no one would say that there is not a relationship between local taxes and the business climate. To the extent that it can result in a more efficient governmental structure, both physically and organizationally, smart growth is therefore a fundamental ingredient of a successful local economic development strategy. In contrast, poorly planned, sprawling growth has the following negative fiscal impacts:

- It increases costs for local services in rapidly growing communities.
- More sparsely used infrastructure, such as more road and water/sewer miles per housing unit, drives higher unit costs in both growing and declining communities.
- Development that is exclusively residential in many communities fails to offset the cost of new services, particularly for schools.
- In cities and other declining population centers, middle-class exodus results in a concentration of disadvantaged residents, creating greater costs at the same time underutilized infrastructure results in inefficiencies.

²⁹ *Advocacy and Public Policy* (September 20, 2002, Number 02-04) Connecticut Conference of Municipalities

³⁰ "Anti-Sprawl Bill would Stimulate New Construction in Urban Areas," *Hartford Courant* 3/3/2004

Local officials have for years used various short-hand assumptions concerning the fiscal costs of certain types of development. Expressions such as “every time I see a new house, I say there goes another \$1,600” are common, because as a general rule, residential development generates more costs than revenues.³¹ Local officials also speak about “chasing after rateables” – meaning the more fiscally beneficial forms of development, including office buildings, motels, manufacturing plants and shopping centers. There are studies, in fact, that show the average ratio of tax revenues to costs of services for various types of business enterprises.³²

A more comprehensive view of the costs of sprawl must compare the relative impact of sprawling growth versus planned growth – a difficult thing to quantify. However, there are a number of approaches that can be used and a number of studies that have done such analyses. One of the most frequently cited is an impact assessment that was prepared by Rutgers University for the New Jersey State Development and Redevelopment Plan,³³ which found significant savings for planned, rather than sprawling, growth. Planned development was estimated to consume 20-45 percent less land than sprawl, costing 15-25 percent less for local roads and 7-15 percent less for water and sewer lines. The estimated comparisons for housing costs and overall fiscal impacts (municipal and school services), while favoring planned development, exhibit less of a difference.

The impact of smart growth directly on economic development is more difficult to measure, and in some cases conceptualize, but it has long been recognized. Economic growth is dependent on the availability of locations for business occupation or development, and business location decisions have long been known to be driven by a variety of considerations, including those relating to transportation, business environment, local taxes, etc. However, it is also known that location decisions are also influenced by quality of life considerations. These considerations are becoming increasingly important in the “new economy,” where “knowledge workers” or the “creative class” is the fundamental economic input. Simply put, in this type of a business, where people *want* to live is more important as a location factor.

Increasingly, local leaders are recognizing the impact of quality of life and what might be called the business quality of life. For example, New York City’s preeminence as a location for corporate headquarters, the financial industry, and more currently, “new economy” knowledge and creative businesses has always been driven by the amenities of the area and the concentration of these types of business there. Regional strategies built on these fundamental relationships (i.e., it’s a nice place to live and operate this sort of business) are being pursued across New York State and the nation. The Tech Valley initiative, for example, which is being aggressively promoted on a regional basis, is much more than a direct effort to attract technology firms. It includes a strong focus on making the region ready for such development through smart growth policies that ensure that the region will remain an attractive place to live, and even improve, as new development occurs.

The number of efforts that could be listed in this regard is limitless, because they are and have been the focus of virtually every major civic, business, economic development and regional planning group, whether the term smart growth is used or not. The real question, then, is not whether such relationships exist, but whether a more focused statewide effort on smart growth can broaden and accelerate smart economic development. If a

³¹ *Why Smart Growth: A Primer*, International City/County Management Associations/SGN, p. 17.

³² See, for example, “The Relative Importance to Montgomery County of Selected Economic Activities” as described in *Why Smart Growth: A Primer*, p. 18.

³³ Impact Assessment of the New Jersey Interim State Development and Redevelopment Plan, prepared for the New Jersey Office of State Planning by Rutgers University - Center for Urban Policy Research, Robert W. Burchell, et al (February 1992), (<http://www.state.nj.us/dca/osg/docs/iaexecsumm022892.pdf>)

heightened focus on smart growth throughout the State helps make each region a better place to live, in other words, would that not have a positive, self-reinforcing impact on the economy?

New York State's current economic development policies, including the Empire Zone program and the activities of local Industrial Development Authorities (IDAs), have come under intense scrutiny, and there is a general perception that these devices are increasingly being used (or manipulated) to merely subsidize the movement of businesses and jobs from one area of the State to another.

The Empire Zone program has been criticized by many as straying from its initial focus, which was to assist areas in economic stress, because zones can now be created almost anywhere. In recent testimony on the State budget, for example, the Sierra Club criticized the Luther Forest proposal in Saratoga County to designate an empire zone to attract micro-chip manufacturing plants: "The zones are being used to incentivize the destruction of open space in areas that are characterized as rapid growth and are pretty well off financially. In an age when we talk about promoting smart growth and quality communities, there is something distasteful about using state incentives to destroy open space."³⁴

The Comptroller has proposed a number of reforms aimed at refocusing the Empire Zones program on its mission of creating jobs and attracting private investment to stimulate economic activity in struggling communities around the State.

Industrial Development Authorities (IDAs) have faced similar criticisms. Although IDAs were never intended to lure businesses from one location within the State to another – a practice often referred to as job "pirating" – many IDA projects seem to have this impact. When tax incentives are used in a manner that only produces relocation, there is no benefit to the State in terms of job creation. Pirating also works against efforts to create a strong regional approach to economic development.

IDAs are also prohibited from providing financial assistance for retail projects (including stores and other retail operations, such as motels, legal or medical offices, etc.). Retail ventures are treated differently because by definition they do not increase the level of demand or production, and can damage competitors or put them out of business. For example, a chain grocery store opening up in a community generally will not increase the demand for groceries, but will lure shoppers away from already established, often smaller and independently-owned neighborhood stores, potentially putting them out of business and severely damaging neighborhood convenience. The difference in jobs produced by a new store and the jobs lost by the store closing might even be a net loss. Unfortunately, the general prohibition on retail projects has a number of exceptions (implemented at the discretion of local IDA boards) that make the prohibition almost completely ineffective.

A 1996 report from the Assembly's Local Governments Committee found that despite the anti-pirating provision, pirating still accounted for a large part of IDA activity, and the retail sales prohibition was found to be similarly ineffective. Comptroller's audits and other reports have had similar findings. The Comptroller has launched a public authorities reform initiative and is reviewing IDA reporting.

³⁴ Testimony of the Sierra Club -- Atlantic Chapter, presented to the Joint Hearing on the Budget (2/10/2004).

Concluding Policy Questions

This is a propitious time to consider broad changes in New York State's approach to land use and economic development policies. A variety of economic and social forces are acting upon both the State and its municipalities, forcing consideration of fundamental changes. As cities continue to hemorrhage population and jobs, and some falter on the verge of financial collapse, people in surrounding regions are recognizing that deterioration of their core communities is a fundamental threat to regional economic and cultural well-being. There is a renewed interest in shared services and consolidation, and city-county mergers are even being discussed.

A number of vital questions should be reviewed in a robust public dialogue, even as current legislative proposals are considered. Simply put, there are a number of big-picture questions that should be answered, including the following:

- What are the monetary and other costs of sprawl to New York State, and to what extent is sprawl an impediment to healthy local economies?
- What approaches would be most effective in modifying current sprawling growth patterns (e.g., changes in planning requirements, fiscal incentives)? What approaches should be avoided?
- How far can (or should) New York State go to promote regional solutions to regional problems?
- Is the current fragmented system of local economic development agencies and land use planning and regulation an impediment to effective regional smart growth and economic development? Are there better ways to make the system work?
- Should comprehensive planning be required at the local, county, regional or State level? Is there a way to effectively coordinate these plans within an overall smart growth and smart economic development plan?
- Can the State do a better job of promoting traditional neighborhood development and assisting local governments with developing zoning codes to support this type of development?
- What are the economic benefits of an aggressive smart growth agenda? Are there economic costs for some approaches?
- Should the State use financial or other incentives to direct development toward existing communities? Should the use of economic development incentives in ways that promote sprawl be discouraged or prohibited?
- Could a State-level smart growth cabinet help ensure that the actions of State agencies and public authorities support smart growth principles?

Appendix: Resources

National

- Smart Growth Network (<http://www.smartgrowth.org>)
- The Congress for New Urbanism (<http://www.cnu.org>)
- International City/County Management Association (<http://www.icma.org>)
- Lincoln Institute of Land Policy (www.lincolnst.edu)

New York State

- *The Local Government Handbook (5th Edition)*, NYS Department of State (January 2000) and available online (www.dos.state.ny.us/lgss/pdfs/Handbook.pdf)
- New York Main Street Alliance (<http://www.cardi.cornell.edu/nymasa/resources.cfm>)
- NYS Quality Communities Clearinghouse (<http://www.dos.state.ny.us/qc/home.shtml>)
- Onondaga County Settlement Plan (<http://www.syracusetheandnow.net/SettlementPlan/SettlementPlan.htm>)

Other States

- Oregon's Statewide Land Use Planning Fast Facts (<http://www.lcd.state.or.us>)
- New Jersey Department of Community Affairs, Office of Smart Growth (<http://www.nj.gov/dca/osg/>)
- Connecticut Conference of Municipalities (<http://www.ccm-ct.org/index.html>)

Reading List

- *Suburban Nation: The Rise of Sprawl and the Decline of the American Dream*, Andres Duany, et al, North Point Press (April 2001)
- *The Geography of Nowhere*, James Howard Kuntsler, Simon and Schuster (1993)
- *Home From Nowhere: Remaking Our Everyday World For The 21st Century*, James Howard Kuntsler, Simon and Schuster (1998)
- *Changing Places – Rebuilding Community in the Age of Sprawl*, Richard Moe and Carter Wilkie, Henry Holt and Company, Inc. (1997)
- *Why Smart Growth – A Primer*, International City/County Management Association (ICMA) (http://www.epa.gov/livability/pdf/WhySmartGrowth_bk.pdf)
- *Getting to Smart Growth: 100 Policies for Implementation* ICMA (2003) (<http://www.smartgrowth.org/pdf/gettosg.pdf>)
- *Getting to Smart Growth II: 100 More Policies for Implementation* ICMA (2003) (<http://www.smartgrowth.org/library/articles.asp?art=870>)
- *Alternatives to Sprawl*, Lincoln Institute of Land Policy (1995) (www.lincolnst.edu/pubs/pub-detail.asp?id=864)