Complete Communities

Workshop Summary Report

"State and Local Government
Regulatory Barriers to Complete Communities"

September 2013

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Acknowledgements

WORKSHOP 1: Private Sector/Delaware Development Community – Wednesday, February 27, 2013

1. Charlie Weymouth, Weymouth Architects
2. Chris Rogers, URS Corporation
3. Debra Young, EmpowerAbility LLC
4. Denise Tatman, DAR
5. Gail Renulfi, DAR
6. Howard Fortunato, HBA-DE
7. John Mateyko, NESEA-DE
8. Jon Long, LC Homes Delaware
9. Lorri Grayson, GG+A Construction
10. Melinda McGuigan, EDiS Company
11. Michael Freda, EDiS Company
12. Phil McGinnis, McGinnis Commercial Real Estate Company
13. Philip Conte, STUDIO JAED
14. Philip Horsey, Pennoni Associates Inc.
15. Rob Arlett, Beach Bound Realty
16. Robert Grove, R G Architects
17. Robert Hill, Emory Hill & Company
18. Shane Minner, Landmark JCM
19. Will Hurd, Footprint Architecture & Design PA

WORKSHOP 3: Delaware Elected Officials and Decision Makers – Wednesday, May 29, 2013

1. Robert Atkinson, Town of Blades
2. Drew Boyce, DelDOT
3. Phyllis Brooks-Collins, Town of Wyoming
4. Carleton Carey Sr., City of Dover
5. Mike Corti, Town of Felton
6. Joan Deaver, Sussex County Council
7. Lew Kilmer, Town of Bethany Beach
8. John McDonnell, Town of Greenwood
9. Susan Moore, New Castle County Council
10. Dennis Reardon, Town of Lewes
11. Gary Simpson, Delaware State Senate
12. Teresa Tieman, Town of Harrington
13. Doug Tuttle, City of Newark
14. David Van Kavelaar, Town of Wyoming

WORKSHOP 2: Delaware Regulators, Code Enforcement Officials, and PLUS Process Representatives – Wednesday, April 10, 2013

1. Greg Akers, City of Dover
2. Henry Baynum, Jr., City of Lewes
3. Jeff Bergstrom, City of New Castle
4. Scott Blaier, DDA
5. Bill Brockenborough, DelDOT
6. Merritt Burke IV, Town of Fenwick Island
7. Terence Burns, DHCA
8. Ronald Coburn, City of Dover
9. Kevin F. Coyle, DNREC
10. Jamie Craddock, Town of Georgetown
11. Robin Davis, Town of Milton
12. Dave Edgell, OSPC
13. Mike Fortner, City of Newark
14. Duane Fox, Jr., State Fire Marshal
15. Alice Guarrant, DHCA
16. Hal Godwin, Sussex County
17. Jocelyn Godwin, Town of Georgetown
18. George Haggerty, New Castle County
19. Karen Horton, DSHA
20. Herb Inden, OSPC
21. Sarah Keifer, Kent County
22. Bob McDevitt, Town of Bowers
23. Charles McMullen, Town of Ocean View
24. Dorothy Morris, OSPC
25. Grant Prichard, Town of Smyrna
26. Catherine Smith, DTC
27. Jill Swartz, Town of Ocean View
28. Anne Marie Townshend, City of Dover
29. Dave Truax, City of Dover
30. Janet Vinc, Town of Smyrna
31. Heather Warren, DDPH
32. Dawn Melson-Williams, City of Dover

Introduction

The spring 2013 workshop series on "state and local government regulatory barriers to complete communities" was initiated following the 2012 Complete Communities Summit held in Dover, Del.

The critical take-away from the 2012 summit was that the private sector community was ready and willing to develop more "complete" communities in Delaware, but that certain regulatory hurdles would have to be overcome first.

Public-private coordination and cooperation was identified as a necessity for implementing complete communities concepts in Delaware.

The Institute for Public Administration (IPA) was tasked with facilitating separate workshops with three groups:

1. **DELAWARE DEVELOPMENT COMMUNITY/PRIVATE SECTOR**
   Includes architects, homebuilders, realtors, engineers, planning firms, and developers.

2. **REGULATORS, CODE ENFORCEMENT OFFICIALS, & PLUS PROCESS REPRESENTATIVES**
   Includes representatives from local governments, the State Fire Marshall, Office of State Planning Coordination, Department of Agriculture, DelDOT, Delaware Transit Corporation, Division of Public Health, Delaware State Housing Authority, and the Division of Historical and Cultural Affairs.

3. **PUBLIC OFFICIALS & ELECTED REPRESENTATIVES**
   Includes state legislators, local government elected officials, planning commission members, and a DelDOT official.

Of additional note, in January 2013, before IPA held the above mentioned workshop series, Governor Jack Markell, via Executive Order No. 36, required agencies to solicit input from the public to identify regulations adopted three years ago or more for possible modification or elimination.

The overall purpose was to engage stakeholders to:

✓ **Facilitate understanding of Complete Communities concept;**

✓ **Further explain IPA's initial work and outcomes of Complete Communities, Phase I project; and**

✓ **Discuss why a favorably perceived regulatory environment is important to creating Complete Communities in Delaware.**

Participants in Attendance at Workshop 1 (Private Sector)

Although this outreach identified some regulatory barriers that are related to complete communities, the scope of the public hearings held by each department covered bigger discussions than just planning-related regulatory issues.

Further, the public hearings held under Executive Order No. 36 did not require or encourage state agencies to address the issue of inter-departmental coordination, agencies were required to assess their own regulations irrespective of how those regulations interacted with other departmental policies.

The spring 2013 workshops facilitated by IPA worked to expand upon the positive progress made by Governor Markell's Executive Order No. 36 by honing in on issues related to intergovernmental coordination and planning-specific regulatory barriers. Local and state officials as well as different state departments were in the same room during workshop discussions, which allowed for interesting feedback related to how different levels of government are interacting with one another.

In all three workshops, IPA staff gave 20-minute presentations on the Complete Communities project. The goal was two-fold:

1) **To define IPA's meaning of the term "complete community" and**

2) **To give participants a clear idea of what discussion points to react to during the workshop.**

Process

Each workshop, although covering different areas, was structured the same. Workshops lasted no longer than 2.5 hours and consisted of the following key components:

- ✓ **Welcome/Roundtable Introductions**
- ✓ **Presentation on Complete Communities**
- ✓ **Break Out Sessions**
- ✓ **Group Facilitated Discussions**
- ✓ **Closing Recap**

Since attendees were asked to provide substantial feedback and input on selected topics, it was important to build in time at the beginning of each workshop to allow attendees to introduce themselves to one another. This allowed attendees to get a better feel for other groups in the room and made break-out sessions and group facilitated discussions more fruitful.

Complete, detailed summaries for each workshop are provided in the appendices for reader review and reference.

Workshop Survey

In preparation for Workshop 1, a survey of private-sector stakeholders within the Delaware development community was conducted to help inform workshop discussion topics. The purpose of the informal survey was to identify the top perceived barriers to creating complete communities from the perspective of the private sector. By far, the respondent population primarily worked in the residential development. The highest percentage of participants was realtors. The highest percentages of participants were from New Castle and Sussex Counties.

Number of Survey Responses by Development Type

Development Type	Responses	% of Survey Responses
Residential	39	62%
Commercial	16	25%
Mixed Use	8	13%
Total	**63**	**100%**

Number of Survey Responses by Location

Location	# of Responses	% of Survey Responses
City of Wilmington	2	3%
New Castle County	31	49%
Kent County	6	10%
Sussex County	24	38%
Total	**63**	**100%**

Number of Survey Responses by Industry

Profession	# of Responses	% of Survey responses
Home-builder	9	14%
Realtor	29	46%
Land Developer	5	8%
Engineer	11	17%
Architect	9	14%
Total	**63**	**100%**

Top Regulatory Barriers according to Survey Responses (aggregate)

1. **Local land development and review process**
2. **Subdivision/land development ordinance issues**
3. **Building code inconsistencies**
4. **Environmental regulations**

Beyond the common themes listed above, each target stakeholder group came up with some individual barriers that are important to mention. See below sub-themes from: 1) architects, 2) home builders, 3) land developers, and 4) realtors.

The **architects** brought up parking requirements. This is an important point as parking requirements have served as obstacles to higher-density, mixed-use development design. Loosening or eliminating parking requirements also allows for developers to include multi-modal design components since they are not required to construct a certain number of parking spaces. Absent parking requirements developers have the freedom to respond to market forces related to transportation demand. In some settings, auto-centric design may be optimal, while in other projects multi-modal components would be more appropriate given consumer preference.

Home builders identified infrastructure improvements as barriers to creating more complete communities in Delaware. Often improvements are required that are cost prohibitive thereby providing disincentives to take on more innovative project designs.

Land developers mentioned fire codes, traffic impact studies, and access permits as roadblocks to creating complete communities. Fire codes have historically been blamed for discouraging or outright prohibiting narrow, neighborhood style streets. However, the Delaware Fire Marshall recently passed changes to the code that will help address this problem. Developers are concerned about the unpredictable nature of traffic impact studies and the costs associated with infrastructure improvements necessitated. Developers have similar concerns related to access permits especially as they relate to major roadways.

Realtors identified redundant processes and zoning code issues as barriers. It is perceived that state departments are not working together and that internally departments are not on the same page. As a result, redundancies and confusion result during the planning process. Zoning codes through density requirements, minimum setbacks, parking requirements, and zoning district restrictions can, in some cases, prohibit innovative development with mixed uses and higher densities.

These survey results served as a backdrop for stakeholder discussion at Workshop 1.

Surveys were not completed for Workshop 2 or Workshop 3 since the initial survey used for Workshop 1 helped to steer later discussions. Instead, the private sectors survey results were also presented at Workshops 2 and 3.

Participants in Attendance at Workshop 3 (Public Officials & Elected Representatives)

Breakout Sessions

At the completion of each presentation, attendees were divided into smaller breakout groups of five people or less to delve more specifically into workshop discussion topics. An IPA staff member was assigned to facilitate discussion and record, on a flip chart, feedback given in each breakout group.

In Workshop 1, the private sector participants were broken up into 5 groups based on industry type: 1) developers, 2) realtors, 3) homebuilders, 4) architects, and 5) engineers.

In Workshop 2, the regulators and code enforcers were broken up into five groups based on the top barriers identified in Workshop 1:

1. Local land development and review process,
2. Subdivision/land development ordinance issues,
3. Building/fire code issues,
4. Environmental regulations, and
5. Lack of intergovernmental coordination.

Workshop 3 with public officials and elected representatives followed the same group breakdown as Workshop 2.

Discussion topics for each break-out group in all three workshops were to:

1. Identify the top three regulatory barriers to creating complete communities in Delaware,
2. List examples of barriers, and
3. Consider how these barriers can be addressed.

Group Discussions

Once breakout sessions were completed, the entire group reconvened to review what each breakout group produced. The notes coming from each breakout group were presented to everyone and attendees were asked to react to the notes and provide additional comments.

There was a range of views on workshop discussion topics. The intent of workshop sessions was to facilitate dialogue, discussion, and fact-finding rather than develop specific consensus among stakeholders.

Moving Forward in 2013 and Beyond

Common themes emerged from the spring 2013 workshop series, which offer starting points for Delaware leaders to work toward creating more "complete" communities in Delaware.

The top outcomes emerging from the entire engagement process held this past spring include:

✓ **Create Form-Based Codes**
A relatively new approach to local planning, form-based codes approach new construction and development from a design perspective rather than the traditional approach in place in most municipalities in Delaware. Growing support for form-based codes is emerging from success story after success story where such code implementation has led to successful construction of complete communities in localities across the country.

✓ **Visualize Future Development by Completing a Master Plan**
Master plans have been completed in Delaware municipalities such as Middletown and Milford and serve as a template for creating a predictable and stable regulatory environment to attract prospective developers. Master plans provide a blueprint for infrastructure development, for growth area land uses, and for development patterns. Developers can quickly reference a completed master plan and know what areas are in play and what areas are not in

relation to local government plans and *__Delaware Strategies for State Policies and Spending__*. Immediately prospective developers are aware of what town infrastructure priorities are and what capacity the town has to handle new development and redevelopment. Towns currently lacking Master Plans should review the online *__Guide for Master Planning in Delaware__* and approach the Delaware Office of State Planning Coordination for additional guidance.

✓ **Support Institution of Transportation Improvement Districts (TIDs)**
According to DelDOT, TIDs are "a geographic area defined for the purpose of securing required improvements to transportation facilities in that area."

Effective May 2013, DelDOT has revised its Traffic Impact Study (TIS) regulations and expanded TID regulations to equitably distribute costs of development and transportation-related impact fees. TIDs will be created in designated growth areas (Levels 1, 2, 3) and local governments should incorporate TIDs in their land use plans—particularly comprehensive plans and master plans. TID fee legislation is proposed to allow DelDOT to assess developers' costs in creating TIDs.

✓ Allow for Mixed-Use Development

While some Delaware local governments are already incorporating mixed-use components into comprehensive plans and zoning ordinances, many are not. To foster innovative projects, local governments must initiate regulatory changes that support a potential mix of residential, retail, office, and institutional land uses.

✓ Set Minimum Densities, not Maximums

Allowing for market-driven density empowers private sector developers to pursue innovative downtown projects that support complete communities concepts and goals. The business case for investment in downtown areas greatly improves when private sector developers have more flexibility on the number of units they can build. Local governments can facilitate this process by conducting a fundamental review of their zoning districts and subsequent density restrictions. Engaging local developers and builders during this process would be productive as well.

✓ Foster Process and Fee Predictability

Private sector stakeholders indicated that in some instances staff within departments contradicted each other during the development review process and that in other situations departments produced last minute requirements that held up projects. Public sector stakeholders noted private developers often approach them late in the process and by doing so needlessly delay their own approval. Enhanced public sector review processes could reduce redundancy and contradictory reviews in the future; pro-active developers who approach all government departments early on in the review process could greatly improve the process for both groups.

Local governments often require that developers defray certain costs associated with new development; however, localities often have different fee structures. Private sectors stakeholders were not against fees; rather, they were in favor of predictable and consistent fee structures across jurisdictions. Delaware local governments should initiate discussions on the possibility of developing consistent fee structures and rates across jurisdictions (to the extent possible) to address this concern.

✓ Improve Intergovernmental Coordination

Whether it's local versus state or inter-agency collaboration, all were in agreement that improvements could be made with government departments working cooperatively with one another. Local government representatives noted that in many cases they have no opposition to state legislation, but need more direction from state departments on the rationale for, and benefits of, implementation of newly enacted laws. Often localities are stymied by new mandates that do not yet have clear implications for implemented regulations.

✓ **Remove or Amend Excessive Regulations**

Codes, ordinances, and regulations are adopted to **protect and improve the safety, health, and welfare of the citizens** and community enhancement. However, parking requirements, minimum setbacks, building code regulations, and design requirements should be reviewed to ensure that such requirements do not inhibit innovative development projects that would greatly benefit Delaware communities. For example, excessive requirements can deter downtown, mixed-use, higher-density development from occurring and also mandate the construction of large impervious parking lots. Parking requirements can also continue to propagate auto-centric transportation systems rather than support multi-modal solutions.

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The three spring 2013 workshops served as a bridge to the upcoming *2013 Complete Communities Summit,* which will be held on November 4, 2013, at the Dover Downs Hotel and Conference Center.

Outcomes from the workshops, listed above, have shaped the overall agenda and program for this year's 2013 summit. Program themes will be based on workshop outcomes, and some of those who attended IPA facilitated workshops will be featured in panel discussions.

For more information about IPA's Complete Communities Project please visit www.completecommunitiesde.org.

Appendices

State and Local Government Regulatory Barriers to Complete Communities		
Perceived Barriers – Workshop 1	**Suggested Solutions – Workshop 2**	**Suggested Solutions – Workshop 3**
Local land development and review process		
• Length, timing, and redundancy of review process • Difficulty obtaining access permits • Prohibitive Costs (TIS, permitting, impact fees infrastructure, financing) • Lack of incentives for infill, redevelopment, mixed-use, or creative design • Jurisdictions inconsistent on fee structures	• Strengthen internal agency/municipal pre-application review process • Establish strong community design/development guidelines • Educate officials on regulatory review process • Streamline land development application • Promote regional (master) planning • Establish DelDOT guidelines re: decisions for issuance of access permits • Create incentives for infill and mixed-use development	• Streamline local land development and review process • Adopt local government design guidelines • Train planning commission/board of adjustment volunteers • Pro-active approach to amending ordinances; involve stakeholders • Ensure predictability, transparency, and consistency of codes and regulations • Coordinate planning of road improvements with DelDOT • Review of DelDOT process for approval of small-scale development projects • Develop sub-regional plans • Establish Transportation Improvement Districts (TIDs) • Provide incentives of infill/redevelopment (e.g., Sussex County's Moderately Priced Housing Unit Program)
Subdivision/land development ordinance issues		
• Inconsistent zoning / subdivision regulations • Regulatory barriers to mixed use • Outdated local codes that do not reflect current market conditions • Euclidean/inflexible zoning codes that isolate uses • New regulations added to array of existing) • Parking requirements	• Consider local adoption of unified development codes • Incentivize infill and mixed-use development • Encourage education on and adoption of form-based codes • Update outdated codes and excessive parking requirements • Provide incentives for targeted development in preferred growth areas	• Adopt Unified Development Codes to merge zoning/subdivision regulations • Address use of agriculture zones as "holding zones" for future development • Amend zoning codes, shared parking alternatives, off-street parking waivers to allow for flexibility in parking requirements • Update codes to allow mixed use • Expedite development approvals that meet code requirements and comp. plan consistency • Address non-conforming uses to bring them into compliance with current codes

State and Local Government Regulatory Barriers to Complete Communities		
Perceived Barriers – Workshop 1	**Suggested Solutions – Workshop 2**	**Suggested Solutions – Workshop 3**
Building/fire code inconsistencies		
• Navigating nuances of local building codes • Restrictive building codes; barrier to reuse, affordable housing, historic preservation • State fire protection plan review process • Lengthy permitting process • Lack of flexibility/rigidity of codes • New ICC / BOCA codes (not specific / applicable / right-sized to needs of localities)	• Host periodic information sessions on building/fire code updates • Engage fire/building code officials early and often in development process • Consider feasibility of adopting code updates by region • Promote adoption of zoning that permit mixed uses • Establish balance between restrictive regulations and adaptive reuse/historic preservation	• Engage fire/building code officials early and often in process • Encourage universal adoption of same schedule for building code updates • Encourage periodic review of local regulations and ordinances to promote a favorable and balanced development environment
Environmental regulations		
• State funding strategies (i.e., perception that state incentivizes) • Level 3 & 4 growth "sprawl by design" • Need for more flexible, formula-based TIS (i.e., multi-modal "transportation" impact studies) • Distribution of impact fees/development costs—borne by last developer	• Provide state guidance on regulatory (e.g., stormwater) changes • Show scientific evidence to promote understanding of regulatory changes • Promote adoption of local government Adequate Public Facilities Ordinances (APFOs) • Encourage fixed and predictable fee structures • Issue predictable and clear regulatory environment guidelines • Grant conservation district additional regulatory oversight • Restrict building in and eliminate subsidies to property owners within flood-prone/sea-level rise areas	• Consider recommendations of Delaware's Floodplain & Drainage Advisory Committee to improve floodplain management and drainage • Map all of Delaware to show floodplain areas; educate prospective property owners on flood zone status of property • Prohibit all new development in floodplains • Require all roadways to be public, constructed to meet state requirements, and address drainage • Provide education on proposed changes to septic regulations due to EPA Chesapeake Bay cleanup • Education Delaware citizens on impact of sea-level rise on future development
Intergovernmental coordination		
• State funding strategies (i.e., perception that state incentivizes Level 3 & 4 growth "sprawl by design") • Need for more flexible, formula-based TIS (i.e., multi-modal "transportation" impact studies)	• Encourage processes that promote regular dialogue among developers and plan reviewers • Streamline processes to promote infill development	• Standardize regulations and better coordinate among state agencies and federal government (e.g., Army Corps)

State and Local Government Regulatory Barriers to Complete Communities		
Perceived Barriers – Workshop 1	**Suggested Solutions – Workshop 2**	**Suggested Solutions – Workshop 3**
• Distribution of impact fees/development costs—borne by last developer	• Consider PLUS process options to fast-track lesser-scale projects • Educate developers on benefits of State growth strategies and PLUS process • Encourage zoning districts that allow mixed-use development "by right" • Address restrictive parking requirements • Allow for grouping of varied, compatible land uses and zoning codes that permit mixed uses • Institute Transportation Improvement Districts (TIDS) to equitably distribute costs of impact fees	• Disseminate results of Executive Order No. 36 to understand inconsistencies in regulatory environment and inconsistencies in overlapping jurisdiction • Increase incentives for development in Level 1 & Level 2 state strategy areas (e.g., mixed-used development, form-based codes, parking system waivers, increasing density & intensity in CBDs) • Exercise state powers to withhold infrastructure funding for improvements in non-growth areas • Institute DelDOT's proposed Transportation Improvement Districts (TIDs) to provide equitable way to distribute development costs

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