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SGPIPA and Smart Growth in New York State: Overview *October 2014*

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Abstract

This report discusses smart growth and sprawl, the evolution of state level smart growth policy in New York State, and the provisions of the Smart Growth Public Infrastructure Policy Act of 2010 (SGPIPA). The report serves as an introduction to companion reports on a) the implementation of SGPIPA by key affected state agencies and authorities involved in water and sewer infrastructure approvals; b) the integration of SGPIPA smart growth criteria into the Consolidated Fund Application for state economic development resources; c) a case study of the smart growth review under SGPIPA of the New York Science & Technology Advanced Manufacturing Plant (STAMP); and d) the results of a survey of New York municipalities about their awareness of SGPIPA, their current and anticipated state support for infrastructure, and SGPIPA's consistency with local policy.

Summary Points of Interest

- *The Smart Growth Public Infrastructure Policy Act (SGPIPA) was signed into law in 2010 SGPIPA and is the first law in New York to explicitly define Smart Growth criteria. SGPIPA is part of New York's Environmental Conservation Law, and is introduced with language stating that it is intended to "augment the state's environmental policy."*
- *Under SGPIPA, each state infrastructure agency must create an advisory committee to "advise the agency regarding the agencies' policies, programs and projects with regard to their compliance with the state Smart Growth public infrastructure criteria". In cooperation with the committee, the head of that agency must then sign a written Smart Growth Impact Statement (SGIS) attesting that projects meet the "relevant criteria" of the law "to the extent practicable".*

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- *SGPIPA affects state agencies and authorities directly. It indirectly influences municipalities or other private and public entities that are requesting financial support from the State insofar as the procedures and priorities of these agencies and authorities have been affected.*

Keywords

Smart Growth, Sprawl, Smart Growth Public Infrastructure Policy Act; Smart Growth Impact Statements; Smart Growth Policy

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Introduction

The Smart Growth Public Infrastructure Policy Act (SGPIPA; see NYSECL, 2010) was signed into law in 2010 after years of experimentation and debate in New York State government over how to best put “smart growth” ideals into law. There is no consensus in general use on a precise definition of smart growth, but generally speaking there is broad agreement on central precepts. The term refers to growth associated with planning practices that prioritize the location of development within the fabric of existing urban or small town settlements. Smart growth is intended to enhance the livability of places in which many people already live, and to preserve the character of more sparsely settled landscapes. Smart growth stands in direct opposition to suburban “sprawl” involving scattered growth in low-density (rural) areas or on the low density fringes of cities, villages and other developed areas. Smart growth is celebrated primarily for its goals of preserving open space, reducing infrastructure costs, reducing automobile dependence, and fostering livable communities through the creation of pedestrian oriented mixed use neighborhoods.

The Smart Growth Network, an organization formed in 1996 involving the federal EPA, other government organizations, and non-profits, outlines these ten principles of Smart Growth:¹

- Mix land uses
- Take advantage of compact building design
- Create a range of housing opportunities and choices
- Create walkable neighborhoods
- Foster distinctive, attractive communities with a strong sense of place
- Preserve open space, farmland, natural beauty and critical environmental areas
- Strengthen and direct development towards existing communities
- Provide a variety of transportation choices
- Make development decisions predictable, fair and cost effective

¹ See <http://www.smartgrowth.org/why.php>, accessed 10/15/14.

- Encourage community and stakeholder collaboration in development decisions

Smart growth policy had been advocated in New York State by supporters well before 2010.² Legislation based on similar principles provided support for historic preservation – investing in existing historic buildings is a “smarter” form of growth than building new structures in suburban locations (OSC, 2004:15). Regional legislation for the Adirondack Park passed in the early 1970’s and was intended to achieve some of these goals, especially open space protection, by channeling development into existing settlements. This legislation attended exclusively to rural northern New York. More pervasive in terms of statewide impact, the State Environmental Quality Review Act (SEQRA) has long required state agencies and local governments to identify and mitigate any “significant environmental impacts” of projects they propose or permit (DEC, 2013), though it was not until 2013 that SEQRA began to address topics explicitly linked to select smart growth principles. It is worth emphasizing in this context that SGPIPA is also part of New York’s Environmental Conservation Law, and is introduced with language stating that it is intended to “augment the state’s environmental policy.”

Planning reforms in the 1990s that were spearheaded by the New York State Legislative Commission on Rural Resources and its Land Use Advisory Committee strengthened local planning and encouraged cooperation among different levels of local government. While avoiding any prominent use of the phrase “Smart Growth,” in 2000, Republican governor George Pataki formed an interagency task force on “Quality Communities” to study “community growth... and develop measures to assist those communities in implementing effective land development, preservation, and rehabilitation strategies that promote

² After a 1999 conference on Smart Growth, the Smart Growth Working Group was created. A diverse coalition of organizations advocating for smart growth policies in New York State, it added structure to the state’s existing network of non governmental smart growth proponents. It was influential in shaping Governor Pataki’s Quality Communities policies in 2000, discussed further below. See <http://ny.audubon.org/smart-growth-working-group>, accessed 10/15/14.

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both economic development and environmental protection” (OSC, 2004, p16). The task force’s report, issued in 2001, outlined principles that defined a “Quality Communities” version of smart growth and recommended:

New York should adopt a set of uniform Quality Communities Principles and the Governor should direct all executive agencies and personnel to utilize them in the implementation of State policies and programs and the allocation and administration of State resources related to the concept of building and sustaining quality communities (Donahue 2001:12)

A bill that incorporated some of these recommendations was debated in the 2001-2002 legislative session, but did not pass.³ Related legislation was introduced into the state Senate and Assembly in subsequent years. A variety of approaches, definitions, and proposed new relationships were evoked. For example, in the 2005/2006 regular session, S. 2436/A. 4847 among other things called for locally driven smart growth plans to be developed, the establishment of regional smart growth compacts, the establishment of a high level statewide smart growth review board to approve smart growth plans, and state agency conduct that was consistent with specified smart growth principles to the maximum extent practicable. Again, this and related legislation did not pass. Despite the legislative barriers, funding for local and regional planning in particular was distributed throughout the duration of the Quality Communities program.

³ In early 2002, Governor Pataki also created a Water and Sewer Co-Funding Initiative that was intended to improve the funding process and coordinate between major state and federal water and sewer funding agencies. The interagency MOU establishing this Initiative cites the Quality Communities Interagency Task Force recommendations that call for state agencies to “study community growth in NYS and develop means to assist communities in implementing effective land development, preservation and rehabilitation strategies that promote both economic development and environmental protection.” The rest of the MOU focuses most, however, on implementing additional more general recommendations to review existing funding policies “and to stream line the state funding application process.” (EPA 2003:B8)

Smart growth under that name received a boost under the Spitzer administration, which from the transition team forward determined to focus incrementally on laying the groundwork for smart growth policy. Spitzer formed a high level Smart Growth Cabinet that raised the profile of smart growth within state agencies and in general. This period also witnessed the passage of some narrowly focused legislation consistent with selected smart growth principles (Paul Beyer, personal communication, 8/18/14). By the advent of the Cuomo administration, smart growth had been woven into many relevant aspects of the governance agenda, with frequent and explicit references to smart growth in a variety of campaign and policy documents. A decade after Governor Pataki’s Quality Communities initiative, the Smart Growth Public Infrastructure Policy Act (SGPIPA) was signed into law in the August just prior to Governor Cuomo’s assumption of office in January 2011.

The bill for the Smart Growth Public Infrastructure Policy Act (SGPIPA) was introduced by a Democratic Assembly member and sponsored in the New York State Senate by both Republican and Democratic senators. It passed with very near unanimous support (56 to 2 in the Senate, 138 to 2 in the Assembly) (ESF 2012). Some State agencies and authorities did not support it, objecting to costs, administrative overload, and a lack of clarity in the definitions (Frascarelli 2010).

The Smart Growth Public Infrastructure Policy Act (SGPIPA)

The stated purpose of the [Smart Growth Public Infrastructure Policy Act \(SGPIPA\)](#) is as follows:

It is the purpose of this article 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 development including environmental degradation, disinvestment in urban and suburban communities and loss of open space induced by sprawl facilitated by the funding or development of new or expanded

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transportation, sewer and waste water treatment, water, education, housing and other publicly supported infrastructure inconsistent with Smart Growth public infrastructure criteria.

Following the above discussion, this is not the only possible way to describe "Smart Growth," but it is the one that now governs the decisions of New York State agencies regarding infrastructure decisions.

The SGPIPA lists ten criteria for evaluating public infrastructure projects that are to be funded by state agencies, requiring that no agency approve or finance a project, "unless, to the extent practicable, it is consistent with the relevant criteria" (see NYECL 2010:np):

- a. To advance projects for the use, maintenance or improvement of existing infrastructure;
- b. To advance projects located in municipal centers;
- c. To advance projects in developed areas or areas designated for concentrated infill development in a municipally approved comprehensive land use plan, local waterfront revitalization plan and/or brownfield opportunity area plan;
- d. To protect, preserve and enhance the state's resources, including agricultural land, forests, surface and groundwater, air quality, recreation and open space, scenic areas, and significant historic and archeological resources;
- e. To foster mixed land uses and compact development, downtown revitalization, brownfield redevelopment, the enhancement of beauty in public spaces, the diversity and affordability of housing in proximity to places of employment, recreation and commercial development and the integration of all income and age groups;
- f. To provide mobility through transportation choices including improved public transportation and reduced automobile dependency;
- g. To coordinate between state and local government and intermunicipal and regional planning;
- h. To participate in community based planning and collaboration;
- i. To ensure predictability in building and land use codes; and
- j. To promote sustainability by strengthening existing and creating new communities which reduce greenhouse gas emissions and do not compromise the

needs of future generations, by among other means encouraging broad based public involvement in developing and implementing a community plan and ensuring the governance structure is adequate to sustain its implementation

A recent amendment to the law, effective as of March 21, 2015, will add an additional criterion:

- k. to mitigate future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable.

SGPIPA includes specific procedural guidelines for state agencies: first, each agency must create an advisory committee to "advise the agency regarding the agencies' policies, programs and projects with regard to their compliance with the state Smart Growth public infrastructure criteria" (SGPIPA 2010:np). In cooperation with the committee, the head of that agency must then sign a written Smart Growth Impact Statement (SGIS) attesting that given projects meet the "relevant criteria" above "to the extent practicable" (SGPIPA 2010:np) or, in a justification statement, detail why meeting the criteria or complying more generally is impracticable. After a project is either approved or justified, it can then be funded.

To be clear, the SGPIPA thus requires state agencies and authorities to ensure that the infrastructure projects they approve for funding comply with smart growth criteria or have a justifiable reason for not doing so. SGPIPA does not directly impact municipalities or other private or public entities that are requesting financial support from those agencies for water and sewer infrastructure projects. That said the law indirectly impacts municipalities and other private/public entities seeking funding because: (1) state agencies must work with them, as applicants for funding programs, to get the information needed to determine whether or not a project is compliant with SGPIPA criteria or justified for funding despite not being compliant; and (2) the extent to which their projects are compliant with SGPIPA principles may influence their chances for receiving project funding.

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