

Complete Communities

Workshop Summary Report

“State and Local Government Regulatory Barriers to Complete Communities”

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written by

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prepared by

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Special thanks also go to those individuals who participated in IPA's spring 2013 workshops.

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.

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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.

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%

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 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.

Complete **DELAWARE** Communities **SUMMIT 2013**

attractive, inclusive, efficient, healthy & resilient places

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		
<i>Perceived Barriers – Workshop 1</i>	<i>Suggested Solutions – Workshop 2</i>	<i>Suggested Solutions – Workshop 3</i>
Local land development and review process		
<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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		
<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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		
<i>Perceived Barriers – Workshop 1</i>	<i>Suggested Solutions – Workshop 2</i>	<i>Suggested Solutions – Workshop 3</i>
Building/fire code inconsistencies		
<ul style="list-style-type: none"> • 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) 	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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		
<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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		
<ul style="list-style-type: none"> • 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) 	<ul style="list-style-type: none"> • Encourage processes that promote regular dialogue among developers and plan reviewers • Streamline processes to promote infill development 	<ul style="list-style-type: none"> • Standardize regulations and better coordinate among state agencies and federal government (e.g., Army Corps)

State and Local Government Regulatory Barriers to Complete Communities		
<i>Perceived Barriers – Workshop 1</i>	<i>Suggested Solutions – Workshop 2</i>	<i>Suggested Solutions – Workshop 3</i>
<ul style="list-style-type: none"> • Distribution of impact fees/development costs—borne by last developer 	<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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

WORKSHOP #1 – Delaware Development Community
State and Local Government Regulatory Barriers to Creating Complete Communities
Wednesday, February 27, 2013, University of Delaware Parade Center, Dover, Delaware

IPA Project Team: Marcia Scott, Ted Patterson, Edward O'Donnell, Jessica Graham, Jeremy Rothwell, Tyler Berl

List of Attendees:

<i>Name</i>	<i>Affiliation</i>	<i>Name</i>	<i>Affiliation</i>
Charlie Weymouth	Weymouth Architects	Michael Freda	EDiS Company
Chris Rogers	URS Corporation	Phil McGinnis	McGinnis Commercial Real Estate Company
Debra Young	EmpowerAbility LLC		
Denise Tatman	DAR	Philip Conte	STUDIO JAED
Gail Renulfi	DAR	Philip Horsey	Pennoni Associates Inc.
Howard Fortunato	HBA-DE	Rob Arlett	Beach Bound Realty
John Mateyko	NESEA-DE	Robert Grove	R G Architects
Jon Long	LC Homes Delaware	Robert Hill	Emory Hill & Company
Lorri Grayson	GG+A Construction	Shane Minner	Landmark JCM
Melinda McGuigan	EDiS Company	Will Hurd	Footprint Architecture & Design PA

Summary of Proceedings:

I. Welcome and Introductions

Ed O'Donnell welcomed everyone and outlined the workshop agenda. He explained that the day's proceedings were designed to gather feedback from the development community on regulatory barriers to Complete Communities development efforts in Delaware. This input will be brought forward to subsequent workshops with code enforcement officials and regulators, after which the process will culminate in a Fall Summit open to all participants.

II. Presentation on Complete Communities

Marcia Scott reviewed the Complete Communities project to date. Activities in 2012 included the selection of two pilot communities, Elsmere and Milford, where workshops were conducted to gather input on elements of a Complete Community, community design preferences, and community-specific issues. She also briefly described the November 2012 Complete Communities Summit and the work

underway in 2013 on Phase II: a series of three workshops on regulatory barriers beginning with today's session, an online planning toolbox, and a Summit to be held in fall 2013.

In addition, Marcia went over the national and economic context for the need to move towards Complete Communities in Delaware. Factors around housing demand are shifting; National Association of Realtors® (NAR) statistics show that due to the needs of aging Boomers and the Millennial generation, consumer demand for walkable, transit-served communities featuring multi-use development is far outstripping supply. Meanwhile, economic changes connected to new technologies and globalization trends are realigning housing markets with a newly valuable sense of place; this **placemaking** trend has to do with lifestyle goals such as being part of a strong social fabric that has a home in public space, enjoying access to a variety of recreation and destination options, and spending less time commuting.

Workshop participants commented that as these national trends surface in Delaware, a need is emerging, for example, for single-family dwellings to be repurposed, a practice often prevented by current zoning. Marcia Scott commented that this need to improve flexibility in housing stock is a great example of a barrier standing in the way of complete community development in Delaware, and that the precise aim of today's workshop was to elicit comments and encourage discussion on such topics.

Ted Patterson then presented the results of the survey distributed to members of development associations in Delaware prior to the workshop. He noted that realtors were the most heavily represented profession among responses, that respondents tended to work primarily in New Castle and Sussex counties, and that they were primarily occupied with residential projects. He expressed an aim to increase feedback in future from those pursuing commercially-oriented development activity as well as those working primarily in Kent County.

Breakdown of Survey Results

<i>Respondents' Professions</i>					
<i>Builder</i>	<i>Realtor</i>	<i>Land Developer</i>	<i>Engineer</i>	<i>Architect</i>	<i>Total</i>
9	29	5	11	9	63
14%	46%	9%	17%	14%	100%
<i>Respondents' Locations of Primary Activity</i>					
<i>Wilmington</i>		<i>New Castle County</i>	<i>Kent County</i>	<i>Sussex County</i>	<i>Total</i>
2		31	6	24	63
3%		49%	10%	38%	100%
<i>Respondents' Primary Type of Development or Related Service</i>					
<i>Residential</i>	<i>Commercial</i>	<i>Industrial</i>	<i>Mixed Use</i>	<i>Infill/Brownfield</i>	<i>Total</i>
39	16	0	8	0	63
62%	25%	0%	13%	0%	100%

Top Regulatory Barriers according to Survey Responses

Home Builders:

1. Local land development review process
2. Infrastructure improvements
3. Environmental regulations

Land Developers:

1. Subdivision/land development ordinance issues
2. Fire codes
3. Traffic impact studies (TIS)
4. Access permits

Architects:

1. Local land development review process
2. Building code inconsistencies among jurisdictions
3. Parking requirements
4. Environmental regulations

Realtors:

1. Redundant processes
2. Zoning code issues
3. Building code inconsistencies

Engineers:

1. Local land development review process
2. Subdivision/land development ordinance issues
3. Traffic impact studies (TIS)
4. Environmental regulations

Aggregate:

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

III. Break-Out Group Discussions

Next, workshop participants formed break-out groups according to professional background (those active in more than one field were invited to self-select). These groups were asked to identify and provide examples of the top barriers to Complete Communities development, and discuss how these obstacles can be realistically addressed in Delaware. Each break-out group provided detailed feedback on these questions.

A. Home Builders (Facilitator: Ted Patterson)

Issue: Timing uncertainty, logistical problems

Details: Redundant processes, unresponsive agency members, difficulty obtaining access permits, and required changes at the eleventh hour make the DelDOT review process, among others, too lengthy.

Results: Delayed tax revenue for governments, increased project costs and consumer prices, and impacts on occupancy due to delayed certificates.

Examples: One developer noted experiencing a groundless two-month delay.

Solutions: Requirements need to be made clear and consistent, early on.

Issue: Financial risk

Details: Higher risks are inherent in “complete community-type” development project concepts. Costs are also increasing due to increasingly strict, inflexible building code revisions (new IRC/IECC restrictions).

Results: Developers become wary of taking on undue risk (i.e., on unique features, complete communities concepts) and pass increased costs on to the consumer.

Solutions: A consistent, reasonable, flexible building code would be helpful.

Issue: Fee impacts

Details: Problems include high government fees and impact fees; inconsistent fee structures among jurisdictions; inequities in fee distributions (e.g., problems shared by old and new housing projects, but fees levied only for new projects); and the challenge of apportioning amenity fees (Home Owners Association fees? If so, how much, and when? Do developers pay at front end, or do homeowners on the back end?)

Results: Development is seen as a government revenue source, not the foundation of the community; the environment for new development becomes difficult; potential projects become too expensive for developers to pursue; development is incentivized in unincorporated (fee-free) areas.

Issue: Communication Problems

Details: State agencies and even units within the same agency (i.e., DelDOT) do not communicate with one another during process. Also, see TIMING, above.

Results: Burdensome and inefficient processes.

Solutions: Routine intra- and inter-agency communication needed. Liaising with a single project point-person would very much preferable to dealing with multiple agency contacts.

Issue: NIMBY Politics

Details: Zoning restrictions prohibit or restrain desired types of development (i.e., in towns). Officials are swayed by small number of angry constituents / unbalanced news media.

Results: Disproportionate influence/faulty reasoning over regulatory decisions and code revisions.

Solutions: More balanced media coverage; reliance on standard procedure rather than politics.

B. Realtors (Facilitator: Marcia Scott)

Issue: Timing of permit processing

Details: Permitting for new construction is painstaking and full of redundant processes.

Solutions: Possibly impose deadlines for permit review. Prepare Master Plans because they are easier to review/approve. Review/streamline current regulations.

Examples: Stormwater review purview: who has the authority in New Castle County (NCC) - DelDOT, NCC Conservation District, and/or DNREC?

Issue: Finance: Pricing

Details: Costs (TIS, permitting, impact fees, financing, transfer taxes) prohibitive overall.

Results: Drives up the costs of affordable homes (which can paradoxically already be more expensive per unit to build than upmarket housing features [e.g., soundproofing])

Solutions: Mitigate costs by rewriting Euclidean zoning codes that isolate uses. Private/public sector collaboration to establish “Smart Growth,” mixed-use districts.

Examples: In Dover, C-1 allows mixed-use commercial/lower-density residential, while C-4 allows high-density commercial/residential.

Issue:	Incentives
Details:	Retirees are flocking to southern Delaware. They bring with them a distinct community and distinct needs, both now and in future.
Results:	Residents with a strong community presence/political participation and fixed incomes, who need to age in place, and will live 7-10 years beyond their driving careers.
Solutions:	Address high costs of regulatory pressures. Government needs to evaluate reasons for influx and new resident needs, consider universal design options and streamline codes to allow “by-right” uses (which are favored over conditional uses).
Issue:	Regulations: Piecemeal approach to barriers
Details:	Governor’s Executive Order No. 36 requires statewide agency-wide reviews to identify/remove regulatory hurdles.
Results:	State agencies are conducting internal workshops (agency-by-agency).
Solutions:	Take a comprehensive review approach instead. State & local governments need to reevaluate and eliminate redundancies instead of <u>growing</u> the body of regulations.
Issue:	Regulations: Septic systems/watershed management
Details:	EPA Chesapeake Bay cleanup is bringing major proposed revisions to septic regulations.
Results:	Pre-treatment units on all new & replacement septic systems, inspection every 3 years. Confusion: pre-sale inspections required?
Solutions:	Incentivize growth in “growth zones” instead of areas not served by a waste water system.
Issue:	Regulations: Building code inconsistencies
Details:	Local governments adopt model international (ICC) or national (BOCA) building codes.
Results:	Needs of local context/smaller jurisdictions are poorly served. (e.g., sprinklers in SFHs.)
Solutions:	Periodic review of local government codes. Modify, streamline, expand and/or repeal irrelevant provisions to improve effectiveness and reduce regulatory burdens.
Issue:	Regulations: DelDOT
Details:	DelDOT subdivision streets and state highway access regulations justify the need for TIS and roadway safety/efficiency analyses.
Results:	Overall project costs are increased by burdensome requirements, an overlong review process and the involvement of third-party reviewers who lack regulatory knowledge.
Solutions:	Redefine TIS as Transportation Impact Studies to recognize varieties of development impacts beyond traffic impact. Level of service (LOS) can include other transportation modes.

C. Land Developers (Facilitator: Jessica Graham)

Issue:	Timing
Details:	Processes are too slow and incorporate revisions throughout.
Results:	Costly, inconveniently timed changes in elevations, sidewalks, etc. Timing is also compromised with access permits held hostage until an agency obtains desired revisions.

Examples: DelDOT is most often mentioned. A 2-year rezoning process was also brought up.
Solutions: A flexible, common sense approach is needed that reduces wasted time and work and finds procedural efficiencies while preserving agency priorities.

Issue: **Incentives for infill/redevelopment**
Details: Market setbacks have been experienced with infill/mixed-use projects. Prevalent single-use zoning is still also a major barrier to undertaking infill.
Results: Chicken and egg situation with building amenities vs. attracting consumers. Towns can be reluctant to infill until market trends are clear and undeniable.
Solutions: Better incentives are needed for redevelopment. (TIS/slow speed and revisions to DelDOT approvals are current DISincentives.)

Issue: **Regulations: Logistics and efficiency**
Details: Too many agencies/governments are dealing with developers and with each other = “Too many cooks”, e.g., coordinating multimodal access.
Results: When agencies contradict each other, confusion, paralysis and inefficiency are the result.
Solutions: Some towns are easier to work with and can offer best practices because they are aware of, and actively working on more flexible zoning, infill, and mixed-use development, densification, parking concessions etc. One point-person/liaison needs to be designated per agency, per project.
Examples: Newark is a model (finding workable solutions, e.g., balancing parking vs. density/use).

Issue: **Regulations: Stability and predictability**
Details: Chronic lack of predictability, regulatory certainty, and stability of basic administrative orientation is common.
Results: Development community is more risk-averse due to heightened regulatory uncertainty. Conflict erupts between interest groups (e.g., civic groups, county executive, lawsuits).
Solutions: More predictability is needed. Master planning would be preferable to the current piecemeal, case by case approach (redevelopment, walkways/bikeways, etc.)

D. Engineers (Facilitator: Tyler Berl)

Issue: **Timing: efficiency and certainty of project reviews**
Details: The land use review process is cumbersome and unpredictable on all levels. PLUS process reviews produce boilerplate, irrelevant comments. Interpretations of ambiguous codes differ between and within agencies. Input is sought from so many agencies that initial approval takes >6 weeks; timeframes double if comments need addressing.
Results: Costly, lengthy development timeframes make many projects non-viable. Approvals from one level can face objections on the same code issue from the next level or agency.
Examples: DelDOT road structure regulations vs. state-wide subdivision regulations for the same. Also, floodplain / swamp provisions are needed in New Castle County, but stormwater regulations differ across state agencies and municipalities.

- Solutions:** Streamline the review process; cut overlapping reviews. More consistent standards and relevant, tailored regulations at all levels will produce greater predictability.
- Issue:** **Regulations: changes case-by-case and over time**
- Details:** Engineers spend much of their time explaining new/project-specific regulatory changes to developers. Regulations may even change mid-project.
- Results:** Constant flux leads to uncertainty and risk-averse decision-making. Mid-project changes lead to increasing project time and cost.
- Solutions:** Regulatory predictability, i.e., stormwater, ADA.
- Issue:** **Regulations: unfairness**
- Details:** Changeable fees and requirements from project to project. Similar standards are applied to projects of different sizes, ignoring economies of scale and exponentially different community/environmental impacts.
- Results:** Unfair, disproportionate fees for Off Site Improvement requirements by final area developer compared to previous projects in the area.
- Solutions:** Establishing predictable, fitting, state-wide standards that are both based on project scale as well as transferable from jurisdiction to jurisdiction.

E. Architects (Facilitator: Jeremy Rothwell)

- Issue:** **Finance: state funding strategies**
- Details:** State agency subsidies for projects in Level 3 and 4 service areas.
- Results:** Incentivized Level 3 and 4 area growth; in effect, sprawl by design.
- Solutions:** Stop Level 3/4 subsidies. Penalize development outside Level 1 or 2 service areas. (This may include developer payments for infrastructure improvements.)
- Issue:** **Market: traditions**
- Details:** Chicken/egg scenario – density needed to grow market for amenities, civic-type amenities needed to sell development.
- Results:** Developers construct and pay for infrastructure (at a loss).
- Issue:** **Market: consumer confidence**
- Details:** It can be difficult for consumers to visualize a realization of complete community development. Misconceptions based on older notions of densification are possible.
- Results:** Consumer unfamiliarity with likely ROI over time for i.e., sustainable greenfield development. Also, commercial development is still based on drive-by, not walk-by/multi-modal visibility.
- Solutions:** The complete community process needs to be accelerated for display to consumers.
- Examples:** Kentlands (Maryland) and Seaside (Florida) took 20 years + to develop.
- Issue:** **Regulations: auto-centric inflexibility**
- Details:** Parking requirements (per unit mandate for parking spaces per square foot of commercial space or residential unit) are outdated and ignore multi-modality.

Solutions: TIS needs to be more holistic (multi-modal ‘transportation’ impact studies). A more flexible, formula-based approach could take other transportation modes into account.

Issue: **Regulations: fire code rigidity.**

Details: Fire Marshals have limited view of health and safety, i.e., mandating wide streets & turning radii to accommodate fire & rescue vehicles.

Results: Meanwhile, dangers such as high vehicle speeds are overlooked (research is conclusive that pedestrian deaths are more likely at vehicle speeds >30 mph).

Solutions: Fire Marshals need to be more holistic in planning for health and safety in Delaware.

Issue: **Regulations: rigid zoning, lack of creativity**

Details: Present zoning and building codes are inflexible in regulating uses (‘stick’ instead of ‘carrot’ approach) and encourage building to the minimum standard only.

Results: Lack of incentives for better quality, creative design, or flexibility with uses.

Solutions: Transition needed from *use* regulation to *form* regulation. Allow developers to base traditional neighborhood-style development proposals on Form-Based Codes. More carrot incentives needed to stimulate creativity and uniqueness (less stick).

IV. Large-Group Facilitated Discussion

Ed O’Donnell then facilitated a large-group discussion of the points raised in each break-out group. The following topics were emphasized in the discussion that followed, however, they do not equate to “group consensus.” A variety of opinions on issues were documented and provided in this document.

Lack of Standardization: A number of participants noted the impact of the lack of standard procedure. Inconsistently applied regulations and case-by-case approaches to state agency reviews; lack of standardized fee structures, or lack of the standard application of the same; subjective, politically influenced decisions and regulations changing mid-project; all of these threaten project viability and communicate to stakeholders that government efforts remain unfocused and revenues-driven. Consistency and timeliness are crucial to smart and successful development; this applies to both the review process as well as to zoning and subdivision ordinances.

Discussion was animated about how to achieve this. Some felt that review and approval processes could be abbreviated if architects and engineers were penalized for ensuing code violations. Others debated how then to manage differing code interpretations. The institution of firm deadlines for approvals was brought up, as was designating a specific and discrete project authority within an agency. Master planning was broached as a potential solution, as was establishing certain precedents or best practices to be followed industry-wide. Overall, a number of participants noted that regulation-specified processes needing to be driven by results rather than by methodology.

Inefficiency: The PLUS process was cited as an example of a slow, cumbersome process featuring unresponsive officials and unexplained delays. Often, progress is accomplished only by one level of government pressuring another to act on certain priorities. This does not encourage a standardized

approach; instead, the standard approach is lengthy and inefficient, and efficiencies are the exception rather than the rule.

Problems and Solutions Specific to DelDOT: Both the “T” in TIS and the DelDOT funding model make their studies auto-centric in nature. Redefinition is needed to allow both fairer evaluation of *transportation*-related rather than *traffic*-related development issues, and consideration of multiple transportation modes. This will allow greater focus on pedestrian-friendly, complete communities and more appropriate funding models. There was some debate as to the appropriateness of TIS for redevelopment; it was depicted as a disincentive to infill on the one hand and a much-needed feature of such proposals on the other (i.e. at the Barley Mill site). Meanwhile, too many middle managers at DelDOT are reviewing site plans and development proposals without communicating, sometimes creating paralysis and confusion by contradicting each other. This problem has grown over time.

Local Codes: Local governments need to revise their building and zoning codes to tailor them to local needs rather than urban patterns, for example. Building codes need to be reasonable, flexible, consistent, big-picture, and right-sized for Delawarean population densities.

Local Training/Trained Support: There was agreement that municipalities and small towns in Delaware lack the resources for planning staff but could benefit from more big-picture planning. The group discussed how know-how can be delivered effectively locally, whether by private consultants, academic consulting, or circuit rider planners from state agencies. Various options for assigning accountability for planning were discussed, including more locally managed planning and even locally organized financing of infrastructure; alternately, master planning or regional planning was also advanced as a solution to inconsistencies and overlaps.

Developer-Provided Amenities / Infrastructure Improvements: Attendees agreed that state requirements for provision of amenities and/or infrastructure add to development costs and ultimately impact the consumer (New Castle County law, for example, makes home builders responsible for amenity costs until reaching a certain completion rate). Meanwhile, consumers who prefer speedy fulfillment of wishes for amenities over eventual community development also pose a challenge. Because of these high consumer and government expectations, if market conditions later deteriorate, subdivisions planned with extensive amenities result in substantial financial losses or completion problems. As a result, builders would like to see a greater share of amenity costs and thus decision-making borne by the Home Owners' Association (HOA) or the municipality so that consumers/citizens can decide on community amenities, whether they are shared by HOA members or are ‘truly’ public amenities (i.e., driven and funded by local governments).

Also, more recent developments end up bearing a disproportionate burden of infrastructural improvement costs, created by the introduction of multiple developments rather than only the most recent one. The distribution of responsibility for infrastructure costs by DelDOT needs to be done more equitably and sensibly (for example, sidewalk requirements are more reasonable if they lead to specific destinations, once built). Ed O'Donnell mentioned that DelDOT's new ‘transportation district’ approach aims to address such issues. Meanwhile, it was also mentioned that to lessen sprawl, development in Level 1- and 2-designated areas can be incentivized by removing subsidies from Level 3 and 4 areas. In

deprioritized areas, the burden of infrastructure improvements could then fall more heavily on the developer, land owner, or local government interested in the development in question.

Parking Requirements: There was some debate about the need for a more flexible, multi-modal, formula-based approach to parking requirements, countered by the report that many HOAs feel that they lack parking and would thus not be eager to sacrifice parking spaces for the inclusion of other transportation options. Lakelands and Kentlands were referred to as examples of the successful integration of multi-modal transit hubs within communities rather than at community edges, which can improve usage as well as resident perceptions of public transit safety.

Regional /National Political Developments: Workshop participants find environmental regulations unrealistic in scope. For example, state initiatives to prepare for sea level rise are paving the way for prohibitive development restrictions. Meanwhile, the Chesapeake Bay initiative is producing new stormwater management regulations that unfairly target development. Environmental solutions for issues such as flood management are extremely important and cannot be ignored, but also need to be tailored to realities on the ground in Delaware.

V. Wrap-Up

Attendees were thanked for their input, informed of the future circulation of a summary for potential revision by those in attendance, and invited to sign up if interested in panel participation at the Fall 2013 Summit. The meeting was then adjourned.

**WORKSHOP #2 –
State and Local Government Regulatory Barriers to Creating Complete Communities
Wednesday, April 10, 2013, University of Delaware Paradee Center, Dover, Delaware**

IPA Project Team: Marcia Scott, Ted Patterson, Edward O'Donnell, Jessica Graham, Jeremy Rothwell, Tyler Berl

List of Attendees:

<i>Name</i>	<i>Affiliation</i>	<i>Name</i>	<i>Affiliation</i>
Greg Akers	City of Dover	Jocelyn Godwin	Town of Georgetown
Henry Baynum, Jr.	City of Lewes	George Haggerty	New Castle County
Jeff Bergstrom	City of New Castle	Karen Horton	DSHA
Scott Blaier	DDA	Herb Inden	OSPC
Bill Brockenborough	DelDOT	Sarah Keifer	Kent County
Merritt Burke IV	Town of Fenwick Island	Bob McDevitt	Town of Bowers
Terence Burns	DHCA	Charles McMullen	Town of Ocean View
Ronald Coburn	City of Dover	Dorothy Morris	OSPC
Kevin F. Coyle	DNREC	Grant Prichard	Town of Smyrna
Jamie Craddock	Town of Georgetown	Catherine Smith	DTC
Robin Davis	Town of Milton	Jill Swartz	Town of Ocean View
Dave Edgell	OSPC	Anne Marie Townshend	City of Dover
Mike Fortner	City of Newark	Dave Truax	City of Dover
Duane Fox, Jr.	State Fire Marshal	Janet Vinc	Town of Smyrna
Alice Guarrant	DHCA	Heather Warren	DDPH
Hal Godwin	Sussex County	Dawn Melson-Williams	City of Dover

Summary of Proceedings:

I. Welcome and Introductions

Ed O'Donnell welcomed everyone and outlined the workshop agenda. He explained that the purpose of the workshop was to build upon and respond to feedback received by members of the development community concerning regulatory barriers to Complete Communities development efforts in Delaware. He encouraged the participants to engage in a frank discussion and "truth" the points made by those in the development community where necessary. Lastly, he noted that the discussion will help to inform

the dialogue scheduled for the last workshop with elected officials on May 29, and for the Fall Summit that is open to all participants.

II. Presentation on Complete Communities

Ted Patterson reviewed the Complete Communities projects to date. Activities in 2012 included the selection of two pilot communities, Elsmere and Milford, where workshops were conducted to gather input on elements of a Complete Community, community design preferences, and community-specific issues. He briefly described how a panel discussion of private developers at the November 2012 Complete Communities Summit provided the nexus for hosting a series of workshops in the spring of 2013. The first workshop with members of the development community was held on February 27, followed by today's workshop with local and state regulators, and will culminate with the May 29 local and state elected officials and planning commission members.

Ted explained the national and economic context for the need to move towards Complete Communities in Delaware. Factors around housing demand are shifting; a report by the National Association of Realtors® (NAR) shows that due to the needs of aging Baby Boomers and the Millennial generation, consumer demand for walkable, transit served communities featuring multi-use development is far outstripping supply. Noting the importance of "place," he highlighted a case in Aberdeen, MD where the renovation of a historic church was deemed unlawful due to its nonconforming use in a commercial district. He went on to say that the underlying purpose of today's workshop was in part to rectify like-minded instances in Delaware in the future.

Jeremy Rothwell then explained that prior to Workshop #1, IPA surveyed representatives from the Delaware development community as a means of "starting the conversation," and identifying significant state and local government regulatory barriers to Complete Communities. Specifically, input was solicited from the Delaware Homebuilders Association, Delaware Association of Realtors, Delaware Chapter of American Institute of Architects, Delaware Chapter of American Society of Engineers and an assortment of developers. This was used to help frame the discussion at Workshop #1 on February 27, which brought together 19 individuals from each of the before-mentioned groups.

Jeremy briefly highlighted some of the specific talking points and issues identified by topic area during the February work session. To respond to issues discussed at Workshop #1, IPA considered the job specialty and expertise of participants then established five "break-out groups" to maximize the quality of today's discussion. He asked that each of the groups discuss the issues by members of the development community and consider the following questions (1) Do you agree that this is indeed a significant challenge? (2) Is this something that can be reasonably rectified and/or addressed, and (3) If it can be rectified, what steps need to be taken at the local and state level (e.g., whether through an administrative change or statutory/legislative change)? Lastly, he reminded the participants that the issues addressed in Workshop #1 were "a" perspective not "the" perspective. It was made clear that the purpose of today's workshop was to learn from one another, and find how we can all better collaborate and serve the public interest.

Break-Out Group Discussions

A. Local Land Development and Review Process (*Facilitator: Marcia Scott*)

- **Length and Timing of Development Review Process**

Acknowledgement of Issue: A municipality gave an example where the jurisdiction was forced to cancel a meeting because there was a lack of consensus on an issue between two DelDOT representatives.

Possible solution(s):

1. Strengthen internal agency/municipal pre-application review process. For example, the City of Dover's pre-application process keeps the review process moving within a 6-week timeframe. For the last 20+ years, Dover's Development Advisory Committee (DAC) meets monthly to provide the comprehensive administrative review of a prospective applicant's development proposal by city departments, state agencies (e.g., DelDOT), and the Kent County Conservation District. DAC meets first to review the proposal to determine its code compliance, plan conformity, and completeness with regard to city and state regulations. DAC representatives will identify potential issues, provide written advisory comments to the applicant, and then attend a 2nd meeting with the applicant. The advice here is to encourage other local governments to establish a committee to DAC, "meet early and often," and establish a clear timeframe for review.
2. As outlined in [Chapter 92 of Title 29](#) of the Delaware Code, the Preliminary Land Use Service (PLUS) process provides for state agency review of major land use change proposals prior to submission to local governments. To improve the length and timing of the PLUS process, OPSC is addressing the issue of "boilerplate" comments from state agencies in the advisory section of the letter to the applicant. Emphasis is being placed on specific state agency recommendations (if needed) for the applicant to meet code compliance/plan conformity.
3. The Delaware State Housing Authority (DSHA) believes that a not-in-my-backyard (NIMBY) attitude by residents adjacent to a prospective affordable housing development project may provide roadblocks to development plans. To address NIMBYism, Karen Horton of DSHA suggests that local governments establish strong community design/development guidelines that reflect a community's vision. For example, the State of Massachusetts adopted a "[Growth Districts Initiative](#)" that works to make communities, which voluntarily want to participate, shovel-ready for growth. Communities receive certain incentive/processes if they agree upfront and in writing that the "Growth District" will meet certain characteristics that are prescribed by the program.
4. Educating elected officials on steps that make up the regulatory review process was also suggested.

- **Redundant Processes**

Acknowledgement of Issue: The development community seems to regard the regulatory process in terms of roadblocks. Predictability of the planning process can help to improve this perception by developers.

Possible solutions:

1. New Castle County (NCC) Department of Land Use has streamlined the land development application process with its mantra, “if you meet the code, then go!” Whereas other local governments may require a vote by its legislative body to proceed with development plans, even if the plans comply and conform to state/local codes.
2. Regional planning can streamline development plans and address piecemeal planning on a parcel-by-parcel basis. The [Master Planning Process](#) brings together stakeholders (e.g., state agencies, local governments, civic groups, and business leaders) to implement certified comprehensive plans and plan for more detailed infrastructure needs. Master planning can benefit “greenfield” areas (creation of planned communities on previously undeveloped land) as well as “infill” areas (retrofitting or redevelopment of previously developed land).

- **Difficulty Obtaining Access Permits**

Acknowledgement of Issue:

1. It is often unclear when a new/modified access permit is needed, especially for small tenants/developments. There is a general lack of understanding regarding requirements and administrative process for obtaining a DelDOT permit for state roadway access or right-of-way work.
2. DelDOT’s timeframe for review needs to be compressed.
3. There is an issue/disconnect between future land use and funding of transportation improvements.

Possible Solution(s):

1. NCC Department of Land Use closely coordinates with DelDOT in the planning of road improvements, the review of subdivision and development proposals, and the issuance of permits. NCC works to ensure that subdivision and development proposals are prepared in compliance with DelDOT requirements. The coordinated review of preliminary plans considers the need for an access permit and when/if a building permit will be issued. NCC will not issue a certificate of occupancy (CO) until DelDOT has affirmed that the access permit has been approved.
2. It is suggested that DelDOT district offices work with local jurisdictions to establish guidelines (e.g., based on the type and square footage of development) that can provide a reasonable decision point for the issuance of access permits.

- **Costs (TIS, permitting, impact fees, infrastructure improvements, financing) Drives Up the Costs of Development and Affordable Housing; Inconsistent Fee Structures**

Acknowledgement of Issue: Members of the break-out group commented that costs are reasonable and are based on administrative/contractual costs of permit review and provision of services. Uniform permitting costs are not a reality as they are tied to “reasonable costs” as determined for the administration of land use and development activities. Permitting costs only seem to be an issue during an economic downturn.

Possible Solution(s):

1. Planning for existing and future needs of a community is key. Housing that reflects community needs, a variety of housing stock, economic realities, and demographic trends all drive the demand for housing. Decision makers should be educated that the credit crisis,

housing market shifts, preference to live near work and desire for energy-efficient homes is impacting home sales and causing “zombie subdivisions.”

2. Planning processes need to provide a path to make adjustments to respond to economic changes that impact the housing industry (e.g., issues with large residential development in Dover).

- **Lack of Incentives** (for infill/development, better quality, creative design, and/or flexibility of uses)

Acknowledgement of Issue: Incentives are needed to encourage vertical mixed-use and smart development projects. Incentives can help leverage quality/compact commercial, housing, service, and retail development—particularly in downtown areas with existing infrastructure and infill opportunities.

Possible Solution(s): Mixed-use and compact development can be encouraged by state/local government plans, policies, design standards, and incentives. Options include enacting standards to foster walkable places, form-based zoning, zoning incentives, fee waivers, and incentives for increasing density and compact development. The City of Dover/Downtown Dover Partnership has incentives that are related to lowering costs (not tied to design). New construction, renovation projects, or mixed-use development in the downtown redevelopment area may be eligible for waivers of permit/impact fees, tax abatements, and/or parking requirements.

B. Subdivision/Land Development Ordinance Issues (*Facilitator: Jessica Graham*)

- **Inconsistencies in local zoning code/subdivision regulations** (make development process more consistent and fair)

Acknowledgement of Issue:

1. In some cases, a municipality’s zoning and subdivision ordinances can contradict each other (e.g., Ocean View), or municipal/county zoning & subdivision regulations may overlap/conflict with state (agency) requirements.
2. Alternately, zoning and subdivision ordinance complexities sometimes cause problems after expensive architect/engineer plans are drafted and presented.

Possible Solutions:

1. Ocean View merged its zoning and subdivision codes into one unified code to simplify matters. The unified code also provides opportunity for the developer to do a preliminary presentation of a simplified concept plan. The concept plan is presented to identify potential problems/get feedback, not for approval/dismissal.
2. Other suggested solutions included providing municipalities and counties with a generic blueprint or checklist listing agency requirements that codes need to take into account.

- **Regulatory barriers to mixed-use development/infill** (or residential development in commercial zones, vice versa, etc.)

Acknowledgement of Issue:

1. Mixed-use has been identified as a priority and integrated into some local government codes (e.g., Dover, Ocean View, and Georgetown). In Dover, planned neighborhood design is also prescribed. However, no mixed-use development has been completed yet in any of these

towns, due to the changes in the economy and the slowdown in lending. How can these towns encourage the completion of mixed-use projects?

2. Enclaves of unincorporated land outside municipal limits attract sprawl and pose additional barriers to infill development and efficient land use.

Possible Solution:

1. Dover incentivizes mixed-use, infill development with waivers of permit/impact fees, parking requirements, and 10-year property tax abatements for the value of improvements. It was also suggested that towns could pursue the development of an anchor institution (e.g., medical facility, assisted living facility, educational institution, cultural site) adjacent to mixed-use zoning areas. Ocean View is working on this idea with an assisted living facility, but has found the timing issue difficult. Generally, anchor developments that are approved by special exceptions are valid for one year, whereas development may take longer than a year. Including the approvals of such developments in the planning review process might provide a solution.
 2. Another suggestion was to facilitate financing of mixed-use/infill development.
- **Outdated local codes that do not reflect current market conditions** (changing housing preferences of aging population, Millennials, smaller families, etc.)

Acknowledgement of Issue:

1. It can be challenging to keep regulations in tune with changing market trends. For example, Georgetown updated its code extensively in 2005, before drastic changes in the economy.
2. One example of a mismatch between the market and zoning codes concerns the allowed uses of single-family homes; usage changes are usually done via (expensive) conditional uses (e.g., allowance of accessory dwelling units [ADUs] or “granny flats”).

Possible Solutions:

1. Georgetown is now looking at simplifying its approval process and changing its fee structure, but is not planning to revise its code per se. Dover makes minor adjustments to its code on a routine basis.
 2. Form-based codes provide a more flexible approach to changing uses.
- **Euclidean/inflexible zoning codes that isolate uses; lack incentives for creative, innovative design; enforce bare minimum standards only**

Acknowledgement of Issue:

1. Euclidean zoning, characterized by the segregation of land uses, is the most prevalent form of zoning in Delaware. One municipal official mentioned a disinterest in form-based codes on the part of the planning commission.
2. Also, some local officials and residents do not want state involvement in local land issues or state interest in promoting more flexible zoning or innovative methods such as form-based codes or master planning.

Possible Solutions:

1. Form-based codes; Redevelopment areas of focus; Administrative flexibility on parking requirements depending on walkability, transit, etc.
2. Education and advice for local government officials on community design/form-based codes, etc.

- Growing body of redundant, overlapping, confusing, and/or contradictory regulations**
Acknowledgement of Issue: The comment was that the ability of state and local governments to coordinate and resolve confusing or contradictory situations varies greatly from case to case; it depends on the extent and the health of pre-existing relationships between departments and/or officials.
Possible Solutions:
 - Opening the lines of communication in a systematic way is the key to this issue.
 - More formal inter-municipal and/or municipal-county collaboration for governments adjacent to each other could help to identify overlaps/redundancies/conflicts and potential solutions. This might be done through the various MPOs, or as part of the PLUS process.
- Outdated/excessive parking requirements that ignore multi-modality: barrier to transit-oriented development**
Acknowledgement of Issue:
 - It was agreed that codes and ordinances tend to be autocratic on the whole.
 - However, some small towns represented in the break-out group have little in the way of public transportation that would need to be taken into account. Nevertheless, those towns do acknowledge a lack of opportunities for cyclists and pedestrians, as well as a lack of space on pre-existing streets for the creation of bicycle and pedestrian thoroughfares.Possible Solutions:
 - Turn DelDOT Traffic Impact Studies (TIS) into Transportation Impact Studies so that developers take pedestrian, transit, and bicycling connectivity as well as vehicle thoroughfares into account.
 - Incorporate trip destinations (e.g., DelDOT's Transportation Improvement Districts) as a priority in plans for non-car transportation infrastructure.
 - Develop biking and walking paths to offer multi-modal opportunities for mobility. Where there is little road space, explore the possibility of alternate corridors (separate from the street grid). This might be better coordinated at the state level, if it involves inter-municipal bicycle routes.
 - Where public transit is lacking, look at developing routes for small shuttles to transport passengers to specific (e.g., tourist) destinations.
- Multi-modal infrastructure construction and maintenance can create conflict** (consumer/developer/resident interests, expense, public vs. private future maintenance)
Acknowledgement of Issue:
 - The question of who maintains multi-modal infrastructure once it has been built can become an issue (e.g., responsibility for sidewalk maintenance)
 - Also, if not built during initial development, such infrastructure modifications can be difficult to make later on (e.g., obtaining easements to create sidewalks so as to provide access to a bus stop).Possible Solution:
 - For developments of a certain size that fall outside of approved State Strategy Investment Levels 1 and 2, remove infrastructure subsidies, and do not allow infrastructure that will have to be replaced/retrofitted at public expense (in this case, auto-centric streets). Instead, make developers responsible for substantial (i.e., resilient) infrastructure in those cases. Increasing

infrastructure subsidies in Level 1 and 2 Investment areas to incentivize targeted development would complement this approach.

C. Building/Fire Code Issues (*Facilitator: Jeremy Rothwell*)

- **Navigating nuances of locally adopted building codes**

Acknowledgement of Issue:

1. There was a recognition that the definitions in the building code, fire code, and zoning code may (and often do) differ from one another. For example, a commercial definition in one code may be different from one or more of the others, which can have serious implications to the respective development project.
2. The International Code Council, which is responsible for setting building standards, updates its standards every three years. In practice, local governments in Delaware may for instance be using the 2003, 2006, 2009 or 2012 version of the ICC code. As a logistical matter of convenience for both developers and local governments, it would be better if ICC updated its code every six or ten years like the NFPA code, but this would not allow for many of the progressive technological changes related to energy efficiency etc. to be incorporated as fast as they have been.

Possible Solution(s):

1. There is a definitive need for the developers, architects, and engineers to have a thorough understanding of each of the ICC codes and NFPA codes. Perhaps the building officials association and the State Fire Marshal can hold periodic informational sessions to go over any updates or discrepancies between the various codes. Furthermore, if the architects/engineers/attorneys cite the respective ICC/NFPA code in their documentation and report to the municipality/county/state, it will go a long way to minimizing confusion.
2. Many developers will meet with the local planning staff before submitting a plan for preliminary approval, but they **do not** meet concurrently with local building and fire code officials to ensure that the project meets the specifications mandated in the respective ICC and NFPA code. As a model, the City of Dover Department of Inspections and Code Enforcement and the Fire Marshal meet with the developer before the plan is submitted to the planning commission as part of their DAC process.
3. There was a discussion as to what to do concerning municipalities adopting different versions of the ICC code. Some felt that the General Assembly should mandate and adopt a statewide building code like it does for mechanical & plumbing. Others felt that municipalities in the same region/county should voluntarily cooperate together, and adopt an ICC and NFPA code at the same time so as to minimize confusion within the development community.

- **Building codes are too restrictive; barrier to adaptive reuse of buildings, housing affordability, & historic preservation**

Acknowledgement of Issue: When it comes to historic structures, the developers need to ask themselves – is there a change in occupancy classification? There are very distinct differences and parameters depending on whether it is classified as a residential or commercial structure. Developers (and their corresponding architects/engineers/attorneys) need to understand this facet. In addition, it should be recognized that while some municipalities (ex. Wilmington) have

their own separate historic districts and codes, almost all in Delaware follow the national standards set by the National Trust for Historic Preservation.

Possible Solution(s):

1. The group felt that the building/fire codes themselves were not too restrictive, but that the developer often times fails to consider the codes that were in place when they create their concept plan. This could be rectified by the developer (and their architects/engineers/attorneys) meeting with the respective building/fire code staff before obtaining lending approval. This would save the developer the trouble of renegotiating with their lender more than is absolutely necessary.
2. The group also felt that the **zoning** rather than building or fire code is the real and principle obstacle to creating Complete Communities. There needs to be the political will on the part of the elected officials at the local level during the comprehensive plan process to shy away from separating uses on the zoning map. In particular, there is the obstacle of density; elected officials tend to have a strong preference for single-family homes. There needs to be more “mixed-use,” “village center” etc. zoning designations that allow for a greater mixing of uses.

- **State fire protection plan review process**

Acknowledgement of Issue: The group was in complete disagreement with the development community that the review process is too lengthy, rigid, or cumbersome. The State Fire Marshal’s office has worked to ensure that it takes on average no longer than three weeks to review, and resubmit with comments, any development proposal. However, if there are discrepancies, the developer is required to incorporate those safety measures as required by state law. This means that the engineer/architect must incorporate those changes and resubmit the proposal, which will again be reviewed in roughly three weeks. It was emphasized that in many instances, the developer simply doesn’t want to listen to the advice given by their architects/engineers who fully understand that a particular aspect of a project will not meet the fire code. Thus, if the developer gets it right the first time, they will not have to resubmit their proposal.

Possible Solution(s):

1. Not only do developers need to meet with the building/fire code officials upfront before they submit their preliminary application to the town/county, they need to have a continuous conversation at each step and after each alteration to the proposal. It was emphasized that most proposals go through many drafts, so that what is submitted at the concept stage is very different from what the State Fire Marshal will get at the back end for final approval. Planners, engineers etc. at local planning offices, towns councils, DelDOT, DNREC et al., may not have a thorough understanding of fire codes and may make recommendations which are contradictory to NFPA standards.
2. There was a feeling of disenchantment among the group that the PLUS process is broken and is not functioning as envisioned. There needs to be greater synchronization and integration in the PLUS “process.” Agencies (and divisions within agencies) cannot be drafting comments and recommendations in a vacuum. It is not necessarily the case of one agency being at fault, but rather the sum of all the parts at fault.

- **Lack of flexibility/rigidity of codes**

Acknowledgement of Issue: On this point as well, the group was in disagreement with members of the development community. It should be reminded that building and fire codes were put in place for safety and to ultimately save lives. “*Developers need a reality check.*” The State Fire Marshal has made a conscious effort to be as flexible as possible, and has for example created a waiver system concerning the placement of fire lanes in front of commercial structures (to allow greater on-street parking). In addition, many of the points brought up by the development community related to street width, sprinkler systems etc. are far more of a sticking point with the fire service (which is an important and powerful constituency group with many Delaware local governments) than with the code officials and fire marshal.

Possible Solution(s):

1. Developers are short sighted with regard to residential sprinkler systems in particular. They should recognize that if they give in to the fire service’s demand for mandatory residential sprinkler systems (which is proven to save lives and property) that they will be in a better bargaining position to ask for and receive greater density. Fire code enforcement officials have often, in the past, opposed a number of moderate- to high-density projects over the issue of sprinklers.
2. Developers can and should engage code enforcement, fire service officials, and fire marshals early in the process (before they obtain lending approval) and work out these stark differences up front so as to avoid conflicts before the planning commission and/or town/county council. Resolve the differences up front! Developers should take the attitude of – “What can I do for you (fire service) without altering the intent of my project that will earn your nod of approval?” There are numerous avenues for compromise and give-and-take (e.g., placement of hydrants).
3. The development community in general needs to develop a better relationship with fire service officials and the fire marshal. It was recommended as a follow-up to have a symposium/session between members of the development community, code enforcement and fire service officials, and fire marshals.

D. Environmental Regulations (*Facilitator: Ted Patterson*)

- **Stormwater regs (e.g., stormwater regs of DNREC vs. DelDOT vs. Conservation Districts)**

Acknowledgement of Issue: Municipal and county governments struggle to comply with new state regulations because state agencies give little direction on implementation of new laws. Local officials aren’t equipped to handle environmental issues. No leadership is provided from the state level. Local officials seek guidance from state agencies without success. Regulations are incomplete and do not change with the times. Storm water regulations are a hurdle to infill development.

Possible Solution(s):

1. State needs to provide clear, concise evidence to direct local decisions.
2. Enhanced education and outreach to elected officials should occur regarding environmental issues to show scientific justification for new regulations. Bowers Beach and Broadkill areas have growing problems related to roadway closures during storm events. Farmers are already feeling the effects of sea-level rise via saltwater crop damage in coastal areas.
3. Uniform regulations should be provided to all local governments (i.e., counties and towns).

4. Adequate Public Facilities Ordinances (APFOs) will help to pay for and manage growth and provide the private sector with predictable and clear regulatory environment parameters at the local level. Local governments should adopt APFOs.
 5. Local governments need to establish a fixed and predictable fee structure.
 6. Local governments need more flexibility in storm water regulations to allow for more infill-type development.
- **Impact of proposed changes to septic regulations due to EPA Chesapeake Bay cleanup (e.g., confusion over whether pre-sale inspections are required)**
Acknowledgement of Issue: TMDL regulations are clear. Municipalities do not want to raise sewer rates to cover Waste Water Treatment Plant upgrades. Local governments are stuck with these costs. Farmers are adhering to nutrient management plan regulations and to cleanup issues. The Soil Conservation District has a good mission, but is not efficient. They do not have enough regulatory power. DNREC is inflexible with solutions on new septic regulations related to the Chesapeake Bay area.
Possible Solution(s):
 1. The Soil Conservation District should be given more regulatory power.
 2. Uniform regulations should be provided to all counties and towns.
 3. APFOs will help to pay for and manage growth and provide the private sector with predictable and clear regulatory environment parameters at the local level. Local governments should adopt APFOs.
 4. Local governments need to establish a fixed and predictable fee structure.
 - **Regulatory uncertainty (i.e., Sea-Level Rise)**
Acknowledgement of Issue: The group agreed that this was an issue of concern. Out-of-state landowners do not think about the risk they face in purchasing coastal properties.
Possible Solution(s):
 1. Uniform regulations should be provided to all counties and towns.
 2. Governments should not be subsidizing land owners who choose to live in coastal areas that will be impacted by sea-level rise.
 3. APFOs will help to pay for and manage growth and provide the private sector with predictable and clear regulatory environment guidelines at the local level. Local governments should adopt APFOs.
 4. Local governments need to establish a fixed and predictable fee structure.
 5. Disallow building in flood-prone areas.
 6. Towns and counties should coordinate on building codes.
 7. Height restrictions in some coastal towns could help to limit negative impacts of sea-level rise and rising water table.

E. Intergovernmental Coordination Issues (*Facilitator: Tyler Berl*)

- **Need to standardize regulation among state agencies.**
Acknowledgement of Issue(s): It was argued that it is not necessarily a good thing to have standardized codes across the state. Each community has individual needs and nuances that make it important to be able to establish the codes that fit best for their community. But it was

understood that there should be more open conversation early in the development and planning process so as to promote efficient application of development and growth.

Possible Solution(s):

1. Both minimum and maximum requirements should be established so stakeholders at least understand the maximum requirements their development may be held to across the state. The legislature needs to hold development to the standards provided by the code, because breaks given provide a precedent for further development proposals.
2. Regulations regarding infill development, the type of development that promotes complete communities, should be reconsidered so as to make this type of development more streamlined. Currently infill development is the hardest and slowest to get approved through review processes.

- **Issues with the PLUS Process**

Acknowledgement of Issue(s): While a twenty-day comment period is provided, there was a question as to whether some development proposals could be expedited that meet certain criteria and conform to existing patterns of development. It was noted that in the PLUS process can be delayed when an initial issue of concern is not addressed by a developer (specifically an out-of-state contractor) and is submitted for a subsequent review without changes.

Possible Solution(s):

1. Possibly expedite the PLUS process for land development proposals that meet certain criteria.
2. Stress that open communication, among all stakeholders, is needed early in the project proposal/review process.
3. Developers need to understand regulation requirements, as well as State growth strategies. This should be especially important for development projects using out-of-state contractors.

- **Issue Regarding Delaware Strategies for State Policies and Spending**

Acknowledgement of Issue(s): The question was how to effectively incentivize developers to build complete communities—including building/redeveloping within Investment Level 1 and Level 2 Strategy Areas. It was noted that building within these areas promote efficient land use, deter sprawl, and prevent unnecessary state investment in infrastructure. But it was also understood that because of the perceived stringency of many different codes, infill development is typically the hardest and most time intensive to get through the application process. Further, it was agreed that while mixed-use development promotes complete communities, it is generally not allowed within traditional zoning codes.

Possible Solution(s):

1. It was determined that mandatory codes need to be reassessed so as to potentially allow more development within Investment Level 1 and Level 2 Strategy Areas—to allow “by right” development if all appropriate codes were met.
2. It was suggested that more emphasis should be placed on Planned Unit Developments (PUDs), which allows the grouping of both varied and compatible land uses, and/or zoning codes that allow for mixed use.
3. Finally, it was agreed that parking requirements are often overly restrictive, generally hinder dense development within municipalities, and need to be addressed.

- **Distribution of traffic impact fees and development fees equitably across all stakeholders (fees are borne by the final developer)**

Acknowledgement of Issue(s): This was generally agreed upon as a significant problem affecting development across Delaware. Because there is a lack of standardization, traffic impact fees often unfairly burden the final developer.

Possible Solution(s):

1. It was determined that Transportation Improvement Districts (TIDs), which are currently under consideration, will certainly improve this problem. In such a formula-driven approach, the costs of providing transportation infrastructure improvements will be more equitably divided between developers and the projects involved.
2. Furthermore, a greater emphasis needs to be placed on the Master Planning process of larger areas, so communities that understand and can predict the type of development and accompanying traffic that will occur in the future.
3. Finally, it was agreed that Traffic Impact Studies (TIS) should include all forms of transportation, rather than just automobile traffic.

III. Large-Group Facilitated Discussion

Environmental Regulations

- There is a need for DNREC and other state agencies to provide the right research and technical input to local governments since most do not have the internal capacity to do it on their own. The state passes the buck down to local governments that generally do not have the essential technical expertise. An example was given where a county was considering adopting a 50-foot buffer/setback ordinance, but was told by DNREC that they *should* adopt a 100-foot buffer/setback ordinance instead based on “sound science.” The county requested that DNREC provide a detailed reasoning to back-up their request for a 100-foot buffer/setback ordinance, but they failed to submit a follow-up or rebuttal.
- There was a general discussion involving the building and redevelopment of areas in the flood plain, and whether (and by how much) the current flood plain guidelines should be altered. It was voiced by some that state and localities should do more up front in preventing development in the flood plains, so as to avoid the costly debacle of having to buy out property owners as was the case in New Castle County in the early 2000’s.
- Soil Conservation Districts need additional funding and “teeth” in order to live up to their intended role of reviewing and approving stormwater management projects. One audience member mentioned that stormwater regulations need to be put on an equal regulatory footing statewide with water and sewer regulations.

Local Land Development and Review Process

- Much of the discussion focused on involving all regulators in the local development pre-application review process. The goal is to provide feedback and communicate early and often with prospective applicants. It was noted that some developers, who don’t take the process seriously, blame regulators for delays in permitting and project approval when previously identified issues are not corrected.
- Concerning the issue of incentives, Dover was again highlighted as a possible model. In its Downtown Business District, multi-story and mixed-use projects may be eligible for impact fee

waivers, building permit fee waivers, parking waivers, and/or 10-year tax abatements for the value of improvements. The reasoning behind the approach is that if the developer doesn't do the project then the city would likely be collecting less in property taxes from those parcels anyway.

- DSHA noted that there are different, more stringent public notification requirements for affordable housing developments. There is a greater likelihood of affordable housing developments being denied due to this public notification requirement and NIMBYism.
- Fire code compliance can create barriers to redevelopment and retrofitting projects. Issues (e.g., lack of sprinkler system installation in mixed-use project in Pa.) can be addressed by making early contacts with regulatory agencies.
- Master planning was encouraged to address disconnects between land use plans and making roadway/infrastructure improvements.
- The local land development and review process needs to consider the vision of the community rather than interests of the developer. Often, "mega-developments" are approved that have no connectivity, lack walkability, are void of streetscaping, and provide little opportunity for social interaction. These larger, isolated developments have no sense of community and are ripe for future problems.

Building/Fire Code Issues

- The building officials emphasized to the group that the various local jurisdictions in the state use four different versions of the ICC code, which makes for a great deal of inconsistency. One member voiced that the state should consider adopting a uniform building code as it does with the mechanical and plumbing code. However, one of the building officials noted that this may prevent some jurisdictions (e.g., Newark) from adopting the most up-to-date and technologically progressive code available. It was recognized that ICC is a national organization that will continue to update its code every three years to respond to technological advances.
- A planner in the audience emphasized that it is a **very** staff-intensive process to update and revise the building code, which can be cost prohibitive to many smaller jurisdictions. It was emphasized that going through that process every three years is cost prohibitive for **any** jurisdiction regardless of size and budget. However, some participants viewed the adoption of a statewide mandate with equal skepticism. As an alternative, the same planner recommended that the municipalities in a given county collaboratively develop a schedule with the county planning/inspections department to revise and update their codes as a group so as to achieve both consistency and economies of scale.
- One audience member inquired as to whether the State Fire Marshal should charge significant fees when a developer submits a project that fails to meet the NFPA standard. The State Fire Marshal was hesitant to agree with that suggestion; he did not think that would have a noticeable impact on the outcome. He emphasized that a developer is far more concerned with time and legal/engineering fees than they are with a fee charged by a state agency.
- A planner in the audience echoed the building officials' point that the adoption of mandatory residential sprinkler systems would likely pave the way and allow for developers to achieve higher density.
- It was recommended by one building official, and affirmed by many in the audience, that the General Assembly should prohibit private water suppliers from charging a standby fee for sprinkler systems. Private water companies (e.g., Tidewater and Artesian) all build a separate

water line just for fire suppression systems that could and would be left on regardless as to whether the customer was in arrears on their water bill, but continue to charge significantly more for access because it is a cash cow for them. As an example, it was explained that a townhome community in Long Neck, Sussex County was forced by the private water supplier to pay \$80,000 a year just to have access to water in their sprinkler system despite not a drop being used.

Intergovernmental Coordination –

- There was a discussion as to what constitutes a reasonable timeframe for state agencies to review development proposals. One participant brought up the “20-working days” proposal that has been considered in the past. Another stressed that there should be no need to overly rush the process. A deliberate and thoughtful approval process is preferred to prevent the approval of an inappropriate development project. It was noted that the resulting development will become a legacy (good or bad) to the community.
- Concerning infill development, DelDOT has a significant challenge given that levels of service are in many cases already poor or degraded. Is it really fair to make the developer of such a project pay for significant transportation infrastructure upgrades when the system was already broken? It was noted that DelDOT has been moving towards the creation of TIDs to replace the project-by-project review of traffic impact studies, as is currently in place. It was also recommended to incorporate transportation improvements into the master planning process so as to make projects that fit the scope of the plan “by-right” if and where possible.
- Concerning new development in Level 4 areas, it was recommended that developers be forced to bear a greater share of the costs in providing infrastructure improvements.

Subdivision/Land Development Ordinance Issues –

- One participant expressed the need for municipalities in an immediate area to coordinate among them and with the county to better standardize and synchronize zoning/subdivision ordinances. There is the issue of making the ordinances more predictable for developers, but also to ensure that developers do not play off one municipality or county.

IV. Wrap-Up

Attendees were thanked for their input, informed of the future circulation of a summary for potential revision by those in attendance, and invited to sign up if interested in panel participation at the fall 2013 Summit. The meeting was then adjourned.

WORKSHOP #3: SUMMARY OF PROCEEDINGS
State and Local Government Regulatory Barriers to Creating Complete Communities
Wednesday, May 29, 2013
University of Delaware Paradee Center, Dover, Delaware

IPA Project Team: Marcia Scott, Ted Patterson, Edward O'Donnell, Jessica Graham, Jeremy Rothwell, Tyler Berl

List of Attendees:

<i>Name</i>	<i>Affiliation</i>	<i>Name</i>	<i>Affiliation</i>
Robert Atkinson	Town of Blades	John McDonnell	Town of Greenwood
Drew Boyce	DelDOT	Susan Moore	New Castle County Council
Phyllis Brooks-Collins	Town of Wyoming	Dennis Reardon	Town of Lewes
Carleton Carey Sr.	City of Dover	Gary Simpson	Delaware State Senate
Mike Corti	Town of Felton	Teresa Tieman	Town of Harrington
Joan Deaver	Sussex County Council	Doug Tuttle	City of Newark
Lew Kilmer	Town of Bethany Beach	David Van Kavelaar	Town of Wyoming

I. Welcome and Introductions

Ed O'Donnell welcomed all participants and outlined the workshop agenda. He explained that the purpose of the workshop was to build upon and respond to feedback received from our two previous workshops that focused on regulatory barriers for building Complete Communities in the State of Delaware.

He explained the importance of the elected official in creating change within the community and encouraged the participants to be open and frank with their comments. Ed noted that while comments received within the previous workshops were of perceived barriers to development within the state, they are not necessarily the entire reality. In such, it will be the role of the present elected officials to "truth" out previous comments and to find potential legislative solutions to such barriers. Finally, he noted that the outcomes of this workshop will be used to steer the discussion to be had in our 2nd annual Complete Communities Summit scheduled for Monday, November 4th, 2013.

Presentation on Complete Communities

Ted Patterson reviewed the Complete Communities projects to date. Activities in 2012 included the selection of two pilot communities, Elsmere and Milford, where workshops were conducted to gather input on elements of a Complete Community, community design preferences, and community-specific issues. He briefly described how a panel discussion of private developers at the November 2012 Complete Communities Summit provided the nexus for hosting a series of workshops in the spring of 2013. The first workshop with members of the development community was held on February 27, followed by workshop two with local and state regulators on April 10, and the series concluded today with state and local elected officials.

Ted discussed the national and economic context for the need towards Complete Community development in Delaware. Factors around housing demand are shifting; National Association of Realtors® (NAR) show that due to the needs of aging Baby Boomers and the Millennial generation, consumer demand for complete communities featuring multi-use development is far outstripping supply. Noting the importance of “place” in creating a dynamic social fabric in every community Ted explored a particularly relevant case study from Maryland. The case highlighted how renovations to a historic church in the town were deemed unlawful due to its nonconforming use with the present commercial district. He concluded that it such unique destinations are what creates “place” or character in the community, and that the underlying purpose of today’s workshop was in part to rectify like-minded instances in Delaware in the future.

Marcia Scott then explained that prior to Workshop #1, IPA surveyed representatives from the Delaware development community as a means of “starting the conversation,” and identifying significant state and local government regulatory barriers to Complete Communities. Specifically, input was solicited from the Delaware Homebuilders Association, Delaware Association of Realtors, Delaware Chapter of American Institute of Architects, Delaware Chapter of American Society of Engineers and an assortment of developers. She stated that while this was not a scientific survey, it was helpful in framing the discussion that was had at Workshop #1 on February 27, which brought together 19 individuals from each of the before-mentioned groups.

Comments received in Workshop #1 were found to center around five main regulatory barriers: the land development and review process; Subdivision and land development ordinances; Building and fire codes; Environmental regulations; and, Intergovernmental coordination. In such, Workshop #2 brought together experts from relative state and local regulatory agencies to discuss these barriers in five breakout groups. Groups were asked to comment on the following questions (1) Do you agree that this is indeed a significant challenge? (2) Is this something that can be reasonably rectified and/or addressed, and (3) If it can be rectified, what steps need to be taken at the local and state level (e.g., whether through an administrative change or statutory/legislative change)? The aggregate of the comments had in the first two workshops were used to educate the group discussion to be had today.

II. Large Group Discussion

A. Local Land Development and Review Process

- **Length and timing of development review process**

Possible solution(s):

- 1) Local governments should make developers cognizant that the development review process includes both local and state-agency review. Local governments need to explain that while local review focuses on land use and construction/design of structures, that state agencies will additionally review how roads, water/wastewater, fire safety, and stormwater/drainage are impacted by a development project.
- 2) Local government design guidelines can help facilitate the understanding of the local land development and review process and requirements. For example, the Town of Bethany Beach adopted non-residential design standards (*with illustrations*) as part of its municipal code (<http://ecode360.com/11902918>).
- 3) Local governments should ensure that there is internal consistency within their existing codes and regulations. For example, an attendee noted that their jurisdiction lacked consistency in planning definitions.
- 4) Training of volunteer planning commission and board of adjustment members is strongly advised to ensure understanding of the land development and review process. The Town of Bethany Beach requires its newly appointed members to attend IPA's Planning Education Training Courses. It was suggested evening or jurisdiction-specific training sessions be considered.
- 5) A pro-active, collaborative approach to developing new or amended ordinances is recommended to promote understanding of the legislative intent, purpose of regulations, permitting, and enforcement. For example, the Town of Bethany Beach invited stakeholders to provide line-by-line input in ordinance drafting for regulations governing geo-thermal systems and solar energy.

- **Redundant processes**

Possible solutions:

- 1) Predictability, transparency, and consistency are needed to streamline the local land development and review process.
- 2) Local government and state agencies need to forge partnerships in permitting processes and communicate potential issues. For example, one agency granted approval of a septic system in an area where a sewer system expansion was underway.

- **Difficulty obtaining access permits**

Possible Solution(s):

- 1) DelDOT welcomes close coordination with local governments in the planning of road improvements, issuance of access/utility permits, and changes in land use or new construction that impacts a state road.
- 2) Local governments need to inform developers about related permitting processes. For example, many Delaware municipalities advise developers that many streets are State owned

and maintained. To undertake construction on a State maintained road, for either an entrance or utility construction, DelDOT approval is required.

- 3) State agencies are in the process of streamlining regulations as per Executive Order #36. For example, DelDOT is in the process of streamlining its access permit process. For small-scale development projects, it has been proposed that DelDOT district offices review, approve, and issue access permits for small-scale development.

- **Government-incurred costs** (TIS, permitting, impact fees, infrastructure improvements, financing) **drive up the costs of development and affordable housing; Inconsistent fee structures**

Possible Solution(s):

1. Development of sub-regional plans (e.g., Southern New Castle County) and Master Plans (e.g., Middletown) can help to mitigate costs by comprehensively planning for access, changing transportation patterns, infrastructure improvements, and future growth and development.
2. DelDOT is awaiting approval of amendments to its existing standards and regulations regarding subdivision streets and state highway access to allow for the establishment of Transportation Improvement Districts (TIDs). TIDs help to coordinate resources in transportation projects and for all development—current and future—to pay the fair share of the cost of transportation-related improvements.

- **Lack of incentives** (for infill/development, better quality, creative design, and/or flexibility of uses)

Possible Solution(s):

- 1) Sussex County adopted a Moderately Priced Housing Unit (MPHU) program for working professionals with development incentives. Ingram Village is an example of a MPHU Community approved by the Sussex County Council and annexed into the Town of Ellendale.
- 2) Citizens need to be involved in the future vision of their communities and consider planning for future infrastructure improvements, services, and facilities holistically. Local governments incentivize desired land use and development patterns. For example, the City of Newark has established a parking waiver system that allows for a reduction in required parking spaces for desired construction within certain zoning districts. Fees collected from the parking waivers are used to fund parking improvements. Another instance was cited where adjacent businesses shared parking facilities during at-peak and off-peak hours.

B. Subdivision/Land Development Ordinance Issues

- **Inconsistencies in local zoning code/subdivision regulations**

Acknowledgement of the Issue:

- 1) While agriculture “holding zones” (e.g., Sussex County AR-2) may control development, and allow for flexibility in future land-use decisions, they can also cause case-by-case, piecemeal, or incremental zoning.
- 2) Local government response to community opposition to development can lead to inconsistent land use decisions.

- 3) Multiple state and local government agencies may have different interpretations of regulations (e.g., stormwater/drainage regulations: DNREC, DelDOT, local governments, conservation districts).

Possible Solutions:

- 1) Local governments could adopt Unified Development Codes (UDC). New Castle County has adopted a Unified Development Code that merged the zoning and subdivision codes into a single coherent document.
- 2) To address “holding zones,” local governments need to craft regulations that allow landowners flexibility in the economic use of land while limiting/controlling future impacts of future development and maintaining agriculture as a sustainable land use.
- 3) The City of Newark uses a “New Homeowner’s Checklist” to provide prospective property owners with information on the existing and proposed adjacent land use, potential development that may impact the property, and location relative to floodplain areas
- 4) Governor Markell’s Executive Order #36 (Review and Reform of State Agency Regulations) was mentioned as an important step in reducing overlapping and outdated state agency policies.

- **Regulatory barriers to infill/mixed-use development and zoning**

Acknowledgement of the Issue:

- 1) Minimum parking requirements can create barriers to infill/mixed-use development in downtown/central business districts.
- 2) Regulatory impediments in the zoning/permitting process, costs, and time involved can be disincentives to infill/mixed-use development.

Possible Solutions:

- 1) Three solutions were suggested to address stringent parking requirements:
 - a. The City of Dover has amended its zoning ordinance to allow for flexibility in its parking requirements and a provision for parking waivers, in its central commercial district, if new construction lacks sufficient on-site parking.
 - b. The City of Wilmington provides a shared parking alternative for neighboring businesses/properties that create daytime and evening demand respectively (e.g. office space/nightlife).
 - c. In the City of Newark, property owners, land developers, or other land users within the central business district may apply for an off-street parking waiver. Fees from the parking waiver system are used to fund parking garages, lots, and facilities developed and maintained by the Newark Parking Authority. The City of Newark’s parking-waiver system that allows developers to contribute to a public parking fund if they cannot meet on-site parking requirements. Funds are used to construct/maintain Newark Parking Authority garages and lots.
- 2) The Town of Bethany Beach allows for a vertical mixed-use district with ground-floor retail/ commercial and residential in upper floors. The City of Newark’s mixed-use development strategy in its central business district has completely revitalized its main street.

- **Outdated local codes that do not reflect current issues/market conditions (aging population, small families, etc.)**

Possible Solutions:

- 1) Local governments should consider code updates and mixed-use development to accommodate market conditions, provide more vibrant commercial areas, and encourage walking rather than driving.
- 2) The Town of Bethany Beach has created new ordinances, with early public input, to address on-site sources of “green” power for buildings (solar/geothermal)

- **Euclidean/inflexible zoning codes that isolate uses, lack incentives for creative, innovative design, and/or enforce bare minimum standards only**

Possible Solutions:

- 1) Local jurisdictions can legally address non-conforming uses of long-standing businesses, properties, or structures to bring them into compliance with the current zoning code.
- 2) Local jurisdictions should work to expedite development proposals approvals that meet all applicable code requirements, do not require a major re-zoning or subdivision, and fit the goals of its comprehensive plan.

- **Growing body of redundant, overlapping, confusing, and/or contradictory regulations**

Possible Solutions:

To assist with municipal orientation and training, the University of Delaware IPA offers a Planning Education Training series for local government staff, officials, planning commission members, and other volunteer boards. Some jurisdictions require that all new planning commission/board of adjustment members attend this training.

C. Building/Fire Code Issues

- **Navigating nuances of locally adopted building codes**

Possible Solutions:

1. To promote understanding of fire and building code requirements, developers, building and fire code officials, and planning staff need to meet early in the process. It was suggested that representatives from the local volunteer fire company should be involved as these officials are stakeholders in fire prevention and code enforcement.
2. State Fire Prevention Regulations references NFPA and is updated/adopted by the State Fire Prevention Commission every five years. Local jurisdictions may adopt or amend the code to make it more stringent—but may need technical assistance in doing so.
3. It was articulated that because FEMA requires up-to-date building codes for all coastal towns in Delaware, many of Delaware’s communities may already be adhering to similar codes. This would make universal adoption easier.

4. Because updating and adopting building codes is extremely time intensive, it was proposed that updates should be done collaboratively, within a geographic area, to achieve economy-of-scale benefits.
- **Building codes as too restrictive causing a barrier to: 1) adaptive reuse of buildings, 2) housing affordability, and 3) historic preservation**

Possible Solution:

Local governments should examine all regulations and local controls (zoning ordinances, subdivision and land development ordinances, historic area requirements, and design guides) to determine how they can promote a favorable development environment. Rather than focusing on building/fire codes as a barrier to complete communities, revisions/updates to codes and ordinances may be necessary to permit building reuse.

- **State fire protection review process**

Possible Solution:

It was reiterated that open communication, from the beginning of the development process, is the best way to reduce time during the review process. A development proposal submitted at the conceptual change may evolve. It's critical to engage the Fire Marshal's office at each stage of the development process to minimize the review period.

D. Environmental Regulations

- **Purview of storm water regulations**

Acknowledgement of the Issue:

All regulatory authority rests with DNREC and enforcement power is only ceded to outside agencies in areas directly under that agencies control. For instance, as a "delegated agency," DelDOT is provided the power to enforce DNREC storm water regulations on all right-of-ways and access points in the state

Possible Solutions:

- 1) Local governments should consider recommendations of Delaware's Floodplain and Drainage Advisory Committee, which suggested measures/regulatory changes to improve floodplain management and drainage.
- 2) Except in Delaware's Piedmont area, the entire state is regarded as coastal. All of Delaware should be mapped to show floodplain areas, prospective buyers should be aware of flood zone status when purchasing property, and local governments should prohibit all new development in floodplains.
- 3) Drainage issues impact private streets. All roadways should be regarded as public, constructed to meet state requirements, and address drainage.

- **Impact of proposed changes to septic regulations due to EPA Chesapeake Bay cleanup**

Acknowledgement of the Issue:

The issue is much larger than previously understood. Regulations will be impacted from not only the Chesapeake Bay cleanup, but rather the cleanup of all water ways and systems in the state, including but not limited to the inland bays and Broadkill Beach.

- **Issues of regulatory uncertainty (i.e., sea-level rise and prohibitive development regulations)**

Acknowledgement of the Issue:

1. It was articulated that floodplain maps are limited or unavailable in a large portion of inland areas in the state of Delaware. This leads to uncertainty in the development market.
2. Development becomes increasingly more risky due to the fluctuating nature of the environmental regulation system in the state.

Possible Solutions:

1. One participant served on the Floodplain and Drainage Advisory Committee that was responsible for assessing and submitting recommendations on how to coordinate, consolidate, and clarify existing DNREC regulations. It was noted that this report should make inroads on existing perceived problems.
2. If floodplain maps are not available, responsibility could be placed on the developer or home buyer to analyze their own potential property. Soil analyses for alluvial soils have the ability to tell if the property has flood risks.
3. It was stated that regardless of scientific certainty of sea-level rise, present Delaware citizens and regulators have a responsibility to future citizens, and in such, should consider now how current development practices effect the environment.
4. DelDOT should examine how the use of impervious pavement may improve drainage and decrease soil erosion. The concern about using impervious pavement material is that it clogs easily with sediment and road debris. This can make use of such pavement cost-prohibitive.
5. It was voiced that developers have the responsibility to examine how development patterns effect the environment; existing drainage patterns should be considered prior to development.
6. It was stated that clustering of development and buffering of environmentally sensitive areas can produce positive results.

E. Intergovernmental Coordination Issues

- **Need to standardize regulations among state agencies**

Possible Solutions:

1. It was suggested that coordination needs to not only occur between state agencies, but also between the state and the federal government. The federal Army Corps of Engineers has a large say in land use regulations, especially in coastal areas and wetlands.
2. During the Executive Order # 36 public hearing process, many citizens wanted DelDOT to absolve the *Complete Street* requirements in all Level 3 and Level 4 areas. However, Executive Order # 26 (Delaware Strategies for State Policies and Spending) mandates that all state strategies must be supported and followed. To promote a clear understanding of all requirements for citizens, developers, and agencies, all executive orders as well as agency requirements should be assessed. An interactive dialogue should occur to address issues among and between all state agencies, local governments, private sector, and the public.

- **Gov. Executive Order No. 36 – An agency-by-agency approach to identify and remove state agency regulatory hurdles**

Acknowledgement of the Issue:

It was acknowledged that Executive Order #36 has the potential to eliminate outdated regulations that no longer serve the public interest. Yet it was also acknowledged that because there is no interagency cooperation worked into the order that agency public hearings were held in a silo preventing inconsistencies in overlapping jurisdictions to be noticed and reduced.

Possible Solutions:

1. All agency findings may be aggregated as they are sent to the Governor's Office. In doing so trends of the regulatory structure may be understood as a whole and inconsistencies and confusion that arise due to overlapping jurisdictions between agencies may be eliminated.
2. This may occur in the General Assembly as well for all actions that require legislative approval.
3. IPA's series of workshops may help to promote a broader understanding and dialogue on state and local government barriers to complete communities.

- **Remove subsidies in Level 3 & 4 growth to minimize "Sprawl by Design"**

Acknowledgement of the Issue:

1. It was acknowledged that development in Level 1 and Level 2 areas is the hardest to get approved due because most is considered infill development. Infill has been found to be the

most costly due to building improvements to adhere to stringent codes. As result, sprawl-type development has occurred, especially in rural areas of southern Delaware.

Possible Solutions:

1. It was argued that the best way to decrease development in Levels 3 & 4 would be to increase incentives provided to development in Level 1 & 2 state strategy areas. This in effect would target growth in areas conducive to *Complete Communities* and minimize “sprawl by design.” Examples of local government incentives include mixed-use development, of form-based codes, parking system waivers, and increasing density and intensity in central business districts/downtown commercial areas. It was also articulated that the State should more readily exercise its power to withhold funding for infrastructure improvements in non-growth designated Level 3 & 4 state strategy areas.

- **Need for more flexible, formula-based TIS (i.e., multimodal transportation impact studies)**

Possible Solution:

DelDOT is in the process of examining a travel demand model that explores how parcel-level changes affect demand for pedestrian and automobile trips. It has the potential to estimating travel and traffic on local roads and streets. The process could generate daily or peak-period traffic volumes different modes of transportation (e.g., autos, buses, bikes, and pedestrians), and data could be provided by road, municipality, or county. While local governments will not have the technical expertise or data to run this type of model, it has the potential to solution to quantify the benefits of the transportation in relation to different development scenarios.

- **Distribution of impact fees/development costs – borne by last developer**

Possible Solution:

DelDOT’s proposed Transportation Improvement Districts (TIDs) are expected to provide for an equitable way to assess development impacts to all developers. This formula-driven approach will equitably distribute transportation improvement costs to all developers and can be integrated within a Master Planning process.

III. Wrap-Up

IPA thanked attendees for their input, informed that the workshop summary would be e-mailed for their review, and invited those interested to participate in the November 4, 2013 Complete Communities 2013 Summit (at Dover Downs). A final workshop summary will be made available on the Complete Communities website at: <http://completecommunitiesde.org/regulatory-barrier-workshops/>.



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