

Smart Growth and Neighborhood Conservation

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In a long-abandoned can factory along the waterfront in East Baltimore, Maryland's smart growth and neighborhood conservation initiative is coming alive. There, the development firm of Struever Bros. Eccles & Rouse, Inc., is restoring the five buildings that once comprised the old American Can Company. The red brick facility along the Patapsco River, a hub of employment for nearly a century, has been vacant since 1985.

When the redevelopment of "The Can Company" is completed, it will feature restaurants, a music and book store, a design firm, a business management firm, the offices of a national adhesives company, and a new Emerging Technology Center connected with several of Baltimore's universities. This project represents much needed in-fill development in one of the oldest sections of Baltimore, providing new jobs in a city that for too long has watched factories and businesses close and jobs leave for, literally, greener pastures. Moreover, it transforms a factory rooted in the mechanical technology of the early twentieth century into a center for the information technology of the twenty-first.

This project is taking advantage of smart growth programs initiated by Governor Parris N. Glendening that concentrate government resources in communities where the infrastructure is already in place (or planned) to support it. 1997 Md. Laws 755-759. It is the fruit of smart growth programs that reward those who clean up contaminated sites, refurbish beautiful old structures to their earlier grandeur, or bring needed jobs to areas of our cities and towns. Through development projects like The Can Company, Maryland is beginning to reverse some of the trends that have led to costly and inefficient sprawl development.

All across the state, entrepreneurs and developers are taking advantage of a tool chest full of tax credits and other programs put in place by Maryland's local and state governments to revitalize older towns and cities and, at the same time, relieve development pressure on more rural landscapes.

In developing Maryland's smart growth initiative,

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Governor Glendening drew on twenty years of experience as a municipal official, county council member and county executive of Prince George's County, one of Maryland's largest and most diverse jurisdictions. Prince George's is a high-growth suburban county bordering Washington, D.C., and by the late 1970s, sprawl development began to consume an alarming amount of the county's forests, wetlands and farms. Low-density residential development was compounded by the concomitant abandonment and decay of urban areas. In a precursor to the 1997 statewide smart growth initiative, the Prince George's County government in the early 1980s implemented innovative planning and zoning tools that directed growth from rural areas into existing communities and designated growth areas.

The county government approached the sprawl development problem from the perspective that government regulations and practices could be changed to discourage, rather than to encourage, sprawl development. For example, the county allocated the expansion of water and sewer service to neighborhoods with necessary public facilities, open space, and roads. It also recommended no growth for certain areas, including a large area bordering the Patuxent River comprised of forests, wetlands, and farmland not yet serviced by water or sewer. By preventing the location of infrastructure in protected areas, the county also made those areas cost-prohibitive for future development. These practices demonstrated the unmistakable link among government policies, the provision of certain infrastructure and services, and the financial realities of development decision-making.

Prince George's County later launched an aggressive revitalization program that targeted county funds for road, sidewalk and other infrastructure improvements in developed areas inside the Capital Beltway and along the U.S. Route 1 corridor. The county also offered tax incentives for new construction and home and business renovations inside the designated revitalization areas. Existing statewide policies, however, continued to encourage sprawl. For example, state transportation funding formulas made it easier and cheaper to build roads in undeveloped areas and almost impossible to rebuild existing roads in already developed communities. Similarly, state school capital construction policies favored the construction of new suburban schools over the expansion or renovation of older schools in existing communities.

Despite these "sprawl-friendly" policies, the county pursued its innovative incentive-based approach for rebuilding and revitalizing existing communities. The result was not only good for the economy, but it also contributed to a better quality of life by improving the aesthetic appearance of communities, reducing crime, and preserving natural resources.

Origins of Smart Growth

In spring 1996, Governor Glendening called together a small group of senior staff and cabinet secretaries to discuss the problems caused by sprawl development. The governor directed the group to devise a statewide program that would reverse many of the land use trends that have led to sprawl development. He believed that sprawl was responsible for the growing loss of farmland and forests around the state, for water quality problems in the Chesapeake Bay, for the seemingly insatiable and costly demand for more and more highway construction, and for the expanding financial burden on taxpayers of building the infrastructure needed to support such far-flung development.

As crime and social needs in urban areas escalated, the property tax base needed to support community services progressively decreased due to the outward migration of businesses and middle- to high-income families. In an era of tight state and local government budgets, the high cost of new roads and other infrastructure needed to support new development highlighted the need to prioritize expenditures. The trends in Maryland that led to smart growth were compelling:

- The state's population had grown from 4 million in 1970 to more than 5 million by 1996, and was projected to exceed 6 million by 2020.
- Suburban populations were soaring. Baltimore's suburbs had grown by 67 percent; Washington's by 72 percent.
- Families were buying houses on larger lots, even as average family size steadily declined.
- People lived farther from their workplaces and commuted longer distances. The number of annual vehicle miles traveled in the state rose from 12 million in 1970 to 28 million in 1990, and spending on state transportation projects expanded in proportion.
- While the distant suburbs boomed, older cities, towns, and suburbs rapidly lost residents. Baltimore, once with a population of nearly 1 million, dropped to 650,000 and the exodus continued. The population of Cumberland, a small city in the mountains of western Maryland, had declined by half since World War II.
- State planners advised that if land use patterns did not change, development over the next twenty-five years would consume as much land in Central Maryland alone as had been used in the entire history of the state.

The framers of the smart growth initiative also drew upon the hard lessons learned from numerous public and legislative debates over land use in Maryland that stretched back nearly three decades. For example, the smart growth framers

- recognized that any effort to take authority for land use decisions away from Baltimore and Maryland's twenty-three counties would be doomed by opposition from the Maryland Association of Counties.
- decided not to propose a cumbersome or complicated state regulatory scheme.
- recognized that decisions by the development community were usually predicated on a simple, bottom-line calculation: Does this make sense financially? Too often, government policies affected those bottom-line calculations in ways that inadvertently promoted sprawl development.
- were committed to a vigorous pursuit of economic development activity for Maryland. The new initiative was never intended to promote a "no growth" or even a "slow growth" policy. By the mid-1990s, Maryland was just beginning to recover fully from the recession earlier in the decade.
- were determined, most importantly, to establish in state law the principle that the state government has a justifiable interest in the land use decisions made by local governments. State assistance flowing as the result of local land use decisions had become an insidious form of entitlement: In the past, the state had acted as if it were obligated to provide financial assistance, even if the local action hastened the abandonment of Maryland's older towns and cities, led to further loss of farmlands and forests, or was otherwise detrimental to the environment or overall quality of life.

In many ways, the smart growth program was the next logical step in a continuum of efforts to promote progressive land use reform in Maryland. At the turn of the century, invention of the automobile brought decentralization and the urge to move to the country. After 1910, when the state road system stretched only 440 miles, the compulsion to spread out became irresistible. By 1938, the Statewide Planning Commission, concerned that sprawl development would soon take over the entire state, recommended legislation to protect forests, farmland, and waterfront property. The legislation—now sixty years old—called for public investment in land for parks and stream valley buffers. Also in the 1930s, statewide zoning enabling legislation gave local authorities the ability to manage and control development.

Over the years, local land use controls often faced constitutional challenges on equal protection, takings, and due process grounds. *See, e.g., Kirsch v. Prince George's Co.*, 331 Md. 89, 626 A.2d 372 (1993); *Maryland National Park & Planning Comm'n v. Chadwick*, 286 Md. 1, 405 A.2d 241 (1979). At the same

time, growth control management techniques like down-zoning, comprehensive planning, subdivision controls, transferable development rights, growth caps and moratoria developed as part of the zoning process. Yet, it became increasingly clear that some form of state intervention was necessary. In 1974, the statewide Land Use Act, MD. CODE ANN. STATE FIN. & PROC. § 5-611 (1997), expanded the responsibilities of the Department of State Planning to include, for the first time, an intervention program in areas of critical state concern. The law helped establish the state's justifiable interest in local land use decisions.

Other laws, like the requirement for every county to develop ten-year water and sewerage service plans, evidenced a statewide concern for planned development. See MD. CODE ANN. ENVIR. §§ 9-501 *et seq.*

In the early 1980s, the land use debate in Maryland refocused on the need to clean up the Chesapeake Bay. By then, the Chesapeake Bay—the dominant natural feature of Maryland and a fundamental element of the character of the state and its people—was in serious trouble. Overloaded with nutrients from industry and sewage plants, from runoff from waterside housing construction, and from farmers plowing their fields right down to the water's edge, the Bay's health and the health of its various fisheries was in sharp decline. In 1985, the state placed a moratorium on the catching of rockfish, or striped bass, which not only was the Bay's most popular gamefish but also the official state fish.

Just a year earlier, the legislature formally recognized the link between the water quality of the Bay and development on the land through the passage of the Chesapeake Bay Critical Area Protection Act. MD. CODE ANN. NAT. RES. II §§ 8-1801 *et seq.* (1990 vol., 1997 Supp.). The law established severe restrictions on development activities in "critical areas" within a 1,000-foot buffer along the entire length of the shoreline of the Bay and its thousands of miles of tributaries. The standards were tied to the development's anticipated effects on water quality, fish, plants and animal habitat. One of the most far-reaching pieces of legislation to emerge from the regional 1983 Bay Conference, the Critical Area Protection Act essentially rezoned 10 percent of Maryland's land surface.

Under the Chesapeake Bay Agreement in 1987, Maryland joined Virginia, Pennsylvania, the District of Columbia, the U.S. Environmental Protection Agency and the Chesapeake Bay Commission in a regional effort to clean up the Bay, including commitments to address the impact of rapid population growth and development.

The shift in focus regarding the importance of the Chesapeake, and the broad public support for these efforts, were important building blocks in the foundation of the smart growth initiative a decade later.

In 1992, the Economic Growth, Resource Protection and Planning Act (Growth Act), MD. CODE ANN. STATE FIN. & PROC. § 5-7A-01 (1995 vol., 1997 Supp.), became Maryland's first major statewide growth management legislation. It was enacted a year after the failure of the more sweeping recommenda-

tions of a statewide commission charged with assessing the effects of growth through the year 2020. But the public debate surrounding the "2020" recommendations paved the way for passage of the 1992 Growth Act, which created a policy framework (listed as seven visions) for government agencies, private developers and local officials to follow. Below are the seven "Visions," intended as a guide to future development in Maryland:

- Development is concentrated in suitable areas;
- Sensitive areas are protected;
- In rural areas, growth is directed to existing population centers and resource areas are protected;

- Stewardship of the Chesapeake Bay and the land is a universal ethic;
- Conservation of resources, including a reduction in resource consumption, is practiced;
- To assure the achievement of the first five "Visions," economic growth is encouraged and regulatory mechanisms are streamlined; and
- Funding mechanisms are addressed to achieve these "Visions."

The Growth Act required local governments to develop comprehensive plans consistent with the visions, and to revise and update those plans every six years. The Growth Act identified four sensitive areas for protection: streams and stream buffers, one hundred-year floodplains, habitats for endangered species, and steep slopes. In designated growth areas, however, the Growth Act directed local governments to streamline the review of development applications and encouraged them to use flexible development regulations to promote innovative and cost-saving site design that will help protect the environment.

Enactment of the Growth Act in 1992 completed the foundation on which the smart growth initiative would be built in 1996 and 1997. The smart growth initiative differs from previous attempts to control sprawl because it does not rely on zoning but rather on an emerging and more innovative approach that uses gov-

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ernment resources as incentives and disincentives. Smart growth will undoubtedly influence the zoning process, but it is not part of that process. As a result, smart growth is not hamstrung by the case law involving attempts to control development through zoning.

Changing the Bottom Line

Critics of the 1992 Growth Act complained that it had no teeth and that it lacked uniform standards, incentives and enforcement provisions. Terms central to implementation of the Act's policies, such as "growth" and "rural" areas, were left to local governments to define. The twenty-four Maryland counties defined rural areas differently. Moreover, there was nothing in the law that required local governments or developers to make more sensible land use decisions. It became clear that the key to making the Growth Act work was to change the financial equation for developers; that is, *to change their bottom line*.

The genius of the smart growth and neighborhood conservation initiative stemmed from the decision to use the state's \$16 billion budget as an incentive for sensible development consistent with the seven visions, and as a disincentive for sprawl. Restricting state spending to areas designated by local governments for growth and where the basic infrastructure is already in place or planned should give developers a financial incentive to build there. Conversely, prohibiting state spending to support development outside of those designated areas should provide a disincentive to build.

The smart growth initiative does not prohibit development anywhere. It does not give the state government authority, retroactively or prospectively, to veto local land use decisions. It simply provides that if the development is not in a locally designated growth area (a Priority Funding Area) the state is not going to help out financially and the developer and local government are on their own. MD. CODE ANN. STATE FIN. & PROC. § 5-7B-02 (1997). The law establishing priority funding areas contains very certain and well-defined terms, restrictions, and incentives that give the law its teeth. It defines "growth-related" projects and the processes by which local governments may designate priority funding areas. With limited exceptions, local governments may designate priority funding areas only in places currently served by public or community sewer systems, or where sewer systems are approved in the county's ten-year water and sewer plans. The new law also requires local governments to certify to the Maryland Office of Planning that areas designated by local governments as priority funding areas meet the definitions and requirements contained in the new law.

Smart growth is not a major new government spending program. While some additional funds have been budgeted for specific programs that fall under the broad smart growth umbrella, the real power of smart

growth stems from a fundamental reprioritization of where state funds are spent. Sprawl is not a naturally occurring product of market forces, but rather the outcome of multiple governmental policies that have distorted markets and directed growth. Smart growth helps balance the market distortions by redirecting state spending toward more sensible development and harnesses the power of the marketplace to achieve these policy objectives.

Even before developing the smart growth initiative, the state began shifting some of its spending priorities, notably its school construction funding. In 1995, about 43 percent of the money the state spent each year on school construction went to older schools. The rest, more than half, went to new schools, usually out in the suburbs. This government policy influenced families to leave older neighborhoods and communities in search of better schools for their children. This policy became a prime contributor to sprawl development, the loss of natural areas, the increase in commuting, and a disinvestment in traditional cities and towns.

To reverse this trend, the governor directed the state's school construction program to start spending more money on older schools in older neighborhoods. Now, eight out of every ten dollars Maryland spends on school construction is used to upgrade, expand or renovate older schools in older neighborhoods. Increasingly, those older schools can boast science labs and computer centers that rival those of suburban schools, thereby making older communities more attractive places to live.

While developing the smart growth initiative, state officials sampled the opinions of individuals, elected officials and organizations from across the state. They contacted more than four hundred community and housing associations, business, environmental, farm, land trust, planning and design groups, local government organizations and others who expressed interest in the issue. All parties were asked to make specific recommendations to help prevent sprawl and make neighborhoods more livable. As a result, the initiative taking shape as smart growth became smart growth and neighborhood conservation to underscore the urban component of the plan.

Priority Funding Areas and Rural Legacy

The two major elements of this new smart growth and neighborhood conservation initiative are the Rural Legacy Program, MD. CODE ANN. STATE FIN. & PROC. § 5-9A-05 (1997), and the priority funding areas legislation, MD. CODE ANN. STATE FIN. & PROC. § 5-7B-02 (1997). Rural Legacy represents the state's most ambitious effort to preserve forever Maryland's most environmentally valuable lands. To balance that, the priority funding areas law establishes the method to target state resources to locally designated growth areas. It requires those areas to meet

minimum state criteria for average residential density and to provide water and sewer service.

The law designates Baltimore and the more than 150 other Maryland municipalities as priority funding areas. Also designated are the areas inside the Baltimore, and Washington beltways, and previously designated enterprise zones and revitalization and heritage areas. Now, each of Maryland's twenty-three counties must designate areas within which they want the state's continued help with development. They have until October 1, 1998, to map their growth areas and certify to the state that their priority funding areas meet state criteria for density, sewer and water.

Once the deadline passes, the state may not spend money on "growth-related projects" outside of priority funding areas, including

- major capital transportation projects that add capacity to the system;
- state financing for new construction of rental and single-family homes;
- various business assistance loan and grant programs;
- water and sewage treatment projects financed by state loan programs; and
- property leases for new office space or land acquisition for most state facilities.

The carrots the state can offer can be pretty appealing, and developers who want to build outside of the designated areas could find themselves hungry once state aid is taken off the table.

This law restricts at least \$1.62 billion annually to designated growth areas, including: \$1.1 billion in transportation funds; \$411 million in housing and community development funds; \$52.8 million in economic development funds; and \$51.5 million in environmental funds.

As local governments, landowners, developers and citizen groups work together to designate priority funding and rural legacy areas, they will begin to recognize the consequences of different land use patterns and the financial limitations of building the infrastructure required to support development.

To support the urban redevelopment thrust of the Priority Funding Areas legislation, three other smart growth initiatives were enacted, including

- a new brownfields law, 1997 Md. Laws 1 & 2, that encourages the cleanup and redevelopment of contaminated former industrial sites in exchange for protection for developers against legal liability for contamination by others.
- a job creation tax credit bill, 1997 Md. Laws chs. 755 & 756, that would reward businesses that

locate within Priority Funding Areas and create twenty-five or more new jobs;

- an innovative pilot program called "Live Near Your Work." Under this partnership program, a participating employer, the state, and the jurisdiction in which the employer is located team together to offer \$1,000 each—\$3,000 total—to help cover closing costs for any employee who buys a home near their place of employment. There are no income-level limits on participants. The homebuyer benefits, but more impor-

tantly, the targeted neighborhood is strengthened by encouraging more home ownership.

The Rural Legacy Program, led by the Maryland Department of Natural Resources and supported by state and national environmental and agricultural organizations, is designed to permanently protect at least 200,000 acres by the year 2011. Rural Legacy will work collaboratively with (rather than replace) other land preservation programs, including the Agricultural Land Preservation Program and Program Open Space, which is the state's parkland acquisition program.

Initial interest in the Rural Legacy Program far exceeded expectations. In the first wave of applications for funding, local gov-

ernments and land trusts in twenty counties and the city of Baltimore asked for funds to protect 53,000 acres of the state's best landscapes and natural areas. The applicants asked for \$129 million, swamping the \$29 million available in the program's first year. In June 1998, the state awarded the first grants under the Rural Legacy Program that will permanently preserve more than 16,000 acres.

The smart growth laws represent only part of Maryland's efforts to contain sprawl and reinvigorate the state's older communities. In January 1998, the governor signed an executive order that extends smart growth policy by directing all state government agencies to follow the smart growth goals. For example, state agencies are to give priority to central business districts or downtown core areas when locating new facilities. Influenced by the enactment of smart growth, for example, two Maryland communities have agreed to build new district court buildings downtown rather than outside of town, and a third has abandoned plans to build new county offices on the outskirts of the county seat.

Agencies have already enhanced the smart growth initiative through their discretionary spending, including

- shifting school construction priorities so that most of the funds are spent for renovation, additions or

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- replacements of older schools;
- earmarking up to \$154 million in bond proceeds over five years for the purchase of land or conservation easements under the Rural Legacy Program;
- offering a one-time-only pool of \$40 million at 4 percent interest for mortgage loans for homebuyers to boost home ownership in targeted smart growth neighborhoods;
- targeting \$10.5 million over three years to the worst crime "hot spots" around the state;
- using \$8.7 million in transportation funds for sidewalk and "streetscape" improvements to make older business districts more attractive to shoppers and residents;
- spending \$1.7 million for streetscaping around transit stations to make them more appealing and accessible; and
- providing \$1.5 million for developers who identify, clean up, and redevelop brownfields sites.

Why the Smart Growth Initiative Passed

In a country where tradition and laws are often based on the Anglo-American philosophy of private property rights and local land use control, any state foray into land use regulation meets skepticism, if not immediate opposition. Usually, efforts like Maryland's smart growth and neighborhood conservation initiative take several years of work, compromise and political give-and-take before they are enacted. Often the final product is a shell of the original proposal. By contrast, Maryland's smart growth initiative passed in the year it was introduced and emerged in a form strikingly close to its original draft. Key reasons for this quick success:

- The concept of land use reform was not new in Maryland. Laws and policies enacted in the previous twenty years laid the foundation for the smart growth initiative.
- The program balanced rural and urban concerns, on the premise that the state could not discourage development on farms or other greenways without simultaneously supporting and encouraging growth in Maryland's traditional population centers.
- Environmental organizations strongly supported the measure and its underlying goal of saving pristine rural lands and reversing the trends that lead to sprawl development.
- Businesses supported the initiative because it will provide more certainty about where development may occur and where it will be discouraged. It also offered the prospect of tax breaks and protection from liability for businesses that clean up and redevelop contaminated properties.
- Traditional local government opposition was diluted from the outset as the state's mayors threw their support behind the proposal.

- Preserving the counties' local decision-making authority overcame county government opposition.
- Rural areas supported the proposal because it was aimed, in part, at protecting rural settings, lifestyles and businesses on a voluntary, rather than mandatory, basis.

The Can Company development along the waterfront in Baltimore is a microcosm of what smart growth can mean to a city, its people, and a developer. The developers of The Can Company were among the first to take advantage of the new brownfields law, which encourages development of abandoned or underutilized sites by limiting liability of developers willing to clean up any contamination and build anew. For developers like Struever Bros., who are not responsible for any prior contamination, redevelopment of a brownfields site also makes them eligible for state assistance with the cleanup effort and potentially for future tax credits.

The Can Company was the first major rehabilitation project in Maryland to qualify for the state's Heritage Preservation Income Tax Credit Program. The program provided income tax credits equal to 10 percent of the qualified capital costs expended in the rehabilitation of the old factory, a certified heritage structure. On January 1, 1998, the income tax credits under this program increased to 15 percent of rehabilitation costs. Under this program alone, The Can Company was eligible for up to \$1.6 million in income tax credits and also qualified for property tax credits under Baltimore's historic property tax credit program.

Companies that locate their businesses and create twenty-five or more new jobs in the refurbished can factory may be eligible for new smart growth job creation tax credits. Under this incentive, the newly hired workers must remain on the job at least a year before their employer is eligible for the tax break.

Using government resources as incentives to encourage development where it makes sense, where local governments want it, and where the infrastructure and services are in place to handle it, is what smart growth is all about. The Can Company is one example of what smart growth and neighborhood conservation can mean.

But perhaps the fundamental reason smart growth passed in a single year is that the public and elected officials alike realized that time is running out, and that if the people of Maryland wanted to preserve the beauty of their state for their children, they had to act now, with a sense of urgency.

Smart growth and neighborhood conservation are only the beginning. Maryland has a long way to go. It has taken fifty years of sprawl development to get to this point; a trend which is not likely to be reversed in a single year, or even in several years. But smart growth is a program with a clear vision to the future, and it is a great start.