American Planning Association
New Jersey Chapter

Making Great Communities Happen

Wednesday, June 27, 2012

Dear Members of the New Jersey State Senate

RE: Senate Bill No. 1534/Assembly Bill No. 2586

On behalf of the Executive Committee of New Jersey Chapter of the American Planning Association, I am writing to express our strong opposition to the enactment of S-1534/A-2586, which, according to its synopsis, would "equalize standing of public and private colleges before land use agencies" in New Jersey.

In plain language, this bill, if passed, would exempt private colleges from any kind of municipal land use oversight and from requirements for compliance with local zoning codes under the Municipal Land Use Law, eliminate the kind of careful review that municipal planning boards and boards of zoning adjustment conduct when evaluating land use applications, and cause more, rather than less, conflict between private universities and the municipalities in which they are located. We understand that the bill would affect 14 institutions with campuses in 16 municipalities—a textbook example of special interest legislation.

The bill purports to build upon the New Jersey Supreme Court's decision, *Rutgers. v. Piluso*, 286 A.2d 697 (1971), which involved Piscataway Township In this decision, the Supreme Court, relying on the principle of sovereign immunity of state government, held that in enacting statutes respecting Rutgers University, the Legislature intended that the growth and development of the university, as a public university for the benefit of all of the people of the state, was not to be thwarted or restricted by local land use regulations and that Rutgers was immune from them. This decision came at a period of great growth for Rutgers, and a close reading of the decision shows that it was as much a political as a legal opinion.

However, *Rutgers v. Piluso* only applied to public universities, and said not a word about the private universities who are not accountable public bodies under state law, whose motives for expansion may be different than a public university, and who are not established for the benefit of all of the people of the state. It is also a decision that is unique to Rutgers and its physical setting, and not necessarily to other universities. The New Jersey Supreme Court noted that "[t]the campus [in Piscataway] is physically well insulated and substantially self-sufficient from the municipal services point of view." The university maintained its interior roads and had its own police force. The only services that Piscataway Township needed to provide were fire protection and local access roads. 286 A.2d at 700.

This is clearly not the case for a majority of the institutions that would benefit from this bill. Their campuses are closely intertwined – "literally cheek by jowl" – with the surrounding community fabric. Residential and mixed-use neighborhoods abut these campuses, and are directly impacted by proposed new development or activities. In these circumstances, local planning and zoning boards are the only public safeguards that can protect existing neighborhoods from poorly planned institutional encroachments. No other public safeguard exists.

Moreover, relying on *Rutgers v. Piluso* as a basis for further exempting private institutions from local planning and land use regulation is a seriously flawed position because of the enactment in 2009 of the New Jersey Economic Stimulus Act (A4048/S2299SCS), which expanded the development authority of state educational institutions well beyond education. Under this law, a state college or county college may enter into a contract with a private entity, referred to as a public-private partnership agreement, which permits the private entity to assume full financial and administrative responsibility for the on-campus construction, reconstruction, repair, alteration, improvement or extension of a building, structure, or facility of the institution. The project must be financed in whole by the private entity, and the State or institution of higher education, as applicable, retains full ownership of the land upon which the project is completed.

The problem, of course, is that under this 2009 law, state educational institutions in effect can become private developers, no different than residential, commercial, office, or industrial developers. The distinction between public or private non-profit educational institutions and their private for-profit partners becomes blurred. This is also the case when private universities develop office space or other forms of commercial space and make this available to for-profit tenants. Certainly, these types of modern day and fairly routine activities were not foreseen by the New Jersey Supreme Court in the *Rutgers v. Piluso* decision, and it would be necessary to engage in costly and time-consuming litigation to determine whether projects supported by these types of "public-private partnerships" should be exempt from local zoning.

The drafters of early planning legislation in the U.S. recognized the problems inherent in not exempting public institutions from any local review, which New Jersey has failed to do. Indeed, the *Standard City Planning Enabling Act*, drafted by an advisory committee of the U.S. Department of Commerce in 1928, contained a specific provision in Section 9 that gave a municipal planning commission, once it had adopted a master plan, the formal authority to review public improvements proposed by <u>any</u> public agencies, regardless of level of government; in other words, this provision applied to state agencies.[1] This model act influenced the planning laws of all of the states, and most states still have some version of this provision on the books, New Jersey excepted.

Other states have gone much farther in ensuring compatibility between adopted master plans and zoning codes, and plans and projects of public institutions, which New Jersey has not done. For example, Oregon, which certifies local comprehensive (or master) plans through a State Land Development and Conservation Commission, flatly provides that local zoning ordinances are applicable

[1] Advisory Committee on Planning and Zoning, U.S. Department of Commerce, *A Standard City Planning Enabling Act* (U.S.G.P.O, 1928). Accessed at: http://www.planning.org/growingsmart/pdf/CPEnabling%20Act1928.pdf.

to any publicly-owned property. Ore. Rev. Stat. §227.286 (see attachment). In Rhode Island, which has a procedure for state review and approval of local comprehensive (or master) plans, state projects must conform to approved local comprehensive plans. However, if a state agency wishes to undertake a project or to develop a facility that is not in conformance with the comprehensive plan, the state agency may petition the State Planning Council for relief. R.I. Gen. Laws §45-22.2-10(e) (see attachment).

Both of these examples show how states can work creatively to iron out differences between state agencies and municipal governments through thoughtful statutes enacted by state legislatures.

However, S-1534 will take a bad situation and make it worse. Private colleges are not just one use, but complex mixes of uses--classrooms, dormitories, faculty housing, office space, retail facilities, athletic facilities (including stadiums), bookstores, auditoriums and performance facilities, museums, parking lots, administration buildings, maintenance facilities, restaurants, cafeterias, and research laboratories. Each of these has a different land use impact on the surrounding area and requires great attention in its review. The level of public scrutiny in reviewing the anticipated impacts of these proposed projects should be the same whether they are privately driven or sponsored by a public institution.

If S-1534 is passed, all of the activities that a private university performs (including some commercial or proprietary activities) will be immune from any kind of public review and zoning control by local land use agencies, and there will be no obligation by the private college to coordinate or consult with local land use authorities. For example, under S-1534, if a private college decides to raise its undergraduate enrollment by 500 students but fails to provide adequate dormitory space well in advance, it is the municipality and its residents who will suffer as pressure is placed on the local housing stock for student rentals.

S-1534 strikes us as the camel who is sticking its nose under the tent. If state facilities, like hospitals, are immune from local land use planning and regulation, then other so-called “non-profit” uses soon will be supplicants asking for similar exemptions from the Municipal Land Use Law.

On behalf of our Executive Committee, I ask that you join us in opposing this bill.

Sincerely,

Charles Latini, Jr., PP, AICP
President

Attachments: 2

cc: William Dressel, Executive Director, New Jersey State League of Municipalities

Excerpt from Oregon Revised Statutes

§ 227.286 City ordinances applicable to public property. City ordinances regulating the location, construction, maintenance, repair, alteration, use and occupancy of land and buildings and other structures shall apply to publicly owned property, except as the ordinances prescribe to the contrary.

Excerpt from Rhode Island General Laws

§ 45-22.2-10 Coordination of state agencies. – (a) Each state agency with regulatory or other authority affecting the goals established in this chapter or the state guide plan, shall submit to the director [of administration for the State of Rhode Island], prior to January 1, 1989, a written report which addresses how each agency has incorporated the findings, intent, and goals of this chapter in to its planned activities. This report shall be revised as necessary, but in no case less than once every two (2) years. After January 1, 1989, agencies shall conduct their respective activities in a manner consistent with the findings, intent, and goals established under this chapter.

(b) The director shall develop standards to assist municipalities in the incorporation of the state goals and policies into comprehensive plans, and to guide the director's review of comprehensive plans and state agency activities. The state planning council shall adopt, no later than January 1, 1989, all rules and regulations necessary to implement the standards established by this chapter.

(c) By July 1, 1989, the director shall develop and make readily available to all municipalities statewide data and technical information for use in the preparation of comprehensive plans. Data specific to each municipality shall be provided by that municipality. The director shall make maximum use of existing information available from other agencies.

(2) The director may contract with any person, firm, or corporation to develop the necessary planning information and coordinate with other state agencies as necessary to provide support for local planning efforts.

(d) It is be the duty of the director to notify all state agencies of the approval of the comprehensive plan, or amendments to it, of a municipality.

(e) Once a municipality's comprehensive plan is approved, programs and projects of state agencies, excluding the state guide plan as provided for by § 42-11-10, shall conform to that plan. In the event that a state agency wishes to undertake a project or to develop a facility which is not in conformance with the comprehensive plan, the state planning council shall hold a public hearing on the proposal at which the state agency must demonstrate:

(1) That the project or facility conforms to the stated goals, findings, and intent of this chapter.

(2) That the project or facility is needed to promote or protect the health, safety, and welfare of the people of Rhode Island.

(3) That the project or facility is in conformance with the relevant sections of the state guide plan.

(4) That the project or size, scope, and design of the facility has been planned to vary as little as possible from the comprehensive plan of the municipality. [Emphasis supplied.]

(f) After an amendment to this chapter or to the state guide plan, all municipalities shall amend their comprehensive plan to conform with the amended chapter or the amended state guide plan. The amendments shall be made within one year of the amendment to this chapter or to the state guide plan.