

Strategic Analysis and Recommendations Based on a Survey of Wyoming Planners Concerning Wyoming's Planning Statutes

---- prepared by Lee Nellis, FAICP for the Sonoran Institute ----

In 2009, the Partnership for Wyoming's Future, a project of the Sonoran Institute (SI), conducted a survey of professional planners and land-use attorneys in Wyoming to find out what changes they would like to see in Wyoming's planning enabling statutes (Title 15, Articles 5 and 6 for cities and towns, Article 18, Chapter 5 for counties). The survey was conducted by Steve Kurtz, FAICP, a well-known Wyoming planner, former editor of *The Western Planner*, and former CEO of Worthington, Lenhart, and Carpenter, a consulting firm based in Casper.

The survey was designed in consultation with the Wyoming Association of Municipalities (WAM), the Wyoming County Commissioners Association (WCCA), and the Wyoming Planning Association (WYOPASS). The findings of the survey and recommendations for future actions prepared by Mr. Kurtz were submitted to SI in July 2009 in the form of a 23-page document entitled *Final Report, Phase One: A Survey of Wyoming Planners Concerning Wyoming's Planning Statutes, Results and Recommendations, July 2009 (Survey)*. That report, which was accompanied by additional materials made available on the Internet, is appended.

Early in January 2011, SI asked me, Lee Nellis, FAICP, to critically analyze the results and recommendations of the *Survey*; establish their value, if any, as a basis for future actions; refine the recommendations in light of my experience in Wyoming and throughout the nation; and prepare this report for review by WAM, WCCA, and WYOPASS. The report begins with a brief evaluation of the overall utility of the *Survey* and a summary of several statutory amendments that the Wyoming planning community seems to support. Following that, I discuss the real value of the proposed changes in the law and some of the issues that would be involved in making them. I conclude that there is little reason to invest energy in statutory changes at this time and move on to discuss and recommend actions that both Mr. Kurtz and I believe will be more helpful, and that are also well-supported by the results of the *Survey*.

Value of the Survey

The *Survey* was not a poll distributed to a carefully selected random sample. It was essentially a series of 39 interviews that were conducted in writing rather than in person, using a uniform schedule of questions. It does a good job of eliciting the professional planning community's attitudes about land use and planning issues in Wyoming, including the quality of the enabling statutes. Measures of statistical validity do not apply here, but there is every reason to believe that the *Survey* is representative.

Statutory Changes

The *Survey* shows that Wyoming's professional planning community would like to see some changes in the existing enabling statutes. Those changes that appear to have substantial support are briefly listed and explained here, with references to the pages in the *Survey* on which they are found.

Joint City-County Planning (pages 5-7). There is virtually unanimous agreement in the professional planning community that the Wyoming Legislature should require cities and counties to plan together.

Large Parcel Development (page 7). There is general agreement about the adverse impacts of the unregulated land divisions permitted by the statutory exemption of parcels larger than 35 acres

from local subdivision regulations. Counties were authorized to expand local exemptions to up to 140 acres in 2008. The *Survey* calls for a study of the impact of that change.

Mobile Homes (page 7). There is general agreement that the statutory treatment of manufactured homes should be standardized, while still allowing some local control over their location. This recommendation that has been implemented in many other states.

Nuisance Enforcement (pages 7-8). 2008 also brought a change in the statutes that was intended to help counties address nuisances. The *Survey* recommends a study of the impacts of that amendment.

State Involvement in Planning (8-9). Roughly half of *Survey* respondents believe the State should have more involvement in planning, some even to the point of making building codes and zoning mandatory in order to take “the heat” off local elected officials who might want to adopt such regulations, but fear they will be tossed out of office if they do.

County Subdivisions (pages 9-11). The topics of “county subdivisions,” “improvement and service districts,” “disclosure statements,” “phasing large subdivisions,” and “financial security” belong together. These items in the *Survey* call for a study, plus three specific changes in the statutes that would help counties more confidently regulate subdivision improvements.

Value of the Proposed Statutory Changes

There is merit to every one of the proposed changes, which reflect the daily realities faced by planners working in Wyoming. But the purpose of this report is take a critical and, ultimately, strategic view of how SI and its partners could do the most to promote sound planning in Wyoming. From that perspective, one must pose this question:

Are the deficiencies the planning community sees in the statutes really the reason why there is so little progressive, effective planning in the state?

The answer to this question is a resounding, ‘No!’ and leads directly to the key point this report has to make.



Wyoming cities and counties COULD do good, even progressive, planning with the tools they have now. Yes, the statutes could be better, but city-county cooperation is clearly authorized by the Joint Powers Act and the planning and zoning enabling statutes allow local governments to address land use issues using at least limited versions of all of the tools that would be authorized or required by the amendments called for in the *Survey*. It is also worth noting that asking a legislature to make changes in the statutes does not guarantee the desired results. SI should be well aware that the recommendations of Arizona’s Growing Smarter Commission opened the proverbial “can of worms” and led that state’s legislature to strip its counties of important regulatory powers.

It is my finding that, while it would be desirable to clarify and improve the statutes, doing so will not guarantee better planning, will facilitate better planning only in small ways, and will raise at least some risk of the Legislature making the situation worse. The reality is that the cities and counties could be doing better planning with the tools they are authorized to use now and most are not.

Before finalizing this conclusion, which may run counter to the conventional wisdom in Wyoming planning circles, I had a conversation and email exchange with *Survey* author, Steve Kurtz. His response is quoted below.

I think the premise of the project is wrong. Trying to come up with amendments to Wyoming statutes is a waste of time. The county subdivision chapter needs to be thrown out and redone, but it isn't legislatively possible to achieve a workable improvement. So I recommended technical assistance and some required planning and training. You are right, it matters more what the planners and local elected officials do than what the statutes say. Good planners and elected officials make good planning, not good vs. bad statutes.

What Now? Is Progress in Planning in Wyoming Possible?

Fortunately, the *Survey* was not confined to questions about changes in the existing statutes. In the end, most of its questions and recommendations address what's not in the statutes at all: whether, and how, it is desirable to provide the fiscal planning tools, funding, technical assistance, and education that are needed to help local officials and staff accomplish better planning in Wyoming (and that may, in the long run, lead to helpful statutory changes).

Before discussing recommendations, however, it seems advisable to address three points where *Survey* findings appear to reflect day-to-day frustrations and a current fad rather than a strategic view of how to make planning work in Wyoming in the long run.

State Planning Mandates. It is interesting that this notion has majority (albeit a thin majority) support among the state's planners. Most *Survey* respondents apparently do not know that Wyoming did, for a few years, require counties and cities to adopt plans. That 1970s experiment resulted in some conversations about the issues that might not otherwise have happened, but did not establish a planning culture among Wyoming local governments. State-mandated planning has since become common, though hardly universal, in other states (including some you might not think of, like Georgia, where it has some teeth, or Idaho, where it has almost none), but I am skeptical of its appeal in Wyoming at this time, when real estate markets are quiet and, with the possible exception of wind, energy development is minimal. It is also worth noting that even in states where planning is mandated, there is tremendous variation in the quality of the results achieved at the local level.

A Statewide Vision. The *Survey* recommends (page 8) the completion of the Building the Wyoming We Want project to establish an overall state vision. But visioning is a fad in planning, public administration, and public engagement that has extended well beyond its proper application. People in Wyoming have a strong sense of identity with their state. But that sense of identity is not strong enough to level out the socioeconomic and ecological differences between say, Cody, Rawlins, and Lusk, and their respective landscapes. To be adopted, a statewide vision will have to be hopelessly vague. We are better off relying on the beloved state symbol – the bronc rider – to invoke unity, while letting every community (hopefully working with its neighbors when that is called for) create a vision when it is ready to do so. Even then, it will be difficult to avoid vision statements that are too vague to implement. An important aspect of any training that is offered in accord with the recommendations of this report should be to help folks understand what vision statements do and do not do, and how to write one that will actually matter.

The Cart and the Horse. Most of the *Survey* recommendations deal directly or indirectly (the need for joint city-county planning, for example) with subdivisions. But it will be difficult to have better planning and land use regulation in Wyoming as long as the subdivision cart is placed before the zoning horse. The folks who created the basic concepts of land use regulation in the U.S. had a straightforward and eminently logical conception of how it would work. Land would be zoned in a given way, in accordance with a comprehensive plan, and then subdivided for that use in accord with subdivision regulations that address the technical issues of site development. This system works well where it is used. Unfortunately, the legislative reaction to the extensive and often ludicrous second home subdivisions that were platted in

the Mountain West in the 1960's reversed the logic, putting priority on the case-by-case regulation of land division rather than on compliance with sound up-front planning. The upshot of what was once perceived as a victory for the forces of planning was actually to weaken growth management in Colorado, Montana, New Mexico, and Wyoming – all of which adopted similar laws requiring local subdivision controls in the 1970s – in the long run. Most counties in Colorado have transcended this problem. Wyoming counties should be next. No statutory change is needed, just a leadership commitment to good planning and an understanding of how the system is supposed to work using the already authorized tools.

It is All About Leadership

Good planning and effective land use regulation occur where strong local leaders, supported by an aware and active constituency, make them happen. They will not occur just because there is better enabling legislation (most of Idaho is an example of this) nor are they guaranteed where the state plays a major role in land-use issues (if needed, I can provide examples of this from Minnesota, Vermont, and other states).



The key to improving planning in Wyoming is to support strong, collaborative local leaders, while also educating their constituents in the benefits of community planning. This is where the *Survey's* recommendations on fiscal planning tools and funding for technical assistance and training apply.

Survey Recommendations

The “Proposal for a Plan to Support Planning in Wyoming” offered by Steve Kurtz in the *Survey* (pages 21-23) begins with state funding for a five-year effort, guided by WAM and WCCA, to create a state planning program, the essence of which would be:

- a mandate for all local governments to develop a plan or become ineligible for state infrastructure funding, and
- funding, training, and technical assistance of several types (legal, design review, etc.) for local officials and planners.

This could, given adequate continuing funding and a positive response from local government officials, evolve into a useful statewide planning program much like the one administered by Georgia's Department of Community Affairs. The website for that program is: <http://www.georgiaplanning.com/>.

It would be nice to offer an example closer to Wyoming, but most statewide planning programs, including the well-known ones of Oregon, Washington, and Vermont, have a much stronger regulatory component. There are also programs, like those of Colorado and Maine, that provide assistance to local governments, but have no enforcement provisions. The Georgia program and Mr. Kurtz' very similar recommendations for Wyoming strike a healthy balance between incentives (assistance, funding) and enforcement.

The *Survey* also offers (see pages 17-20) several individual recommendations for legislation that do not fit, at least not clearly, into its “Proposal.” Most of these are for specific amendments of the existing statutes, but they also include new ideas, like legislative authorization of impact fees, funding for local open space acquisition, and legislative authorization of tax increment financing.

Take A Second Path, Too

I recommend that SI and its partners find sponsors in the Legislature and lobby for a statewide planning program like the one recommended in the *Survey*. I also suggest that a second path be taken at the same time.

I suggest this for two reasons. First, no one knows whether or not the Legislature can be persuaded to establish and fund a statewide planning program. We do know that it may take more than one session to work through the process of educating legislators, crafting language that can be adopted, and securing a spot in the budget. My recommendation for a second path can, at least conceivably, be implemented more quickly. Second, we also know that the program proposed in the *Survey* has two particular implicit goals: institutionalizing funding and technical assistance for community planning as a state function and linking the provision of infrastructure to planning.

These are worthy goals, but there is a great deal more to good planning. Specifically, the Survey proposal does not place much emphasis on leadership development, on general public education, or on planning to conserve the State's natural and cultural assets. One also expects that controversial topics, like impact fees, will be avoided in an initial effort to establish planning as a state function. The second path would be less institutional and more collaborative, with the goal of having an initial impact on individual local officials and communities.

A Planning Collaborative

I recommend that SI, WAM, WCCA, WYOPASS, and a much broader slate of partners seek funding to create what I am calling a "planning collaborative." That's just a name to use in this report, but it expresses the intent of creating a program that involves many partners and works in a less formal way.

The *Survey's* recommendations do not mention partners beyond local governments, their associations (WAM, WCCA, WYOPASS), and state agencies, primarily the Wyoming Business Council. This may be because the professional planning community fears to be associated with the environmental community, while also having to avoid too cozy a relationship with business interests. Successfully promoting better planning will, however, require a coalition, or more likely, several shifting coalitions of interests. The effort I envision would bring in other state agencies, land trusts, trade organizations (agriculture, energy, real estate, tourism, etc.) and even advocacy groups who have an interest in land-use issues. This diversity of participants would be possible because the collaborative would not take policy positions.

The purpose of the collaborative would be to raise public awareness of land use issues in Wyoming, provide statewide training for local officials, planners, and citizens; and to assemble resources to respond to community requests for local training and technical assistance. I will address each of these functions briefly, but the fun of this idea would be in getting everyone in a room and designing a program.

Awareness. I recently watched a film, *The Code of the West: Alive and Well in Wyoming*, that makes me wonder if the best way to build a constituency for better planning is not through art that appeals to peoples' sense of identity and place. There are plenty of coffee table books about Wyoming, but none that speak to the trends and the future, not one (as far as I know) that contrasts the damage done to the landscape by careless development with the remaining grandeur. The collaborative could produce such a book. A film would be even more compelling.

Training. The collaborative should offer a truly substantive statewide training program for local officials, their staffs, and interested citizens similar to SI's Western Community Stewardship Forum. Expectations should be modest. Only the interested would attend. Only the most interested would follow up. But this is an excellent way to identify present and future leaders (they will show up) and help them understand how to make planning work in their communities. The collaborative should also offer a one-evening training for local officials, staffs, and citizens. The Idaho Planning Association reached more than 700 people with such a program in the early and mid 1990s.

Resources. There are many ways to provide useful planning advice to a community that has limited resources. One interesting model is the Your Town program that was originated by the National Trust for Historic Preservation and is now run by the National Endowment for the Arts. For a program description visit <http://www.yourtowndesign.org/>. SI collaborated with the National Trust to stage a successful Your Town program in Silver City, New Mexico. The collaborative could assemble teams of Wyoming planners, architects, landscape architects, engineers, attorneys, and other professionals to spend a couple of days working with local officials, staff, and citizens in a charette format.

Given reasonable funding and "volunteer" staff services from partner organizations, the collaborative could design and offer the training and technical assistance programs suggested here without creating a new organizational structure, legislative authorization, or much else in the way of formality. If the collaborative was successful and demand began to exceed its capabilities, it could be institutionalized within the framework proposed by the *Survey*. Or, an alternative institutional home for the functions of the collaborative could be the University of Wyoming's Cooperative Extension Service. Extension plays this role, at least in part, in a number of states, like Wisconsin.

In Conclusion

This report has summarized and analyzed the results of a 2009 survey of Wyoming's professional planning community. While that survey was intended to (and did) identify needed changes in the state's planning enabling legislation, both the final report on the survey and this analysis suggest a different focus for efforts to improve planning in Wyoming.

The statutes could be improved, but the state's local governments have the tools they need to do sound, even progressive, planning right now. What is needed is not new legislation, but leadership, training, and, ideally, an incentive for planning. The recommendations made in the *Survey* call for all of these needs to be met through state government, with funding from the Legislature. Most importantly, they call for state infrastructure planning to be tied to local comprehensive planning.

While I agree with the recommendations of the *Survey*, I have added the idea of a planning collaborative that could begin the necessary educational and leadership development tasks without authorization from the Legislature. The collaborative would be initiated by SI and its partners, but include all organizations interested in promoting better planning in Wyoming.

The Next Step?

This draft report is intended to stimulate discussion. Please let hear what you think. SI will be seeking comments from its partners and others before finalizing this report towards the end of February.