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**THIRTY YEARS LATER THE CASE OFFERS
INSIGHTS AND SUPPORT FOR NY'S
SMART GROWTH EFFORTS**

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A GOLDEN ANNIVERSARY IN NEW YORK LAND USE LAW:

Thirty Years Later the Case Offers Insights and Support for NY's Smart Growth Efforts



Patricia E. Salkin

As New York continues its efforts to define, develop and implement effective smart growth and quality community programs, lawmakers and policy-makers pause to remember that a segment of the growth management movement started here three decades ago.

In 1969, the Town of Ramapo (Rockland County) implemented a visionary growth management plan designed to provide needed public services and utilities over a period of 18 years for the then fast-growing New York City suburb. The constitutionality of the "Ramapo Plan" was challenged, and eventually in November 1972 the New York Court of Appeals handed local governments a victory, affirming their ability to use existing authority in the planning and zoning enabling acts to implement innovative programs to ensure that population growth and development are accompanied by adequate supporting public infrastructure. The U.S. Supreme Court denied review, letting stand - as a national model - the growth management plan in one New York town. By 1978, *Golden v Town of Ramapo* (30 N.Y.2d 359) was already recognized as one of the most significant land use cases in America, and has been cited approvingly in approximately 100 cases in New York and in 18 other states.

The Ramapo Plan was implemented through the adoption of a series of amendments to the Town zoning ordinance that required anyone proposing to subdivide land to obtain a special permit from the Town Board prior to the issuance of any building permits, special permits from the zoning board of appeals, subdivision approval and/or site plan approval. The law required that the Board evaluate the proposed

request with respect to the availability to the proposed development of five essential public improvements and services: sewers or an approved substitute; drainage facilities; parks or recreational facilities (including public school sites); state, county or town roads improved with curbs and sidewalks; and firehouses. Each of these criteria was scored separately on a scale that assigned points depending upon the degree of availability of each facility to the site, and applicants needed to secure a minimum of 15 points before a permit could be issued by the Town. Emphasizing the importance of the underlying comprehensive land use plan and capital improvements plan, the court found that these restrictions "conform to the community's considered land use policies as expressed in its comprehensive plan and represent a bona fide effort to maximize population density consistent with orderly growth."

In upholding the authority of local governments to enact sequential or timed growth laws, the Court of Appeals said, "The power to restrict and regulate conferred under section 261 [of the Town Law] includes within its grant, by way of necessary implication, the authority to direct the growth and population...within the confines of the township." Foreshadowing the political debate today about smart growth, Judge Scileppi noted, "Undoubtedly, current zoning enabling legislation is burdened by the largely antiquated notion which deigns that the regulation of land use and development is uniquely a function of local government—that the public interest of the State is exhausted once its political subdivisions have been delegated the authority to zone. While such jurisdictional allocations may well have been consistent with formerly prevail-

ing conditions and assumptions, questions of broader public interest have commonly been ignored." In acknowledging that any one unit of local government cannot alone solve the pressures and demands of evolving and growing communities, the Court of Appeals said that "...State-wide or regional control of planning would ensure that interests broader than that of the municipality underlie various land use policies."

Judge Breitel's dissenting opinion begs the Legislature to address: "housing, planned land development under government control and the exclusion in effect or by motive, of walled in urban populations of the middle class and poor..." to reflect the interests of the whole State. In citing to the work of the National Commission on Urban Problems, the ALI Model Land Development Code and the NYS Office of Planning Coordination, Judge Breitel summarized the widely held belief that these challenges require regional or state-level solutions.

Both the majority and the dissent in *Golden* remind us that New York continues to struggle to find an appropriate balance of traditional notions of local control with the realization that the impacts of local land use decisions often extend beyond the jurisdictional borders and that the solutions to some of our community development challenges demand regional and statewide attention.

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