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**A Golden Anniversary in Land Use Law:
Golden v. Ramapo (1972)**

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Abstract: The famous New York case of *Golden v. Ramapo* helped create the movement towards smart growth thirty years ago. Ramapo, like most other towns in New York struggled with the familiar quandary of how to balance the pressures of absorbing growth while still controlling urban sprawl. Ramapo's solution, to greatly reduce development in its jurisdiction for eighteen years in order to research more efficient development methods, sparked much controversy with local land owners. The United States Court of Appeals, in one of New York's most significant contributions to smart growth, upheld Ramapo's plan and created a groundbreaking precedent still widely followed today.

This year marks the 30th anniversary of one of New York's singular contributions to the nation's land use law. The Court of Appeals decided *Golden v. Ramapo* in May of 1972 and cert. was denied by the U.S. Supreme Court in November. On November 9th, the Land Use Law Center of Pace University Law School, the Government Law Center of Albany Law School, and the American Bar Association will host a national conference on the case and its extraordinary contemporary relevance. Speakers include several of the nation's leading land use scholars, many of the local officials and professionals involved in developing Ramapo's precocious land use strategy, and several attorneys and planners deeply involved in the development of sophisticated land use strategies today. Among the speakers is Robert H. Freilich, editor for 25 years of the Urban Lawyer and the popular and perennial commentator on developments in land use law at ABA forums and other professional gatherings nationally. (Information about the conference may be obtained by calling the Land Use Law Center at (914) 422-4262 or emailing amccoy@pace.law.edu.)

Robert Freilich was Ramapo's legal advisor during the 1960s when it was experiencing the type of rapid growth that is causing so much concern today. Like many suburban communities, Ramapo was zoned predominantly for residential development, mostly single-family homes. Today, this phenomenon is called sprawl; opinion polls indicate that the effects of sprawl are one of the primary concerns of local residents in communities nationally. For many local officials, the top priority is figuring out how to change zoning ordinances and master plans and create effective

intermunicipal collaborations to absorb growth while combating sprawl. A look at how Ramapo and the judiciary responded to growth pressures 30 years ago is instructive.

Between 1940 and 1968, Ramapo, located in close proximity to New York City, experienced a population growth rate of nearly 300%. Projections indicated that the town would double in size again by 1985. In 1969, the town board adopted a number of land use strategies that became known as a growth management program. Its inventions were sophisticated, controversial, and legally dubious. Ramapo's land use devices and the courts' sanction of them, are credited with accelerating the incipient growth management movement.

In 1969, the Ramapo town board amended its master plan and zoning ordinance to delay the development of land within its jurisdiction over an 18 year period by sequencing that growth with the provision of capital improvements. The direct effect of these amendments was to postpone residential subdivision in some parts of town for up to 18 years. These inventions were challenged as *ultra vires* - beyond the legal authority of the town - and as a regulatory taking. The lawsuits brought by Ruth Golden, similarly situated landowners, and the Rockland County Builders Association were filed at a time when these issues had not been actively litigated. The opinion by the New York Court of Appeals was nothing short of prescient. It has been sustained by 30 years of extensive land use and regulatory takings litigation, including several recent decisions of the U.S. Supreme Court. The *Golden* decision has been examined and discussed in well over 100 major decisions by subsequent courts in dozens of states and evaluated in over 150 law review and journal articles. In New York, the cases that rely on *Golden v. Ramapo* are among the most influential land use cases decided by its appellate courts. These include *Berenson v. Town of New Castle*, *Charles v. Diamond*, *Kamhi v. Yorktown*, *Riegert Apartments v. Clarkstown*, *Fred F. French v. City of New York*, *Bedford v. Mount Kisco*, and *Asian Americans v. Koch*.

Ramapo's master plan amendments adopted a growth control strategy. The town obtained HUD funding for master planning in 1964 and prepared a four volume study documenting the pace and effect of growth, the inability of the town to provide needed infrastructure to support the current rate of growth, and a host of related matters. The planning literature of the time was full of excitement about growth management, but there was little evidence, on the ground, of its legal adoption. Ramapo's law preceded by several years the adoption of the much-heralded urban growth boundaries legislation in Oregon, the creation of the Adirondack Park Agency in New York, and Florida's infrastructure concurrency law.

As a more basic matter, Ramapo's investment in comprehensive planning put it solidly on the side of a debate emerging in the 1960s about the wisdom of adopting master plans in the majority of states where local governments have the option of doing so. Some advocates, even today, think local master plans unduly constrain local governments and are ineffective documents, not worth the high cost of preparing them. Others believe that land use laws that conform to objectives contained in adopted master plans are highly successful in overcoming legal challenges. They strongly urge

communities to adopt, and regularly update, truly comprehensive plans, backed up by detailed studies.

To implement its master plan, Ramapo adopted several amendments to its zoning ordinance. It also adopted a six-year capital budget and a capital plan for the following 12 years that committed the town to providing supportive infrastructure to all parts of the community over an 18-year period. No changes were made in the town's zoning districts or in the land uses allowed in each district. Instead, residential subdivision was designated a new class of land use, called Residential Development Use, and prospective subdividers were required to obtain a special permit. The permit could not be issued unless a critical mass of infrastructure was in place to serve the subdivision, including roads, sewers, drainage, parks, and firehouses. This provision created a temporary, not permanent, suspension of the right to develop - similar to the effect of a development moratorium which has become a popular technique in many states.

Further provisions of the Ramapo amendments softened the effect of the temporary restraint on development. Development of unsubdivided land was not prohibited, leaving all property owners some current land use. Variances could be provided to landowners who could show that their plans were "consistent" with the town's strategy. A special permit could be obtained "vesting" a landowner's right to develop the parcel in the future when infrastructure is in place. Developers were permitted to provide infrastructure themselves to qualify for a special permit. A development easement acquisition commission was established to provide property tax relief to landowners not able to develop their parcels for several years.

Judge Scileppi, writing for the majority of the Court of Appeals, upheld Ramapo's land use amendments as being within the delegated authority of local governments, decided that the 18 year suspension of the right to develop did not constitute a regulatory taking, dismissed the town's argument that some of the landowners' claims were not ripe, established the concept that local zoning may not be exclusionary, carefully defined the role of the courts in land use matters versus that of the state legislature, deferred to fact-based determinations of local lawmakers, and, in so doing, forecast clearly the following 30 years of land use policy and litigation. This article can only mention briefly a number of the threads woven by the town of Ramapo and the *Golden* court that have become the fabric of our modern land use law:

Exhaustion and ripeness: In *Golden*, the court held that certain plaintiffs who had not sought a special permit and therefore had not exhausted their administrative remedies could bring a constitutional challenge against the amendments. In this respect, the court mirrors the recent holding of *Palazzolo v. Rhode Island*, 533 U.S. 606, 121 S.Ct. 2448, 150 L.Ed.2d 595 (2001), where further applications for development approvals were deemed unnecessary for ripeness purposes where it was clear, as in Ramapo, that the local board did not have the discretion, under the challenged ordinance, to approve the landowner's application.

The importance of the comprehensive plan: The New York Court of Appeals recently upheld the Town of Mamaroneck's adoption of a highly inventive recreational zone, limiting the use of over 400 acres to private recreational uses as part of its planned response to growth pressures. Great reliance was placed by the Court on the extensive planning that preceded the adoption of this novel zoning device. This is recent evidence that Ramapo's reliance on its master plan was the correct approach. (*Bonnie Briar Syndicate, Inc. v. Town of Mamaroneck*, 94 N.Y.2d 96, 721 N.E.2d 971, 699 N.Y.S.2d 721 (1999).) The use of planned unit development zoning, not authorized directly by state statutes, was sanctioned for the same reason in *Dur-Bar Realty Co. v. City of Utica*, 394 N.Y.S. 2d 913 (4th Dep't 1977)

Regulatory takings: In upholding Ramapo's temporary restrictions on the right to develop, the Court of Appeals anticipated the U.S. Supreme Court's most recent regulatory takings decision: *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S., 122 S.Ct. 1465, 152 L.Ed.2 517 (2002). In *Tahoe*, the U.S. Supreme Court held that a moratorium on all development lasting 32 months was not, in itself, a taking. The landowners argued for a categorical rule that would classify a development moratorium as a taking without considering the moratorium's length, the severity of the problems addressed, or the good faith of the agency involved. The *Golden* court parallels the rationale used by the *Tahoe* Court in rejecting these arguments. Both indicate that property may not be segmented in time or estate for takings purposes, that benefits accrue to burdened property owners during moratoria, and that temporary suspensions of the right to develop can be in the public interest.

Total takings: The measures adopted by the town of Ramapo to mitigate the regulation's effect on property owners (variances, vested right permits, limited as-of-right development, self-help options, and tax relief), anticipated the U.S. Supreme Court's view in another seminal regulatory takings case: *Lucas v. South Carolina Coastal Commission*, 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992). The absence of a hardship variance provision in the South Carolina beachfront management act led the *Lucas* Court to characterize a 1,000 foot setback provision – prohibiting all development on the plaintiff's parcels – as a total taking. The Ramapo softening provisions prevented the ordinance from effecting a “total taking,” established by *Lucas* as a *per se* violation of the 5th Amendment's taking clause.

Affordable housing and the exclusion of growth: The *Golden* decision established the fundamental proposition that the rights of citizens in search of a place to live are bound up in the due process rights of developers who bring actions challenging the exclusionary effect of local zoning. This notion underlies the court's subsequent decision in *Berenson v. New Castle*, 38 N.Y. 2d 333 (1975), holding that local zoning must accommodate present and future housing needs of the community and region. In the *Golden* court's words, “What we will not countenance, then, under any guise, is community efforts at immunization or exclusion.” It was important to the court that the Ramapo ordinance amendments did not attempt “to freeze population at present levels but to maximize growth by the efficient use of the land, and in so doing testify to this community's continuing role in population assimilation.” This is cautionary advice to

communities that attempt to use their delegated land use power to resist, rather than to accommodate, growth.

Role of the courts: The Ramapo lawsuit challenged the role of local governments in making decisions about growth control, recognized as a regional, not local, issue. It acknowledged criticisms of local land use control, calling the delegation of such power a “largely antiquated notion” causing “distortions in metropolitan growth patterns” and “crippling efforts toward regional and state-wide problem solving.” The role of the judiciary in these matters, which has been highly deferential in the 30 years since the decision, was precisely defined by the court: “Yet, as salutary as such proposals may be, the power to zone under current law is vested in local municipalities, and [the courts] are constrained to resolve the issues accordingly.” The court also deferred to the local legislative body’s findings, giving its regulations “the usual presumption of validity attending the exercise of the police power,” and placed the burden of proving the invalidity of local land use legislation on the challenger. This pattern of deference has persisted ever since.

Localism: Despite its deferential attitude toward legislative bodies, the court was aggressive in pointing out the limits of localism and in urging the state legislature to realign land use responsibilities. Ramapo’s plan of postponing development was called by the court “inherently suspect.” The court noted the “serious defects” in local control, “pronounced insularism,” and the importance of communal and regional interdependence.” It concluded with a ringing criticism of the devolution of land use authority to localities: “Of course, these problems [of growth] cannot be solved by Ramapo or any single municipality, but depend upon the accommodation of widely disparate interests for their ultimate resolution. To that end, State-wide or regional control of planning would inure that interests broader than that of the municipality underlie various land use policies.” New York’s legislature has left this advice virtually unheeded since 1972 electing instead to expand the extent of local control over land use matters and the techniques available to them to create balanced communities.

Ultra vires: The central issue in Ramapo was whether the town had the power under its delegated authority to control growth. In reviewing the history of the adoption of zoning and land use controls, such as subdivision regulation, the court concluded that municipalities have considerable room for invention, so long as their objective is to create a balanced and well ordered community. This broad interpretation of local land use authority has become the trend among courts nationally and has fueled a great expansion of local invention to deal with the problems of sprawl, the provision of infrastructure, the costs of development, and, recently, the protection of natural resources and the environment.

Conclusion

While criticizing local control and calling for the legislature to accommodate regional needs in some fashion, the court empowered local governments, in the absence of a better approach, to aggressively deal with a number of land use issues

that have become all the more pressing since its decision in 1972. Nationally and in New York, there is little practical evidence that regional or state agencies can or should determine most local land use matters.

The town of Ramapo blazed a bright trail of invention in the late 1960s. The *Golden* court sustained the town's power to do so, if the end is a balanced community, and, for thirty years, local governments have been ever more bold in dealing with market pressures on local land use. They have virtually invented the field of local environmental law, are transferring development rights from one part of town to another, are providing zoning incentives to developers, creating overlay zones to protect watersheds or stimulate traditional neighborhood development, adopting performance-based zoning ordinances, floating bonds to acquire funds for the purchase of development rights, and creating a number of impressive intermunicipal land use councils to achieve some sub-regional coherence. This trend toward local invention owes much to the town of Ramapo and the Court of Appeals in the way they dealt with the onset of sprawl over thirty years ago.