

ZONING AND LAND USE PLANNING

The Comprehensive Plan's Essential Role in Zoning



By
Anthony
Guardino

One of the most basic principles of zoning law is that a local government's zoning must be "in accordance with a comprehensive plan." In this regard, it is important to keep in mind that a zoning ordinance is not the comprehensive plan itself; rather, as numerous courts and commentators have pointed out, a municipality's zoning rules must be "consonant with a total planning strategy," reflecting consideration of the needs of the community. The New York Court of Appeals explained 50 years ago, in *Udell v. Haas*, 21 N.Y.2d 463 (1968), that a comprehensive plan is the "essence of zoning." Without it, the court added, "there can be no rational allocation of land use."

Although state law requires comprehensive plans, *see, e.g.*, Town Law §272-a, it may not necessarily

be obvious at first glance what constitutes a local government's comprehensive plan. In *Udell*, the court observed that New York courts have not equated the term "comprehensive plan" with any particular document. Similarly, the statutory definition in Town Law § 272-a(2)(a) states that a comprehensive plan "means the materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the immediate and long-range protection, enhancement, growth and development of the town located outside the limits of any incorporated village or city."

The fact that a municipality has adopted a comprehensive plan does not mean that it may not amend or alter its zoning rules. It certainly may do so, as long as any change is in accord with the plan (and does not run afoul of other zoning law

requirements). The recent decision by the Appellate Division, Third Department, in *Matter of Heights of Lansing, LLC v. Village of Lansing*, 160 A.D.3d 1165 (3d Dept. 2018), helps illustrate this concept.

Rezoning Permitted

In 1999, the upstate village of Lansing adopted a comprehensive plan in accordance with Village Law §7-722. Among other things, the plan classified a 19.5-acre parcel as a business and technology district (BTD). This zoning classification was continued for the property after the village amended its comprehensive plan in 2015.

In November 2016, the village's board of trustees adopted a local law that rezoned the property as a high density residential district (HDRD).

Thereafter, owners and managers of real property located in a subdivision known as Lansing Trails, adjacent to the rezoned property, went to court to challenge the local law. Among other things, they argued

ANTHONY S. GUARDINO is a partner with Farrell Fritz in Hauppauge, Long Island, he can be reached at aguardino@farrellfritz.com.

that the law was not consistent with the village's comprehensive plan.

The Supreme Court, Tompkins County, ruled in favor of the village, and the petitioners appealed. The Third Department affirmed, holding that the local law that rezoned the property from a BTM to an HDRD had not been adopted in contravention of the village's comprehensive plan.

In its decision, the appellate court explained that as a legislative act, a zoning amendment enjoyed a "strong presumption of constitutionality" and that the burden rested on the party attacking it to overcome that presumption beyond a reasonable doubt. The Third Department added that a zoning amendment would be upheld if it was adopted for a "legitimate governmental purpose" and there was a "reasonable relation between the end sought to be achieved" by the amendment and the "means used to achieve that end."

In this case, the Third Department found, the rezoned property was directly adjacent to areas zoned for residential use and for commercial use. The appellate court noted that the village board had decided that, consistent with the village's comprehensive plan, rezoning the property from a BTM to an HDRD would create a better transition between the two areas. Although the petitioners argued that a proposed

high-end residential development at the rezoned property did not further the expected need for affordable housing that was expressed in the comprehensive plan, the appellate court found that the zoning change did comport with the community's general need for rental housing and the goal—expressed in the plan—to encourage the development of "a broad range" of housing options, particularly for an aging population.

Therefore, in the Third Department's opinion, the local law was consistent with the village's

The New York Court of Appeals explained 50 years ago, in *Udell v. Haas* that a comprehensive plan is the "essence of zoning." Without it, the court added, "there can be no rational allocation of land use."

comprehensive plan and was "calculated to benefit the community as a whole as opposed to benefiting individuals or a group of individuals." The petitioners failed to demonstrate that the rezoning was arbitrary, unreasonable, or unlawful, the Third Department concluded.

Spot Zoning

Of course, courts will not uphold every zoning change. Consider the Third Department's decision in *Matter of WIR Associates, LLC v. Town of Mamakating*, 157 A.D.3d 1040 (3d Dept. 2018), which was handed down only a few months before *Lansing*.

The *Mamakating* case arose in 2001, when the town board of the town of Mamakating, in Sullivan County, adopted a comprehensive plan. The plan found that approximately 530 acres of vacant real property in the town was appropriate for mixed use resort development. The town board simultaneously enacted a zoning law that placed the property within a planned resort-office (PRO) district, where such a use was authorized.

The town revisited the comprehensive plan and zoning law on occasion, but nothing of substance occurred until after it was revealed that a large residential and commercial development project involved the property.

Then, in early 2014, the town board imposed a one-year moratorium on residential development while it "consider[ed] changes to [the town's] comprehensive plan and ... land use regulations." A 2015 report studied whether the zoning law was consistent with the comprehensive plan and proposed various zoning amendments that purportedly would bring the two into alignment, including one to rezone the property as Mountain Greenbelt (MG) that would effectively prohibit the proposed development.

In August 2015, the property was rezoned as MG.

The owner of the property, WIR Associates, LLC, went to court, seeking to annul the rezoning of its property. Among other things,

it argued that the rezoning conflicted with the town's comprehensive plan. WIR pointed to language in the plan finding the property suitable "for potential large-scale nonresidential development" that would spur economic growth and other language in the plan stating that the large vacant parcels and easy access to a nearby highway made the area appropriate for "low impact resort-related activities as well as limited non-residential uses," including tourist-related activities, resort development, and a planned resort community.

WIR asserted that a planned resort community was permitted in a PRO district but was not permitted in a MG district. According to WIR, as a result, the town board's decision to rezone its property arbitrarily disregarded the comprehensive plan's finding that a planned resort community was appropriate for its property.

In addition, WIR contended that its property had been arbitrarily singled out for different, less favorable treatment than neighboring properties in a manner that was inconsistent with a well-considered land use plan so as to constitute "discriminatory reverse spot zoning." (Spot zoning is the singling out of a small parcel of land for a use classification totally different from that of the surrounding area, for the benefit of the owner of the property and to the detriment of other owners. Reverse spot zoning is the singling out of a small parcel

of land for a use classification totally different from that of the surrounding area, to the detriment of the owner of the property.)

The Supreme Court, Sullivan County, rejected WIR's arguments, and it appealed to the Third Department. The appellate court reversed the trial court's decision dismissing WIR's zoning challenges.

In its decision, the Third Department explained that the 2015 report proposed the rezoning to address changed conditions in keeping with the spirit of the comprehensive plan. Therefore, in the Third Department's view, it was "debatable" whether WIR ultimately could establish by competent evidence that the town board's decision to change its zoning ordinance as it affected its property was arbitrary and unreasonable in violation of the town's comprehensive plan. Nevertheless, the Third Department ruled, accepting WIR's allegations as true, and in the absence of documentary proof conclusively establishing a defense to them, WIR had articulated a cognizable claim that should not have been dismissed.

The Third Department then analyzed WIR's spot zoning allegations. The appellate court pointed out that the town board had rejected recommendations to rezone other property in a PRO district as MG and, without explanation, had limited its exertions to the area around WIR's property. The Third Department then concluded that WIR's allegations

were sufficient to state a cognizable claim for reverse spot zoning.

Conclusion

In New York, local governments are required to engage in comprehensive planning, rather than what the Court of Appeals referred to, in *Matter of Town of Bedford v. Village of Mount Kisco*, 33 N.Y.2d 178 (1973), as "irrational *ad hocery*." However, because the obligation is one of comprehensive planning, not "slavish servitude to any particular comprehensive plan," zoning laws can be amended after a comprehensive plan is adopted. Zoning laws that deviate from a comprehensive plan are permitted because "sound planning call for recognition of the dynamics of change."

Yet, when a change conflicts with the fundamental land use policies and development plans of the community—when it violates a comprehensive plan—it may be rejected by the courts. Local officials, developers, property owners, community members, and their advisers should keep these standards in mind whether adopting or amending a comprehensive plan, and when changing existing zoning rules or regulations.