

# New York Law Journal

## Real Estate *Update*

Wednesday, November 22, 2006

ALM

### Standing Test of Time

*1972 Court of Appeals Ruling Endorsed Phased Growth*

BY JOHN M. ARMENTANO

Almost 35 years ago, before environmental sensitivities surrounding property development had become a major concern, before the legislature enacted the State Environmental Quality Review Act (SEQRA), before the “federalization” of property rights issues in cases such as *Lucas v. South Carolina Coastal Council*<sup>1</sup> and *Tahoe Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*,<sup>2</sup> and at a time when comprehensive land use planning was in its infancy in New York and elsewhere across the country, the New York Court of Appeals issued a decision that has since become one of the leading land use planning cases nationwide.

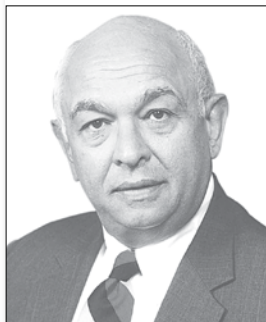
The Court’s ruling, in *Golden v. Planning Board of the Town of Ramapo*,<sup>3</sup> was a major jurisprudential and philosophical determination in support of phased or “orderly” growth. Recognizing what it characterized as “the increasing complexities of urban and suburban growth,” the Court, in an opinion by Judge John F. Scileppi, strongly supported local governments’ use of a “broad[], comprehensive plan for community development.” There is little doubt that the decision has influenced numerous courts and legislatures, both for what it approved and for the concerns it highlighted.

#### The Statutory Background

The case involved the upstate town of Ramapo. As the Court explained, as early as 1964, the town began to develop a master plan.

**John M. Armentano**, a partner with the Long Island law firm of Farrell Fritz, represents local governments and developers in zoning, land use, and environmental matters, including litigation. He can be reached at [jarmentano@farrellfritz.com](mailto:jarmentano@farrellfritz.com).

ZONING AND  
LAND-USE PLANNING



The plan’s preparation included a four-volume study of the existing land uses, public facilities, transportation, industry and commerce, housing needs, and projected population trends. The town followed its implementation of a master plan by adopting a comprehensive zoning ordinance. Additional sewage district and drainage studies were undertaken, which culminated in the adoption of a capital budget providing for the development of the improvements specified in the master plan within the following six years. The town also adopted a capital program that provided for the location and sequence of additional capital improvements for the 12 years following the life of the capital budget. In essence, the two plans, covering a period of 18 years, detailed the capital improvements projected for maximum development and conformed to the specifications set forth in the master plan, among other things. The town subsequently adopted a number of amendments to its zoning ordinance for the stated purpose of eliminating premature subdivision and urban sprawl. As a consequence of those amendments, residential development was to proceed according to the provision of adequate municipal facilities and services, with the assurance that any concomitant restraint

upon property use was to be of a “temporary” nature and that other private uses, including the construction of individual housing, was authorized.

The standards for the issuance of special permits were framed in terms of the availability to a proposed subdivision plat of five essential facilities or services: (1) public sanitary sewers or approved substitutes; (2) drainage facilities; (3) improved public parks or recreation facilities, including public schools; (4) state, county, or town roads—major, secondary, or collector; and (5) firehouses. The amended zoning ordinance provided that no special permit could issue unless the proposed residential development had accumulated 15 development points, computed on a sliding scale of values assigned to the specified improvements under the statute. Subdivision thus was a function of immediate availability to the proposed plat of certain municipal improvements; the stated purpose of the amendments being to phase residential development to the town’s ability to provide the above facilities or services.

Certain savings and remedial provisions were designed to relieve potentially unreasonable restrictions. For example, the board could issue special permits vesting a present right to proceed with residential development in such year as the development met the required point minimum, but in no event later than the final year of the 18-year capital plan. The approved special use permit was fully assignable, and improvements scheduled for completion within one year from the date of an application were to be credited as though existing on the date of the application. A prospective developer could advance the date of subdivision approval by agreeing to provide those improvements that would bring the proposed plat within the number of development points required by the amendments.

## The Court's Analysis

Various property owners challenged the amendments to the town's zoning ordinance, arguing that the purpose of controlling or regulating growth within the town was not within the authorized objectives of the state's zoning enabling legislation. The Court disagreed. The Court found that the "undisputed" effect of the town's "integrated efforts in land use planning and development" was to provide an over-all program of orderly growth and adequate facilities through a sequential development policy commensurate with progressing availability and capacity of public facilities, and that the challenged amendments were proper zoning techniques exercised for legitimate zoning purposes.

The Court recognized that the town's planning board was not statutorily authorized to deny the right to subdivide, but it found that that was not what the town sought to accomplish. Rather, the town sought to condition development pending the provision of specified services and facilities. Whether it was the municipality or developer who was to provide the improvements was not relevant because the objective was the same: to provide adequate facilities, off-site and on-site, and in either case subdivision rights were conditioned and not denied.

## Regional Planning

The Court had a great deal to say about what today is commonly referred to as "regional planning." It observed that zoning historically had assumed the development of individual plats and stated that that had proven "characteristically ineffective" in treating the problems attending subdivision and development of larger parcels, "involving as it invariably does, the provision of adequate public services and facilities." In the Court's view, zoning enabling legislation was "burdened" by the "largely antiquated notion" that held that the regulation of land use and development was "uniquely a function of local government." The Court stated that experience with "greater technological integration" and "drastic shifts in population distribution" had pointed up "serious defects" and it recognized that community autonomy in land use controls had come under increasing attack because of its "pronounced insularism and its correlative role in producing distortions in metropolitan growth patterns" and, perhaps more importantly, in "crippling efforts toward regional and State-wide problem solving, be it pollution, decent housing, or public transportation."

Conceding that these problems could not be solved by Ramapo or any single municipality, the Court ruled that that should not be the only context in which growth devices such as those adopted by Ramapo would be sustained. Simply put, the Court held, phased growth was "well within the ambit" of existing enabling legislation.

## The Exclusion Bar

The Court also had a great deal to say about "exclusionary" zoning, clearly stating that it would "not countenance...under any guise...community efforts at immunization or exclusion." It then found that Ramapo's amendments were not exclusionary but merely sought, by the implementation of sequential development and timed growth, to provide "a balanced cohesive community dedicated to the efficient utilization of land." Indeed, it continued, the restrictions conformed to the community's "considered land use policies as expressed in its comprehensive plan" and represented "a bona fide effort to maximize population density consistent with orderly growth." Perhaps even more importantly, the Court added, timed growth did "not impose permanent restrictions upon land use." Ramapo asked "not that it be left alone," but only that it be allowed "to prevent the kind of deterioration that has transformed well-ordered and thriving residential communities into blighted ghettos with attendant hazards to health, security and social stability."

Stating that it required that communities confront the challenge of population growth with "open doors," the Court found that the "temporary restrictions upon development, to provide required municipal services in a rational manner," should be upheld.

## The Taking Issue

Finally, the Court anticipated more recent litigation when it touched on the taking issue, noting that the amendments had the effect of restricting development for close to 18 years in certain cases. It acknowledged that the restrictions were "substantial in nature and duration," but emphasized that they were not absolute. For one thing, it noted, property owners under the terms of the amendments could elect to accelerate the date of development by installing, at their own expense, the necessary public services to bring the parcel within the required number of development points. It added that the restrictions were mitigated by the prospect of appreciated

value and interim reductions in assessed value, and were within the limits of the law.

## Conclusion

Judge Scileppi's opinion was one of the first in the nation to give sustenance and vitality to the concept of comprehensive planning based on well considered "foresighted planning calculated to promote the welfare of the township." In later rulings, the Court seized on its objection to exclusionary zoning in *Golden* to make it clear that exclusionary and discriminatory zoning would not be countenanced under any circumstances.<sup>4</sup>

It should be noted that about 15 years after the *Golden* decision, in *Suffolk Housing Services*, the Court had before it the question of whether to adopt the New Jersey *Mount Laurel* decision and approach to affordable housing, but declined to do so. Relying on *Golden*, the Court noted that a municipality "may not legitimately exercise its zoning power to effectuate socioeconomic or racial discrimination."

In summary, *Golden*, taken in historical context and recognizing the lack of guiding common law principles, was a significant opinion on a number of major issues, many of which have become law through legislation, in other states by virtue of decisions of their highest courts relying on *Golden*, or by the United States Supreme Court itself invoking the *Golden* philosophy and approach. The Court of Appeals, through Judge Scileppi, seized the moment, acted where others had failed to act, and left its imprint on zoning history when it decided *Golden*. It is the *Polaris* of common law land use analysis.

.....●.....

1. 505 U.S. 1003 (1992).

2. 535 U.S. 302 (2002).

3. 30 N.Y.2d 359 (1972).

4. See, e.g., *Suffolk Housing Services v. Town of Brookhaven*, 70 N.Y.2d 122 (1987); *Kurzieus v. Village of Upper Brookville*, 51 N.Y.2d 38 (1980); *Berenson v. Town of New Castle*, 38 N.Y.2d 102 (1975).