Pace University
DigitalCommons@Pace

Pace Law Faculty Publications | School of Law

2-17-1999

Intermunicipal Compacts; Regional Land Use Strategies Work at the Grassroots Level

John R. Nolon
Pace University School of Law, jnolon@law.pace.edu

Follow this and additional works at: http://digitalcommons.pace.edu/lawfaculty

Part of the Land Use Planning Commons, and the State and Local Government Law Commons

Recommended Citation
John R. Nolon, Intermunicipal Compacts; Regional Land Use Strategies Work at the Grassroots Level, N.Y. L.J., Feb. 17, 1999, at 5, available at http://digitalcommons.pace.edu/lawfaculty/721/.

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace Law Faculty Publications by an authorized administrator of DigitalCommons@Pace. For more information, please contact cpittson@law.pace.edu.

Intermunicipal Compacts: Regional Land Use Strategies Work at the Grassroots Level

Written for Publication in the New York Law Journal
February 17, 1999

John R. Nolon

[John R. Nolon is Charles A. Frueauff Research Professor at Pace University School of Law and Director of its Land Use Law Center.]

Abstract: Regional land use control has long been a difficult issue in New York as most localities refuse to acknowledge responsibility for problems extending beyond their own borders. New York law enables municipalities to cooperate among one another to devise improved solutions to land use, and other issues. This article studies the state history of regional land use and provides several successful examples of how grassroots regionalism can change the way municipal governments think about land use and solve problems.

***

Searching for a Regional Land Use Strategy

Whether and to what extent the state legislature should require regional land use planning has been an issue in New York for nearly three decades. In 1975, the Court of Appeals held that the failure to provide for multifamily housing in a town's zoning ordinance could be unconstitutionally exclusionary. In doing so, it noted that "it is quite anomalous that a court should be required to perform the tasks of a regional planner. To that end, we look for the Legislature to make appropriate changes in order to foster the development of programs designed to achieve sound regional planning."[1] Three years earlier, in Golden v. Ramapo, this same court, in sustaining Ramapo's controlled growth ordinance, stated "Of course, these problems 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 insure that interests broader than that of the municipality underlie various land use policies."[2]

Those who argue that the New York State legislature should adopt a strong regional approach to land use planning and regulation do so, in part, because

[1] Berenson v. New Castle, 38 N.Y.2d 102, 1975.
[2] Golden v. Ramapo, Court of Appeals, 30 N.Y.2d 359, 1972.

they perceive a need to coordinate the often disconnected and discordant land use decisions of local governments. The danger in this observation is that it identifies local control as the problem to be solved, rather than the base on which to build an intermunicipal process, responsive to regional needs. The challenge for advocates of a regional approach to land use planning and control is to identify effective regional processes that respect the critical role that local governments play in land use decision-making. To be politically palpable, these solutions must not be perceived as methods of imposing a state or regional body's will on local governments, but as means of communicating effectively about regional and local needs, balancing those interests, and arriving at mutually beneficial decisions over time.

The principal limit to the reach of local land use control is jurisdictional: this authority ends at the municipal border. As a matter of law and practice, local zoning and comprehensive planning are introspective in nature, operating within "our" community for the benefit of "our" citizens. As a result, this power has not been used on a regular basis as the legal vehicle for protecting intermunicipal environmental resources, harnessing the influences of regional markets, or influencing the land use decisions of municipal neighborhoods that have profound external impacts. Effective control over these intermunicipal, or regional, matters depends on the ability of local governments to plan and act in concert with one another. Over time the need to exercise some extraterritorial control has increased and questions are now being asked about how neighboring localities can protect "our" watershed or stimulate "our" economic future.

Intermunicipal Cooperation

Although the New York Legislature has created a variety of different solutions in various regions, ranging from the highly structured Adirondacks Park Agency to the low-key Hudson River Greenway Communities Council, its state-wide approach has been to empower and encourage local governments to enter into intermunicipal agreements that arbitrate intermunicipal interests and establish collaborative implementation strategies. New York leads the nation in granting authority to municipal corporations to contract with one another to undertake shared activities. The legislature first authorized local governments to cooperate by entering into intermunicipal agreements in 1960 with the enactment of Article 5-G of the General Municipal Law.[3] This statute provides municipal corporations[4] with express statutory authority to enter into intermunicipal agreements for the performance of their respective functions, powers, and duties.[5]

---

[3] N.Y. GEN. MUN. LAW § 119-m (McKinney 1986).

[4] Municipal corporations are defined as "a county outside the city of New York, a city, a town, a village, a board of cooperative educational services, fire district or a school district." N.Y. GEN. MUN. LAW § 119-n(a) (McKinney 1986 & Supp. 1996).

[5] N.Y. GEN. MUN. LAW § 119-o(1) (McKinney 1986).

The provisions of these 1960 amendments to the General Municipal Law were broad enough to allow municipalities to cooperate regarding land use planning, regulation, and administration. Although a few communities used this authority for that purpose, the state legislature in the early 1990's thought that it was necessary to make this intermunicipal land use authority more explicit. In 1992, the legislature enacted additional legislation to further encourage intergovernmental cooperation concerning comprehensive planning and land use regulation.[6] These statutes make it clear that local governments have the authority to create intermunicipal planning boards, zoning boards of appeals, comprehensive plans, land use regulations, intermunicipal overlay districts, and programs for land use administration and enforcement.

First Generation Intermunicipal Agreements

From the 1970's until the mid-1990's, under their broad authority to collaborate regarding land use planning, regulation, and enforcement, local governments experimented with a variety of means of cooperation. A number of municipalities in this first phase used their intermunicipal authority to consolidate planning boards or zoning boards of appeals. This kind of consolidation brings an intermunicipal perspective to the decisions of these boards. Sometimes boards were consolidated to apply for state or federal aid the municipalities would not have been eligible for independently. The costs associated with joint planning activities may be apportioned between the participating municipalities on any equitable basis.

During this early period, intermunicipal agreements were also entered into to design and upgrade drainage systems on an intermunicipal basis, form a cooperative entity for intermunicipal watershed data gathering and monitoring, undertake hydrological testing and water supply development, enforce land use regulations through hiring of shared officers, gather data and monitor environmental conditions, share the use of water filtration plants, and conduct joint site plan review processes.

In 1982, the Town of Lowville entered into an intermunicipal agreement with the Village of Lowville to consolidate their planning and zoning boards. The Town of Denmark and two of its villages entered into an agreement to hire a joint zoning enforcement officer. In 1984, the County of Orleans helped three of its towns form a cooperative board to prepare a Waterfront Revitalization Program. By the early 1990s, communities were implementing land use regulations cooperatively. St. Lawrence County assisted the Town of DeKalb and the Village of Richville to conduct site plan reviews jointly. In 1992, three New York and two Connecticut towns passed identical resolutions designating the Mianus River a critical shared

[6] N.Y. GEN. CITY LAW § 20-g (McKinney 1989 & Supp. 1996), N.Y. TOWN LAW § 284 (McKinney 1987 & Supp. 1996) and N.Y. VILLAGE LAW §7-741 (McKinney 1996).

resource and pledging to cooperate in protecting it.

Second Generation Intermunicipal Agreements

Although many of the activities performed through these first generation compacts were relatively simple in nature, much was learned from them. They demonstrated, for example, that counties, state agencies, and New York City could assist, finance, and cooperate with entities created by cities, towns, and villages. By the mid-1990s, there was evidence that communities were willing to use their intermunicipal authority to adopt consistent land use plans, regulations, and review processes. A 1994 intermunicipal agreement among the Villages of Castile and Perry and the Town of Castile arguably began a new phase of land use cooperation initiating joint adoption of zoning provisions. A Titicus River accord, signed in 1995, joins two New York towns, two Connecticut municipalities, and New York City's Department of Environmental Protection in an agreement to preserve that watershed, illustrating the full intergovernmental and regional potential of the intermunicipal authority created by the New York State legislature.

Over the last few years, a second generation of intermunicipal compacts has appeared. These are more intricate agreements demonstrating that intermunicipal authority is capable of being used to coordinate land use planning, regulation, and enforcement over much larger geographical areas and by more complicated means.

Ten municipalities in the lower Hudson River Valley entered into an intermunicipal agreement in 1994 to establish the Historic River Towns of Westchester compact to advance their common interest in tourism and waterfront revitalization. In 1995, eleven villages, the Town of North Hempstead, and Nassau County agreed to undertake a series of activities to protect and enhance the quality of Manhaset Bay. This, and a similar agreement among 14 towns to protect the Oyster Bay-Cold Spring Harbor area, were facilitated by the Department of State, Division of Coastal Resources and Waterfront Revitalization. The State Department of Environmental Conservation signed on with a county and three towns to create the Irondequoit Bay Management Project in 1997. In 1998, eleven cities, towns, and villages in Westchester County agreed to collaborate to prevent the pollution of Long Island Sound. They applied for, and received, a grant from the state to conduct a feasibility study to initiate their partnership.

In the Tug Hill region, local governments have been working together since 1981. Recent amendments to their compact stipulate that the Cooperative Tug Hill Council, which has become a regional coordinating entity, is to provide a representative forum for developing a long-term vision, designate special areas of regional concern and develop a plan for the region, provide technical and project review assistance to constituent towns, review projects proposed in special areas for consistency with the overall plan, and provide a regular communication system on development and conservation matters among the participating localities.

Interestingly, this model was begun in the early 1970s at the initiative of the state legislature. Because of the threatened development of 55,000 acres of wilderness forest in the Tug Hill region, the legislature established The Temporary State Commission on Tug Hill in 1972.[7] Instead of simply studying the region's problems and making recommendations, as originally conceived, the Commission established the Cooperative Tug Hill Planning Board through an intermunicipal agreement and with representation from each participating town. This Board was the predecessor to the Cooperative Tug Hill Council whose contemporary objectives and functions closely approximate those of most traditional regional planning entities.

This progress at the eastern end of Lake Ontario, and the other second generation compacts, are the occasional results of a serendipitous process. In one instance, inspired local officials forge a compact. In another, a county coalesces an alliance. In still a third, a state agency provides leadership, funding, and inspiration for the formation of several large-scale intermunicipal organizations. When one generalizes about this experience it is possible to argue that, overall, it constitutes a healthy and successful evolution toward grassroots regionalism. The problem with the generality is that these experiences are highly particular, occurring in all too few locations.

State Incentives for Intermunicipal Land Use Compacts

What is needed to create effective regional coordination of land use decision-making in New York? Are the many state statutes that allow extensive horizontal and vertical coordination enough? Have the second-generation agreements sufficiently demonstrated the willingness of local governments to work together over broad enough areas on critical land use matters? What more should the state do?

The answer may simply be to make this form of grassroots regionalism the intentional policy of the State of New York and back it up with the commitment of existing financial and technical resources? What if a state agency were charged to provide an aggressive educational program, explain intermunicipal authority, demonstrate the remarkable results of the second generation compacts, and provide a packet of information on how to create such approaches, complete with model agreements and organizational papers? What if that agency followed up by providing technical assistance to local officials interested in emulating these experiences? What if significant amounts of discretionary state funds, normally dedicated to infrastructure development, open space acquisition, and commercial and community development programs were set aside for expenditure in priority funding areas designated by these intermunicipal cooperatives of local officials?

---

[7] Act of June 8, 1972, ch. 972, 1972 N.Y. Laws 3086.

What if the state's funding criteria made it clear that infrastructure funding is more likely to be spent in designated areas that contain existing development centers and that open space acquisition funds are more likely to be allocated to designated areas that contain significant natural resources or fertile agricultural lands?

Is it possible that New York's legislature and local officials have responded effectively, if quietly, to the 25 year old call of the Court of Appeals for a regional land use policy? The legal connections are there. The evidence of local willingness to employ them is in. The time may be right for the state to build on this now solid and impressive base of grassroots regionalism so that its benefits can be much more broadly enjoyed.