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GRASSROOTS REGIONALISM THROUGH INTERMUNICIPAL LAND USE COMPACTS

JOHN R. NOLON*

INTRODUCTION

Whether and to what extent the state legislature should provide for efficient mechanisms for regional land use planning has been an issue in New York for nearly three decades. In 1975, the New York Court of Appeals held that the failure to provide for multi-family housing in a town's zoning ordinance could be unconstitutionally exclusionary.¹ In doing so, the court 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 to the Legislature to make appropriate changes in order to foster the development of programs designed to achieve sound regional planning."²

Three years earlier in *Golden v. Planning Board of Town of Ramapo*,³ the same court, in sustaining Ramapo's controlled growth ordinance, stated:

[o]f 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

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¹ *Berenson v. Town of New Castle*, 341 N.E.2d 236 (N.Y. 1975).

² *Id.* at 243.

³ 285 N.E.2d 291 (N.Y. 1972). The state's highest court stated that New York's "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." *Id.* at 299. The court referenced criticisms of community autonomy finding that local land use control suffers from "pronounced insularism" and produces "distortions in metropolitan growth patterns." *Id.* It also noted that local control "crippl[es] efforts toward regional and State-wide problem solving, be it pollution, decent housing, or public transportation." *Id.*

that interests broader than that of the municipality underlie various land use policies.⁴

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 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 cured rather than the base on which to build an intermunicipal process that is responsive to regional needs.

Former Speaker of the House, Thomas P. O'Neill Jr., once quipped that "all politics is local."⁵ For advocates of regionalism in a strong home rule state, O'Neill's political reality means that designing a regional solution to the "problem" of municipal independence runs the risk of engendering overwhelming political opposition. It might be better to embrace local democracy as part of the solution and ask first whether regional problems can be solved with the enthusiastic participation of local governments rather than at their expense.

If this political limitation is accepted,⁶ 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 gov-

⁴ *Id.* at 300.

⁵ See Thomas O. Sargentich, *The Future of the Item Veto*, 83 IOWA L. REV. 79, 135 n.245 (1997) (quoting THOMAS P. O'NEILL JR., MAN OF THE HOUSE 26 (1987)).

⁶ Times may have changed, but the history of regionalism in New York leans in the O'Neill direction. For example, the Land Use and Development Law was introduced in 1970 as senate bill 9028, S.9028, 193d Leg. (N.Y. 1970). Although never enacted, it proposed a statewide comprehensive land use plan, regional plans, and county plans, all consistent with one another. Local governments were to exercise their land use authority in conformance with the county plans. By these means, an integrated statewide planning system was to be created that coordinated the land use initiatives of each level of government. The reaction to the Land Use and Development Law was severe. Not only did it fail to reach the full Senate, but the state agency that proposed it was disbanded by the legislature shortly thereafter. Two years later, the state Urban Development Corporation was stripped of its power to override town and village zoning after it announced a proposal to build subsidized housing in nine communities in Westchester county. See Elaine Marie Tomko-DeLuca, Annotation, *Applicability of Zoning Regulations to Governmental Projects or Activities*, 53 A.L.R. 5th 1, § 34 (1997) (discussing the Urban Development Corporation's power and limitations with respect to local zoning).

ernments. They should be viewed as means of communicating effectively about regional and local needs, balancing those interests, and arriving at mutually beneficial decisions over time.

The State of New Jersey's economic development policy has been credited with particular success because it is based on cooperating with local economic development programs rather than operating independently.⁷ By taking this approach, New Jersey's definition of economic development coincides with the local definition.⁸ In this way, the critical components of the governmental system, state and local governments, work in tandem on a crucial issue of mutual importance. Finding ways to align these components to coordinate regional land use planning is part of designing a politically viable approach.⁹

⁷ See William Fulton, *Learning from New Jersey*, GOVERNING MAG., Dec. 1998, at 46, available in LEXIS, News Library.

⁸ In practice, it has been recognized that:

[t]o a governor, economic development usually means big-picture economic growth—especially high-paying jobs that will help increase the state's overall prosperity. . . . But a mayor . . . views the world differently. A mayor is concerned about a different kind of tax base—usually property and sales taxes, as opposed to income taxes. And rather than targeting economic sectors, a mayor is likely to target troubled geographical areas where tax revenue is low and residents need jobs. That, in a nutshell, is why state and local economic development programs don't always jibe.

Id.

The same could be said for state-created regional land use planning initiatives. What the state defines as the critical regional planning issues, such as the location of solid waste disposal facilities, may not have much to do with a town supervisor's concern over escalating property taxes and the lack of commercial tax ratables. The New Jersey economic development approach ensures that a conversation about these matters and an agreement about what is to be accomplished precede implementation of the state's program. See Fulton, *supra* note 7, at 46 (acknowledging the beneficial approach taken by New Jersey with regard to urban development and its interactive relationship with its cities and towns).

⁹ The dangers inherent in not aligning these components were pointed out by Douglas Porter in his analysis of powerful regional agencies with state-granted authority "to intervene in or override local land use decisions. . . . Such powers, however, have been acquired only through extraordinary effort and have been exercised with considerable controversy that occasionally escalates into open warfare with local governments." Douglas R. Porter, *Regionalism Revisited*, URBAN LAND, Oct. 1989, at 32, 32. He concludes by pointing out that incentives are necessary to secure local governments' cooperation in regional efforts and that "[c]oalition building appears to be mandatory for regional action, no matter what the organizational framework." *Id.* at 33.

Maryland's relatively new State Finance and Procurement priority funding laws¹⁰ direct state infrastructure funding to be spent in "Smart Growth" areas. These areas are mapped by counties, which have land use authority in Maryland of the type that cities, towns, and villages have in New York. This grass-roots element of the Maryland scheme has drawn criticism from traditional regionalists.¹¹ It leaves the matter of where to grow to local decision-makers. The concerns are that the results are not uniform, that too many greenfields are being included in some counties' priority area maps, and that existing built-up areas will not get the share of infrastructure funding that they deserve.¹²

The New York Legislature has created a variety of different solutions in various regions, ranging from the highly structured Adirondack Park Agency,¹³ to the low-key Hudson River Greenway Communities Council.¹⁴ Nonetheless, its statewide approach has been to empower and encourage local governments to enter into Intermunicipal Agreements that arbitrate intermunicipal interests and establish collaborative implementation strategies.

¹⁰ See MD. CODE ANN., STATE FIN. & PROC. § 5-7B-03 (Supp. 1998); see also Rob Gurwitt, *The State v. Sprawl*, GOVERNING MAG., Jan. 1999, at 18, available in LEXIS, News Library (recognizing Maryland's "bold experiment in "growth control").

¹¹ See, e.g., *Smart Growth Plans 1st Bite*, BALTIMORE SUN, Jan. 24, 1999, at 1B, available in LEXIS, News Library (reporting criticism by local officials of the state's denial of plans to build bypasses to reduce congestion because they are not part of "Smart Growth" plans); Timothy Wheeler, *Glendening Plan Would Limit Sprawl*, BALTIMORE SUN, Dec. 22, 1996, at 24A, available at LEXIS, News Library (reporting criticism of the plan because it would interfere with local development decisions).

¹² See, e.g., *Growth Reform in Maryland*, BALTIMORE SUN, Jan. 3, 1997, at 1B, available in LEXIS, News Library (commenting that the growth plans might deny funds for school construction costs in Columbia, Maryland).

¹³ Enacted in 1971, the Adirondack Park Agency Act, N.Y. EXEC. LAW §§ 800-20 (McKinney 1996), was attacked as an unconstitutional interference with the authority of local government to zone and control land use. See *Wambat Realty Corp. v. New York*, 362 N.E.2d 581, 582-83 (N.Y. 1977). The Court of Appeals upheld the Act, noting that "[o]f course, the Agency Act prevents localities within the Adirondack Park from freely exercising their zoning and planning powers. That indeed is its purpose and effect, not because the motive is to impair home rule, but because the motive is to serve a supervening State concern transcending local interests." *Id.* at 584.

¹⁴ In 1991, the New York State legislature enacted the Hudson River Valley Greenway Act, N.Y. ENVTL. CONSERV. LAW § 44-0101 to -0121 (McKinney 1997). Local governments are given incentives to voluntarily become "participating communities." N.Y. ENVTL. CONSERV. LAW § 44-0119(3) (McKinney 1997). Participation includes involvement in developing subregional, or intermunicipal, plans and voluntarily updating their local documents to be consistent with these plans. See *id.*

Since 1960, state statutes have authorized local governments to enter into compacts to design compatible land use plans and enact compatible land use regulations.¹⁵ Those familiar with the state statutes that authorize IMAs and the ways in which this authority has been used might argue that this falls far short of effective regionalism. In recent years, however, the impressive progress made through this type of intermunicipal cooperation suggests a rather rapid evolution to more effective use of this authority.¹⁶

The question raised by this article is whether these statutes and this experience provide an opportunity to develop an effective regional approach fitted to the great diversity of New York's regions. It examines first the role local governments play in determining land use and then the statutes that authorize municipalities to cooperate with respect to land use planning and control. The article traces the use of this authority through two phases of evolution revealing ever more complex and potentially effective intermunicipal strategies. It ends with some thoughts as to how the state government could facilitate effective regional processes by providing incentives for speeding this evolution toward effective grassroots regionalism.

I. LOCAL ROLE IN THE NEW YORK SYSTEM OF LAND USE CONTROL

Land use law in New York encompasses the full range of laws and regulations that influence or affect the development

¹⁵ See, e.g., N.Y. ENVTL. CONSERV. LAW §§ 44-0101 to -0121 (McKinney 1997) (describing the grant of power as a process which promotes a "cooperative effort"); Susquehanna River Basin Compact, N.Y. ENVTL. CONSERV. LAW §§ 21-1301 to -1321 (McKinney 1997) (purpose of the act is to promote "interstate comity"); Champlain River Basin Compact, N.Y. ENVTL. CONSERV. LAW §§ 21-1101 to -1113 (McKinney 1997) (promoting an "intergovernmental forum" to contend with environmental problems).

¹⁶ See generally Jeff LeJava, Comment, *The Role of County Government in the New York State Land Use System*, 18 PACE L. REV. 311 (1998) (advocating county governments' continuing and increasing role in promoting vital intermunicipal agreements ("IMAs") among neighboring municipalities). An example of a successful agreement can be found in the IMA between Tompkins County and Town of Covert, Seneca County. Tompkins County extended the public transportation line into Seneca County, which effectively reduced the traffic congestion in Tompkins County. See *id.* at 371 (citing Resolution 224 which authorized an IMA between Tompkins County and the Town of Covert, Seneca County). See *Resolution No. 224—Authorizing an Intermunicipal Agreement Between Tompkins County and Town of Covert—Tomitran Public Transportation Service* (visited Oct. 14, 1999) <<http://www.co.tompkins.ny.us/bor/resolutions/r224-95.html>> (containing the text of the resolution).

and conservation of the land. This body of law is intensely inter-governmental and interdisciplinary.¹⁷ In land use law there are countless intersections among federal, state, regional, and local statutes. It is significantly influenced by other legal regimes such as environmental, administrative, and municipal law, to name a few. In this rather dense legal constellation, however, the municipal star shines more brightly than the others. This is because the role assigned to local governments is to determine the use that can be made of privately held land throughout the state.

The New York Constitution gives the state legislature the authority to pass laws to protect the public health, safety, morals, and general welfare of the people.¹⁸ In the wisdom of the legislature, primary authority to regulate land use in the public interest has been delegated to the local level: the over 1,600 villages, towns, and cities in the state. The state has retained authority to regulate certain aspects of land use,¹⁹ delegated some authority to county or regional agencies,²⁰ and, in certain instances, has shared land use authority with local governments.²¹ Occasionally, the legislature withdraws this delegated authority by enacting legislation that preempts the local role.

Using their significant power in this area, localities divide their jurisdictions into zoning districts. They further provide for the uses allowed in and the development specifications pertaining to each district. By these means, local governments create a blueprint for the future development of each community. The aggregate effect of these blueprints, when aligned on an inter-municipal basis, is the plan for the future development of the region. These patterns evolve as local boards and agencies review, approve, and condition applications for site plans, subdivisions,

¹⁷ See generally *supra* notes 13–14 and accompanying text.

¹⁸ See N.Y. CONST. art. III, § 1 (granting the state senate and assembly the express power to legislate).

¹⁹ See N.Y. State Uniform Fire Prevention and Building Code Act, N.Y. EXEC. LAW §§ 370–83 (McKinney 1993) (providing that the Act's extensive provisions shall regulate the construction of buildings throughout the state).

²⁰ See, e.g., N.Y. GEN. MUN. LAW § 239-m (McKinney 1999) (providing for county and regional agency review of local land use decisions); N.Y. EXEC. LAW §§ 800–20 (McKinney 1996) (creating the Adirondack Park Agency).

²¹ See N.Y. ENVTL. CONSERV. LAW § 24-0509 (McKinney 1997). Local governments are free to regulate freshwater wetlands so long as such regulations are at least as protective of freshwater wetlands as those of the Department of Environmental Conservation under the state Freshwater Wetlands Act. See *id.*

and special permits. They change as the local legislature rezones discrete areas and as property owners are awarded variances from the strict application of the zoning ordinance.

The enabling statutes require that the provisions of zoning ordinances must be "in accordance with a comprehensive plan"²² or "in accord with a well considered plan."²³ The New York Court of Appeals has stated that planning "is the essence of zoning."²⁴ Comprehensive planning "is the insurance that the public welfare is being served and that zoning does not become nothing more than just a Gallup poll."²⁵ Recent amendments to the delegating statutes encourage local governments to consider the comprehensive plans of other local governments and governmental agencies in adopting and amending their own plans.²⁶

II. LOCAL SELF-INTEREST IN INTERMUNICIPAL COOPERATION REGARDING LAND USE

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 certain external impacts.²⁷ Effective control over these intermunicipal, or regional, matters depends on the ability of local governments to

²² N.Y. VILLAGE LAW § 7-704 (McKinney 1996) (stating that the comprehensive plan considers factors such as safety, health, and avoidance of congestion); N.Y. TOWN LAW § 263 (McKinney 1987).

²³ N.Y. GEN. CITY LAW § 20(25) (McKinney 1989) (regulating the location of trades, industries, and buildings to consider health, safety, and welfare in accord with a "well considered plan").

²⁴ *Udell v. Haas*, 235 N.E.2d 897, 901 (N.Y. 1968). The court also references "[t]he almost universal statutory requirement that zoning conform to a 'well-considered plan.'" *Id.* at 900.

²⁵ *Id.* at 901.

²⁶ See N.Y. GEN. CITY LAW § 28-a(4)(n) (McKinney Supp. 1999); N.Y. TOWN LAW § 272-a(3)(n) (McKinney Supp. 1999); N.Y. VILLAGE LAW § 7-722(3)(n) (McKinney 1996).

²⁷ See Rena I. Steinzor, *Unfunded Environmental Mandates and the "New (New) Federalism": Devolution, Revolution, or Reform?*, 81 MINN. L. REV. 97, 174-75 (1996) (arguing that local regulations will often keep only their local interest in mind when federal regulation does not exist or apply).

plan and act in concert with one another. Over time the need to exercise some extraterritorial control has increased; questions are now being asked about how neighboring localities can protect "our" watershed or stimulate "our" economic future.

Local leaders have learned, for example, that economic development activities in one community cannot reverse negative trends in the larger economic market area. Parallel action among localities in the entire market area may be required to achieve any noticeable effect.²⁸ One community cannot create enough supply to meet the regional demand for affordable housing. Efforts in one community to protect natural resource areas that are shared with adjacent municipalities cannot succeed without compatible efforts in all the communities with land use jurisdiction affecting the resource.²⁹

Economic development, housing demand, and resource protection are but three examples of issues that require joint action to be effective.³⁰ Municipal officials have recognized the jurisdictional limits of local control. Their impressive interest in and use of IMAs to solve land use problems demonstrate this recognition.

Another limitation of exercising land use authority in isolation is that the municipal scale of operation may be less than optimal. Local financial resources, in some cases, may be insufficient to accomplish tasks that need to be undertaken. By joining with nearby communities with similar land use challenges, municipalities may share the cost of comprehensive plan preparation, drafting zoning, wetlands, and floodplain laws, and preparing aquifer protection, watershed enhancement, and corridor development plans. Historic preservation, cultural resource protection, erosion control, and visual buffering programs could also benefit from cost sharing among the municipalities. Local governments may achieve operational efficiencies as well through the formation of joint planning, zoning, historic preservation, or conservation advisory boards. Municipalities may also enter into

²⁸ See LeJava, *supra* note 16, at 314–15.

²⁹ See *id.* at 315 ("A consequence of failing to account for intermunicipal impacts of land use decisions is the difficulty in devising solutions to interjurisdictional problems.").

³⁰ See *id.* at 313–14 (discussing *Town of Bedford v. Village of Mount Kisco*, 306 N.E.2d 155 (N.Y. 1973)) where the zoning for an apartment building in one jurisdiction would affect the rural character of the adjacent municipality).

compacts to share the cost of enforcing regulations and monitoring compliance.

III. STATUTES THAT AUTHORIZE GRASSROOTS SOLUTIONS TO INTERMUNICIPAL PROBLEMS

The state legislature has authorized local governments to cooperate in all these ways. 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.³¹ This statute provides municipal corporations³² with express statutory authority to enter into IMAs for the performance of their respective functions, powers, and duties.³³

The provisions of the 1960 amendments to the General Municipal Law were broad enough to allow municipalities to cooperate regarding land use planning, regulation, and administration. Perhaps because few communities used their Article 5-G authority for that purpose, the state legislature in the early 1990s thought it was necessary to make this intermunicipal land use authority more explicit.³⁴ In 1992, the legislature enacted additional legislation to further encourage intergovernmental cooperation concerning comprehensive planning and land use regulation.³⁵ These statutes clearly illustrate 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.

³¹ See N.Y. GEN. MUN. LAW § 119-m to 119-o (McKinney 1999).

³² A municipal corporation is 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 1999).

³³ See N.Y. GEN. MUN. LAW § 119-o(1) (McKinney 1999).

³⁴ See Sponsor Memorandum in Support of S.7181-A/A.9805-A 2 (May 27, 1992).

³⁵ See N.Y. GEN. CITY LAW § 20-g(1) (McKinney Supp. 1999) ("By the enactment of [§ 20-g] the legislature seeks to promote intergovernmental cooperation that could result in increased coordination and effectiveness of comprehensive planning and land use regulation . . ."); see also N.Y. TOWN LAW § 284(1) (McKinney Supp. 1999) ("By the enactment of [§ 284] the legislature seeks to promote intergovernmental cooperation that could result in increased coordination and effectiveness of comprehensive planning and land use regulation . . ."); N.Y. VILLAGE LAW § 7-741(1) (McKinney 1996) (same).

Further improvements followed in 1993 when the state legislature enabled county governments to assist constituent localities in land use matters.³⁶ These amendments allow cities, towns, and villages to enter into IMAs with counties in order to receive professional planning services from county planning agencies.³⁷ Thus, municipalities lacking the financial and technical resources necessary to engage in professional planning activities can receive assistance from county planning agencies to carry out their land use planning and regulatory functions. Pursuant to these amendments, a county planning agency can act in an advisory capacity, assist in the preparation of a comprehensive plan, assist in the preparation of land use regulations, and participate in the formation of individual or joint administrative bodies.

IV. FIRST GENERATION IMAS³⁸

From the 1970s until the mid-1990s, under both their General Municipal Law authority to cooperate and this express power 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 and zoning boards of appeals. This kind of consolidation brings an intermunicipal perspective to the decisions of these boards. Sometimes boards were consolidated in order to apply for state or federal aid that the municipalities would not have been eligible for independently.³⁹ The costs associated with

³⁶ The 1993 amendments modified sections 119-u and 239-d of the General Municipal Law, section 20-g of the General City Law, section 284 of the Town Law, and section 7-741 of the Village Law.

³⁷ See N.Y. GEN. CITY LAW § 20-g(2)(b) (McKinney Supp. 1999) (giving the municipalities located within counties the authorization "to enter into, amend, cancel and terminate agreements with such county in order to authorize the county planning agency to perform and carry out certain ministerial functions on behalf of such municipality").

³⁸ Copies of all IMAs reference in this section are on file with the Land Use Law Center at Pace University School of Law.

³⁹ Where a village and a town were too small to desire independent planning boards, the establishment of a joint planning board with subdivision approval authority made the municipalities eligible for urban planning assistance from the State. See Opinions of the Comptroller Relating to Municipal Government, 25 Op. St. Comp. 12-14 (1969); see also Opinions of the Comptroller Relating to Municipal Government, 23 Op. St. Comp. 505-06 (1967) (federal aid for planning was contin-

these joint planning activities were to be apportioned between the participating municipalities on an equitable basis.⁴⁰

During this early period, IMAs were entered into in order 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 the hiring of shared officers, gather data on and monitor environmental conditions, share the use of water filtration plants, and conduct joint site plan review processes. Examples of this type of intermunicipal cooperation follow.

*A. Lowville Joint Planning Board and Cooperative Zoning Board of Appeals*⁴¹

The Town of Lowville and the Village of Lowville established a Joint Planning Board in 1982. Of the five board members, two are appointed by the Town, two are appointed by the Village, and the fifth is appointed jointly by the Town and Village. The same procedure is followed for designating the five-member Cooperative Zoning Board of Appeals. A fiscal agent for the Joint Planning Board and a fiscal agent for the Cooperative Zoning Board of Appeals are appointed by the Town. A Cooperative Enforcement Officer is designated by agreement of both municipalities to serve as the building inspector for both jurisdictions.

gent upon planning being performed for the entire town, including any villages within the town).

⁴⁰ See Opinions of the Comptroller Relating to Municipal Government, 23 Op. St. Comp. 505-06 (1967) (setting forth the methods by which revenues can be provided and allocated among participating municipalities for the joint performance of power, including but not limited to the levying of taxes).

⁴¹ See The Joint Town of Lowville/Village of Lowville Cooperative Zoning Board of Appeals Agreement, July 20, 1982; see also The Joint Town of Lowville/Village of Lowville Planning Board Agreement, July 20, 1982. In each instance, the joint boards combined the duties previously held separately by each of the municipalities. These agreements permit both the town and the village to jointly administer their respective land use planning and zoning programs. See *id.*

*B. Denmark-Castorland-Copenhagen Cooperative Enforcement Officer*⁴²

The Town of Denmark, the Village of Castorland, and the Village of Copenhagen entered into an IMA under the 1960 General Municipal Law. They hired a Cooperative Enforcement Officer to be responsible for the administration and enforcement of the respective land use control laws of the three municipalities. The Town of Denmark is the responsible fiscal agent of the cooperative and handles all finances associated with the agreement. The enforcement officer submits a monthly-itemized bill to each of the municipalities for services rendered. When the enforcement officer is acting on behalf of a particular municipality, the officer is considered a public officer of that municipality.

*C. Yates-Carlton-Kendall-Orleans Waterfront Revitalization Program*⁴³

A precocious agreement for its time was entered into in 1984 between the towns of Yates, Carlton, and Kendall and the County of Orleans. At this early date, they used their General Municipal Law authority to create a cooperative board in order to prepare a Waterfront Revitalization Program among the three municipalities (towns) which contracted with the County to provide planning and technical services. The board was charged with securing citizen participation, gathering input, and reporting regularly on the program to the town boards.

⁴² See The Denmark-Castorland-Copenhagen Cooperative Enforcement Officer Agreement. Under the authority of Article 5-G of the General Municipal law, the Town of Denmark, Village of Castorland, and the Village of Copenhagen, entered into an IMA whereby they jointly appointed a cooperative enforcement officer. See *id.* The cooperative enforcement officer was responsible for performing "those assigned duties relative to administration and enforcement of respective land use control local laws." *Id.* para. 6.

⁴³ See The Kendall, Yates, Carlton-Lake Ontario cooperative Waterfront Board Agreement, July 16, 1984. The Kendall, Yates, Carlton-Lake Ontario Waterfront Board ("KYC Cooperative Board") was created in order to "[r]esearch, coordinate, and prepare a Local Waterfront Revitalization Program on behalf of the agreeing Towns." *Id.* at II.A. The board was given authorization to form a contract with the Planning and Development Department of Orleans County. See *id.* at II.B. If any of the participating municipalities terminated its membership and cooperation from the KYC Cooperative Board before completion, then that municipality would not be entitled to any monetary reimbursement. See *id.* at VII.B.

*D. DeKalb-Richville Joint Site Plan Review*⁴⁴

The Town of DeKalb and the Village of Richville, together with the assistance of the St. Lawrence County Planning Office, established a combined Planning Board in 1991. According to the Agreement, three of the five Planning Board members must reside in DeKalb and the remaining two must reside in Richville. A quorum requires at least two of the DeKalb residents and one resident from Richville. A majority of the membership of the Planning Board constitutes a majority vote. The Board is authorized to receive applications for site plan review. They may choose to approve, approve with modifications and conditions, or disapprove of such applications. The Board may act as lead agency for the purpose of conducting an environmental review of a proposed site plan. DeKalb and Richville each appoint their own enforcement officer, but one person can be appointed to hold both positions simultaneously. Each municipality independently brings actions against violators of the Site Plan Review Law. Such actions may include fines or penalties.

*E. Village of Forestville-Chautauqua County Water Resource Development Agreement*⁴⁵

In 1992, the Village of Forestville sought the expertise of the Chautauqua County Department of Health, Division of Environmental Services, in assessing and developing the Forestville's public water supply. Pursuant to an IMA negotiated between the Village and the County, County employees conducted hydrological testing and an evaluation of Walnut Creek to assess the quantity and quality of Forestville's water supply. Forestville, lacking the technical staff necessary to perform this analysis

⁴⁴ See The Town of DeKalb Site Plan Review Law, Mar. 2, 1991. "[P]ursuant to Article 5-G of the New York State General Municipal Law, § 271 of the New York State Town Law, and § 179-f of the New York State Village Law" the Dekalb Site Plan Review Law was enacted in order to create an agreement between the Town of Dekalb and the Village of Richville whereby a joint planning board would be established in order to receive, review, and accept or reject all site plans submitted from within the two municipalities. *Id.* § 6.1.

⁴⁵ See The Village of Forestville and County of Chautauqua Water Resource Development Agreement, Dec. 10, 1992. The Village of Forestville solicited the County of Chautauqua's expertise and help in evaluating, assessing, and addressing problems with water quality and water quantity. See *id.* The agreement stipulated that the County of Chautauqua would be paid by the Village of Forestville for the hydrological testing and evaluation that the county would perform on the village's water supply. See *id.*

themselves, took advantage of the appropriate county resources after experiencing severe water quantity shortages and water quality problems.

*F. Mianus River Watershed Resolution*⁴⁶

Intermunicipal cooperation may take a form other than a full-fledged IMA. The New York towns of Bedford, North Castle, and Pound Ridge and the Connecticut towns of Greenwich and Stamford passed a joint resolution in 1992 recognizing the Mianus River and its watershed "as an important natural, cultural and economic resource."⁴⁷

By the adoption of parallel resolutions, these five municipalities, in two states, agreed to "actively support intermunicipal cooperation to promote bioregional watershed protection."⁴⁸

*G. City of Dunkirk-Village of Fredonia Water Services Agreement*⁴⁹

The Village of Fredonia contracted with the City of Dunkirk in 1993 to have the City of Dunkirk extend its public water supply to the Village of Fredonia. In addition, Fredonia consulted with Dunkirk regarding the appropriateness of expanding Fredonia's filtration plant. The agreement stipulated that Fredonia would provide and maintain the necessary water distribution lines, mains, and pumps at its own cost. It also defined the liability of the two municipalities for damages in the event of a disruption in service.

⁴⁶ See The Mianus River Watershed Resolution, November 17, 1992. The Mianus River Watershed resolution is an example of an IMA among municipalities of different states, in this case New York and Connecticut. See *id.* The municipalities all have a vested interest in the Mianus Watershed because it supplies the "drinking water for 130,000 residents in Westchester County and southeastern Connecticut." *Id.* para. 2.

⁴⁷ *Id.* para. 11.

⁴⁸ *Id.* para. 12.

⁴⁹ See The City of Dunkirk-Village of Fredonia Water Services Agreement, July 16, 1993. The City of Dunkirk entered into an agreement with the Village of Fredonia whereby Dunkirk agreed to supply Fredonia with water from January 1, 1993 through December 31, 1997. See *id.* The "contract" is renewable for a five-year term contingent upon the mutual consent of both Dunkirk and Fredonia. See *id.*

*H. Nunda Joint Planning Board and Joint Zoning Board of Appeals*⁵⁰

The Town of Nunda and the Village of Nunda created a joint planning board in 1993 with four members from the Town and three members from the Village. The two municipalities also have a joint zoning board of appeals with two members from the Town and three members from the Village.

*I. Castile-Perry Zoning Agreement*⁵¹

In 1994, the Town of Castile, the Village of Castile, and the Village of Perry enacted amendments to their respective zoning regulations to coordinate land development and preservation efforts among the three municipalities. The objectives of the amendments included the protection of agricultural uses, the provision of open space, and the prevention of an excessive concentration of population.

*J. Titicus River Watershed*⁵²

Entered into in 1995, the Titicus River Watershed Intermunicipal Agreement is an example of interstate and intermunicipal cooperation. Two New York towns (Lewisboro and North Salem) and one Connecticut town (Ridgefield) formed a cooperative entity for the preservation of the Titicus River and Reservoir, which furnish drinking water to New York City. The cooperative es-

⁵⁰ See The Town of Nunda and Village of Nunda Joint Planning Board of Appeals Agreement, July 12, 1993; see also The Town of Nunda-Village of Nunda Joint Zoning Board of Appeals Agreement, July 12, 1993. In both agreements, the Town of Nunda created a joint board via an intermunicipal cooperative agreement with the Village of Nunda. See *id.* Prior to this agreement, each municipality maintained its own separate board. The agreement created a joint board that superceded previous boards. See *id.*

⁵¹ See The Castile-Perry Zoning Agreement, Sept. 19, 1994. The Town of Castile, Village of Castile, and Village of Perry entered into a municipal agreement whereby they all repealed and amended their local laws in order to coordinate their efforts in regulating "the height, the number of stories and size of buildings and other structures, and other open spaces, and the density of population and location and use of buildings, structures and land for trade, industry, residences or other purposes." *Id.* § 1.

⁵² See The Titicus River Watershed Agreement, July 14, 1995. The New York Towns of Lewisboro and North Salem and the Connecticut Town of Ridgefield participated in an IMA whereby they endeavored to maintain and protect the water quality of the Titicus River Watershed. See *id.* The agreement was entered into to "establish[] a volunteer monitoring program for the Titicus River and Reservoir Watershed." *Id.* at 8, paras. 3 and 4.

established the Titicus River Watershed Volunteer Monitoring Program. Its purpose is to gather data on water quality in the watershed for use by municipal officials and private individuals in making land use decisions. The cooperative devised a work plan and a budget for implementing the plan. The Town of North Salem serves as the administrator of the program, possessing the authority to enter into service and purchase contracts on behalf of the cooperative. The City of New York, also a signatory to the agreement, participates through its Department of Environmental Protection, and reimburses the cooperative entity for the program's costs.

V. SECOND GENERATION IMAS⁵³

Although many of the activities performed through these first generation compacts were relatively simple in nature, they provided valuable examples for future agreements. 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. The Castile-Perry Agreement arguably began a new phase of land use cooperation, initiating the joint adoption of zoning provisions. The Titicus River Agreement, referenced above, shows this practice evolving across state borders.

Over the next several years, a second generation of intermunicipal compacts appeared. These are more intricate agreements than those that preceded them. They demonstrate 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. Examples of the more highly evolved form of IMAs follow.

⁵³ Copies of all IMAs reference in this section are on file with the Land Use Law Center at Pace University School of Law.

*A. Historic River Towns*⁵⁴

Nine municipalities and one non-profit organization joined together in 1994 to enhance economic development and the tourism among them. Known as the Historic River Towns of Westchester, cities, towns, and villages from Peekskill to Hastings entered into an IMA to combat the consequences of an economic recession in the area resulting from the closing of industrial plants. This cooperative effort sought to nullify and counteract the economic effects of recent major changes, such as the merger of General Foods and Philip Morris, the downsizing of IBM, and the closing of the General Motors plant in Sleepy Hollow. The purpose of the agreement is to increase tourism and economic activity in the Lower Hudson Valley Area. Their IMA lists seven goals⁵⁵ to be accomplished by the creation of the Historic River Towns of Westchester:

1. To promote intermunicipal cooperation among all ten participants;
2. To build the local economy of the area through public private partnerships;
3. To enhance and promote tourism;
4. To increase public awareness of their tourism attractions;
5. To improve methods of transportation to tourist sites;
6. To develop a comprehensive marketing plan for the tourist; and
7. To recommend and insure the improvement of these tourist sites.

Through this consortium, the municipalities have taken a number of actions that they could not have undertaken successfully on their own. They attracted technical assistance from the Westchester County government; attracted funding for promotional brochures and a shuttle service; arranged favorable rates and schedules with the Metropolitan Transportation Authority; advertised their collective tourist attractions; and spawned a se-

⁵⁴ See The Historic River Towns of Westchester Intermunicipal Agreement, Sept. 26, 1994. Nine municipalities and one not-for-profit organization entered into this IMA for the purpose of combating the economic recession and corporate downsizing responsible for the loss of thousands of jobs in the area. See *id.* The participants in this agreement hope to boost the economy and increase tourism in the Lower Hudson Valley area. See *id.*

⁵⁵ The enumerated seven goals are paraphrased from the original wording in the agreement. See *id.* §§ 3(a)-(f).

ries of local waterfront revitalization plans and compatible zoning amendments designed to enhance tourism, which is their common economic resource.

*B. Manhasset Bay*⁵⁶

Years of unchecked pollution and its adverse impact on Manhasset Bay led to the signing of an IMA in 1995 to preserve this shared environmental and economic resource. Eleven villages, the Town of North Hempstead, and Nassau County negotiated and signed this compact. The agreement reveals that it was the result of several years' work under programs of the U.S. Fish and Wildlife Service and the New York Department of State. The agreement recognized the interdependence of environmental conservation and economic activity, and recognized the need to collaborate intermunicipally to protect the Bay. Its goals are to:

improve the water quality Manhasset Bay so that all waters of the Bay will consistently meet water quality standards for bathing, swimming, and fishing; improve the water quality of Manhasset Bay so it will once again be classified as an area suitable for the harvesting of shellfish for human consumption; restore and enhance the surrounding tidal wetlands that serve to cleanse ecosystems; provide marine food production and wildlife habitat; offer opportunities for education, research and recreation; provide flood and storm control . . . open space and aesthetic appreciation; control and reduce point and nonpoint source pollution affecting the Bay and its environs; and coordinate local coastal regulations so as to maximize protection and enhancement efforts to improve the quality of Manhasset Bay, its tributaries and wetlands.⁵⁷

⁵⁶ See The Manhasset Bay Protection Committee Agreement, 1995. The parties entered into this IMA upon:

recogniz[ing] the importance of Manhasset Bay as a vital coastal ecosystem essential to the environmental and economic well being of the people in the surrounding communities and as a . . . significant coastal fish and wildlife habitat as noted by the U.S. Fish & Wildlife Service (1991) and the New York Department of State (1987); and the [Town of North Hempstead] and the Municipalities are deeply concerned with the existing degradation of Manhasset Bay and the potential for further degradation due to the variety of pollutant sources, including but not limited to stormwater runoff, petroleum spills, industrial effluent, illegal dumping, floatable debris and boat waste.

Id. para. 1.

⁵⁷ *Id.* para. 6, § 2.

The agreement establishes the Mahasset Bay Protection Committee to coordinate efforts to protect and enhance the quality of the Bay and its watershed. The Committee's function is to coordinate the involvement not only of the constituent municipalities, but to work with the relevant county, state, and federal agencies. Representatives of each municipality serve on the Committee. It is empowered to act for these municipalities to secure New York State Department of State grant funds, hire environmental consultants, and jointly fund and implement the Manhasset Bay Local Waterfront Revitalization Program.

*C. Oyster Bay-Cold Spring Harbor*⁵⁸

In the Oyster Bay-Cold Spring Harbor area, around Huntington, Long Island, fourteen municipalities, beginning in 1995, established a consortium to reverse the decline of this shared natural and economic resource area. They entered into a compact agreeing to seek funding, identify priority areas, adopt a harbor management plan, and create model local land use regulations. The collaborative effort is managed by a Coastal Area Advisory Committee. The agreement contains this pledge among the cooperating municipalities: "[T]he municipalities wish to improve the management of Oyster Bay-Cold Spring Harbor and enhance environmental protection of its resources; and they recognize that a harbor management plan could provide coordinated regulatory and enforcement structures to protect the surface waters of Oyster Bay-Cold Spring Harbor and its tributaries."⁵⁹

The Committee coordinates municipal cooperation with several area-wide initiatives including the implementation of the Long Island Sound Study, a Department of State Environmental Protection Fund Grant for the development of a Harbor Management Plan, and a non-point pollution and storm-water mitigation plan. Several of the charges to the Committee contained in the agreement are of particular note. They include the responsibility to: "review existing . . . land and water use regulations regarding coastal development;" "create model local laws . . . to minimize degradation of the . . . Harbor and its tributaries;" "rec-

⁵⁸ See The Oyster Bay-Cold Spring Harbor Complex Agreement. Suffolk County, Nassau County, the Town of Oyster Bay, the Town of Huntington, and ten villages entered into an IMA whereby they intend "to identify funding sources in order to finance surface water remediation and protection projects." *Id.* para. 8.

⁵⁹ *Id.* para. 9.

commend methods of improving enforcement of and compliance with coastal laws and regulations," and "identify land and water uses which, individually or cumulatively, may cause or contribute significantly to degradation of . . . [the] Harbor or its tributaries."⁶⁰

*D. Cooperative Tug Hill Council*⁶¹

The development boom anticipated in conjunction with the proposed expansion by the U.S. Army of Fort Drum, coupled with a lack of volunteers to serve on local boards in the rural communities in the Tug Hill area, prompted a consolidation of planning boards among ten municipalities in 1981. An IMA provided for the consolidation. The Tug Hill area is east of Lake Ontario and north of Syracuse, encompassing parts of four counties. Originally, the ten towns participated in the drafting of a Rural Development Code. Based on this experience, the Tug Hill Commission drafted an IMA for regulating land use among those municipalities. The agreement called for the creation of a Cooperative Planning Board, a Cooperative Zoning Board of Appeals, a Code Enforcement Committee, and Cooperative Enforcement Officers.

A 1996 amendment to this agreement replaced the Cooperative Planning Board with the Cooperative Tug Hill Council. The purpose of the Council is to collect data, identify common concerns in the Tug Hill Region, facilitate intermunicipal communication, and offer technical and project review assistance to participating communities upon request. The amended IMA established a process for the identification of "special area designations"⁶² within each town by the local legislatures. These special areas are recognized in a plan adopted by the Commission for the larger region. The Council reviews development projects occurring within the designated special areas as well as projects having regional significance. The evolution toward a more so-

⁶⁰ *Id.* para. 10.

⁶¹ See The Cooperative Tug Hill Council Agreement, May 1, 1996. Fourteen towns entered into this IMA pursuant to Article 5-G of the New York General Municipal Law. See *id.* para. 1. Issues handled by the Cooperative Tug Hill Council include "community development planning; matters affecting the central forest, watershed, and other natural characteristics; and local government management information needs." *Id.* para. 2.

⁶² *Id.* para. 3.

phisticated use of IMAs can be seen in the maturation of this compact over its fifteen-year life.

*E. Irondequoit Bay Management Project*⁶³

In 1997, the New York State Department of Environmental Conservation became a signatory, along with a county and three towns, in the creation of the Irondequoit Bay Management Project. The municipal participants are Monroe County and the towns of Irondequoit, Penfield, and Webster, which share land use control of the Bay. The agreement creates the Irondequoit Bay Coordinating Committee. The Committee is responsible for developing a consistent vision for the Irondequoit Bay, including minimizing conflicts among those concerned with the Bay's future; advocating consistency among town codes and plans; improving effectiveness of the development review process; fostering proper resource management; educating the public regarding the vision for the Bay; identifying adverse impacts on the Bay; and developing strategies to increase public use of the Bay.

The coordinating duties of the Committee are its principal charge. These duties are:

to coordinate, among the various levels of government with an interest in Irondequoit Bay, all levels of public and private use of the area, and to develop, recommend and monitor, related policies. All parties regard the [Committee] as steward of Irondequoit Bay, providing an effective mechanism to balance the rights of all stakeholders while protecting the Bay's ecosystem.⁶⁴

The role of the county government, as a member of the Committee, is to provide intergovernmental coordination, staff support and technical assistance to the committee, and technical assistance to the towns. The County is also to review development proposals for consistency with the vision and to adhere to agreed upon measures in its own permit review and approval

⁶³ See The Irondequoit Bay Management Project Agreement, July 1997. This agreement was entered into by the New York State Department of Environmental Conservation, the County of Monroe, and the Towns of Irondequoit, Penfield, and Webster, in order to coordinate the efforts of the various levels of government to provide "an effective mechanism to balance the rights of all stakeholders while protecting the Bay's ecosystem." *Id.* para. 3. This IMA was enacted pursuant to Article 5-G of the New York General Municipal Law and Article 3 of the New York Environmental Conservation Law. See *id.* para. 2.

⁶⁴ *Id.* para. 3.

process. The Department of Environmental Conservation is responsible for providing technical assistance to the Committee, creating an educational program regarding air, water, and soil quality, and guiding and instructing the Committee on the implementation of the Department's regulations under the State Environmental Quality Review Act.⁶⁵

*F. Long Island Sound-Westchester Watershed*⁶⁶

An IMA for the preservation of the Westchester portion of the Long Island Sound watershed was drafted in 1998. Eleven communities, including three cities, two towns, and six villages, joined to foster intermunicipal preservation and conservation activities consistent with their economic development plans. The communities cooperating through agreement are the cities of Mount Vernon, New Rochelle, and Rye, the towns of Mamaroneck and Harrison, and the Villages of Larchmont, Mamaroneck, Pelham Manor, Port Chester, Scarsdale, and Rye Brook.

The agreement articulates the shared interests among the communities which include increasing the economic value of the business and industrial districts, improving air and water quality, reducing noise and traffic, enhancing open space and recreational opportunities, and maintaining the cultural, social, scenic, aesthetic, and historical assets of the area. The participants in this compact understood that the process of cooperating on reducing immediate pollution threats to the Sound would build a base for cooperation on more intricate matters. They cooperated in applying as a group to the Department of State for a \$50,000 grant under Title 11 of the Environmental Protection Fund to conduct a feasibility study of stormwater management issues af-

⁶⁵ See N.Y. ENVTL. CONSERV. LAW § 8-0101 to -0117 (McKinney 1997).

It is the purpose of this act to declare a state policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to enrich the understanding of the ecological systems, natural, human and community resources important to the people of the state.

Id. at § 8-0101.

⁶⁶ See The Long Island Sound Watershed Agreement, July 1, 1998. All of the municipalities that participated in the agreement share the common goal of the prevention and remediation of pollution and the preservation of the Long Island sound as a natural resource. *See id.*

fecting all the participating communities. This grant was awarded in late 1998 and will involve representatives in a mediated process of determining how to solve their multiple stormwater management issues.

VI. REFLECTION ON THE ROLE OF COUNTIES AND STATE AGENCIES

In several of the intermunicipal cooperation examples above, the county government is a key participant. These include the Yates-Carlton-Kendal-Orleans, Forestville, DeKalb-Richville, Irondequoit, Manhasset, and the Historic Hudson accords. In addition to their authority to assist local governments through intermunicipal undertakings of this kind,⁶⁷ counties carry out a number of important land use functions that can be undertaken cooperatively with localities. Counties are empowered to (1) have planning boards; (2) adopt county-wide land use plans; (3) render opinions regarding certain local land use actions; (4) participate in regional planning boards and councils; (5) review subdivision applications and septic and sewer projects; (6) establish water and sewer districts; (6) fund and staff soil and water conservation boards; (7) establish and assist environmental management councils; (8) construct roads and bridges and regulate access to them; and (9) operate community development and affordable housing programs.⁶⁸

Where a county has independent authority to carry out an activity, a county or local agreement can stipulate how these county functions are to be coordinated or shared with the localities involved. These agreements can be effective vehicles not only to arrange the assistance of the county regarding the locality's land use plans and regulations, but also for coordinating the work of soil and water conservation boards, environmental management councils, county permitting and infrastructure activities, and other county functions.

If the fifty-seven counties outside of New York City constitute viable "regions," New York State already has one venue for regional coordination and arbitration of land use matters. The fact that counties have participated in several of these impres-

⁶⁷ See *supra* note 16 and accompanying text.

⁶⁸ The boards of supervisors of county governments are responsible for establishing county or regional planning boards. See N.Y. GEN. CITY LAW § 239-b (McKinney 1999); *infra* notes 81-83 and accompanying text.

sive intermunicipal undertakings is evidence of their ability to assist and stimulate regional approaches to land use planning and control.

Also evident in several of these second generation agreements is the steady influence of the Department of State, through its Division of Coastal Resources and Waterfront Revitalization, in inducing and enabling ever more complex IMAs.⁶⁹ The Division's combination of funding resources, technical assistance, and emphasis on intermunicipal approaches to coastal resource protection has been a catalyzing force in several second generation IMAs. Among these are the Long Island Sound, Hudson River Towns, Manhasset Bay, and Oyster Bay-Cold Spring Harbor illustrations discussed above.

VII. STATE STATUTES THAT CONNECT COMPONENTS OF THE LAND USE CONTROL SYSTEM

New York land use statutes are filled with provisions that encourage connections among land use functions, all levels of government, and all parties interested in land use decision-making.⁷⁰ Consider the following sampling, which starts at the grassroots level and moves upward.

A. *Citizen Participation*

"The participation of citizens in an open, responsible and flexible planning process is essential to the designing of the optimum town comprehensive plan."⁷¹ Also, getting the most out of a planning process demands involvement because "citizen participation is essential to the design and implementation of a county comprehensive plan."⁷²

⁶⁹ See *supra* note 53 and accompanying text.

⁷⁰ See *infra* notes 71-86 and accompanying text.

⁷¹ N.Y. TOWN LAW § 272-a(1)(e) (McKinney Supp. 1999); see also N.Y. GEN. CITY LAW § 28-a(2)(e) (McKinney Supp. 1999); N.Y. VILLAGE LAW § 7-722(1)(e) (McKinney 1996).

⁷² N.Y. GEN. MUN. LAW § 239-c(1)(e) (McKinney 1999).

B. *Local Land Use Planning*

"Among the most important powers and duties granted by the legislature to a town government is the authority and responsibility to undertake town comprehensive planning" ⁷³

C. *Broad Range of Issues to Be Covered in the Comprehensive Plan*

The comprehensive plan may cover most critical community issues such as: location and intensity of land use; agricultural, historic and cultural resources; sensitive environmental areas; transportation; housing; utilities; educational; health; recreational; and cultural facilities. Other issues covered in the plan may include historic sites, economic development activities, and industrial and commercial construction.⁷⁴ The adoption of a comprehensive plan is the type of action likely to require the preparation of an environmental impact statement to investigate all its potential adverse impacts on the environment.⁷⁵

D. *Conformance of Land Use Regulations to Planning*

"All town land use regulations must be in accordance with a comprehensive plan" ⁷⁶

E. *Intermunicipal Cooperation*

Cities, towns, and villages have authority to enter into cooperative agreements with one another to create consolidated planning or zoning boards, to create compatible comprehensive plans and land use regulations, and to provide for the joint enforcement and monitoring of those regulations.⁷⁷

⁷³ N.Y. TOWN LAW § 272-a(1)(b) (McKinney Supp. 1999); *see also* N.Y. GEN. CITY LAW § 28-a(2)(b) (McKinney Supp. 1999); N.Y. VILLAGE LAW § 7-722(1)(b) (McKinney 1996).

⁷⁴ *See* N.Y. TOWN LAW § 272-a(3)(a)-(l) (McKinney Supp. 1999); *see also* N.Y. GEN. CITY LAW § 28-a(4)(a)-(l) (McKinney Supp. 1999); N.Y. VILLAGE LAW § 7-722(3)(a)-(l) (McKinney 1996).

⁷⁵ *See* N.Y. GEN. CITY LAW § 28-a(9) (McKinney Supp. 1999).

⁷⁶ N.Y. TOWN LAW § 272-a(11)(a) (McKinney Supp. 1999); *see also* N.Y. GEN. CITY LAW § 28-a(12)(a) (McKinney Supp. 1999); N.Y. VILLAGE LAW § 7-722(11)(a) (McKinney 1996).

⁷⁷ *See* N.Y. GEN. CITY LAW § 20-g (McKinney Supp. 1999); N.Y. TOWN LAW § 284 (McKinney Supp. 1999); N.Y. VILLAGE LAW § 7-741 (McKinney 1996); *supra* note 35 and accompanying text.

F. Shared Resource Protection

Local governments are specifically authorized to create intermunicipal overlay districts "for the purpose of protecting, enhancing or developing one or more community resources."⁷⁸

G. Consideration of Regional Needs

Local comprehensive plans are authorized to consider "regional needs and the official plans of other governmental units and agencies within the region."⁷⁹

H. Local or County Interrelationships

The General Municipal Law authorizes all municipalities, including counties, to enter into agreements to perform services and functions together that they are authorized to undertake independently.⁸⁰ Counties with county planning boards are authorized through those boards to assist in the preparation of local comprehensive plans and land use regulations and participate in joint planning and zoning boards formed by one or more municipalities.⁸¹ The county legislative body may authorize the county planning board to review certain classes of planning and zoning actions by local governments.⁸² Within or across county lines, municipalities are authorized to form an association to promote community or inter-community planning and to cooperate with appropriate county and state authorities regarding the county comprehensive plan.⁸³

I. County Comprehensive Planning

County legislative bodies may request the county planning board to assist in the preparation of a county comprehensive plan

⁷⁸ N.Y. GEN. CITY LAW §20-g(3)(c) (McKinney Supp. 1999); *see also* N.Y. GEN. MUN. LAW § 119-u(4)(e) (McKinney 1999); N.Y. TOWN LAW § 284(4)(e) (McKinney Supp. 1999); N.Y. VILLAGE LAW § 7-741(3)(c) (McKinney 1996).

⁷⁹ N.Y. TOWN LAW § 272-a(3)(b) (McKinney Supp. 1999); *see also* N.Y. GEN. CITY LAW § 28-a(4)(b) (McKinney Supp. 1999); N.Y. VILLAGE LAW § 7-722(3)(b) (McKinney 1996).

⁸⁰ *See generally* N.Y. GEN. MUN. LAW art. 5-G (McKinney 1999); *see also* N.Y. GEN. MUN. LAW § 119-o(1) (McKinney 1999); *supra* note 31.

⁸¹ *See* N.Y. GEN. MUN. LAW § 119-u(2)(b) (McKinney 1999); *see also* N.Y. GEN. CITY LAW § 20-g(2)(b) (McKinney Supp. 1999); N.Y. TOWN LAW § 284(2)(b) (McKinney Supp. 1999); N.Y. VILLAGE LAW § 7-741(2)(b) (McKinney 1996).

⁸² *See* N.Y. GEN. MUN. LAW §§ 239-c(3)(a), 239-m (McKinney 1999).

⁸³ *See id.* § 239-g.

which may include all the elements of a local comprehensive plan as well as “[c]onsideration of cumulative impacts of development, and other issues which promote compliance with the state environmental quality review act.”⁸⁴

J. Regional Partnerships

A state statute declares that “[r]egional planning councils serve as an increasingly important resource to the state and its localities, helping to establish productive linkages between communities as well as with state and federal agencies.”⁸⁵ Contiguous localities are authorized to establish regional planning councils, gather information, and prepare regional comprehensive plans.⁸⁶ Regional plans are authorized to contain the same components as local and county comprehensive plans.

VIII. STATE INCENTIVES FOR INTERMUNICIPAL LAND USE COMPACTS

What is missing 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?

In the Tug Hill Agreement, participating communities have been working together since 1981. The recent amendments to their compact stipulate that the Cooperative Tug Hill Council, which has become a regional coordinating entity, is to pursue the following primary objectives:

- 1) To provide staff who will, through regular contact with participating municipalities, identify problem areas and needed services, and who will coordinate activities designed to address all such issues.
- 2) To establish a representative forum by which issues and opportunities of common or individual concern can be affected

⁸⁴ *Id.* § 239-d(1)(p).

⁸⁵ *Id.* § 239-h(1)(b).

⁸⁶ *See id.* § 239-h(4)(a)(i)-(iii).

- 3) To establish a [regular] communication system [with the constituent governing bodies]
- 4) To explore all avenues of cooperation by and between participating municipalities.
- 5) To visualize the future from a big picture or multitown perspective and to create opportunities through cooperation for achieving such vision.
- 6) To retain the rural character of the [communities] . . . rely[ing] primarily on special area designations by each town, and a plan for the entire . . . region.
- 7) To provide technical and project review assistance . . . [to constituent towns] when development is proposed in designated special areas, and when projects of [regional] significance are proposed.
- 8) To carry out project review in cooperation with affected towns when development . . . in a special area . . . [or a project of regional significance is proposed].⁸⁷

Interestingly, this model began 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 1972.⁸⁸ 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 IMA and with representation from each participating town. This Board was the predecessor to the Cooperative Tug Hill Council, whose contemporary objectives closely approximate the objectives 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

⁸⁷ The Cooperative Tug Hill Agreement, para. 3 (1)–(8).

⁸⁸ 1972 N.Y. Laws 972.

[T]he commission shall make a study of Tug Hill which shall include . . . the conservation and development of the natural resources of the region, notably the flora, fauna, scenic beauty and environmental purity; the strengthening of cultural resources, social organizations, economy and general well-being of the rural communities and the development of measures by which the region may draw strength from neighboring areas, but at the same time protecting itself from unplanned population growth.

Id. § 2.

serendipitous process. In one instance, inspired local officials forge a compact, whereas in another, a county coalesces an alliance. In still a third occasion, 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, in the aggregate, these experiences constitute a healthy and successful evolution toward grassroots regionalism. The problem with this generalization is that these experiences are highly particular and occur in all too few locations.

What is missing here other than making this form of grassroots regionalism the intentional policy of the State of New York and backing it up with the commitment of existing financial and technical resources? What if a state agency were charged with providing an aggressive educational program explaining intermunicipal authority, demonstrating the remarkable results of the second generation compacts, and providing 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? What if the state's 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 likely to be allocated to designated areas that contain significant natural resources or fertile agricultural lands?

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