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Performance Zoning: Shaping Land Development Patterns Today

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Abstract: Over thirty years ago The United States Court of Appeals upheld municipal efforts to control growth in the case *Golden v. Ramapo*. Since then, municipalities have come up with novel tools to harness development into sustainable patterns while mitigating damaging effects of sprawl. This article focuses on the renaissance of one popular land use device, performance zoning, and how the Town of Hyde Park uses this tool to promote growth in community centers and protect undeveloped areas.

Land use practitioners, scholars, and local officials from around the country are gathering at Pace Law School on November 9th to examine the legacy of the 1972 Court of Appeals decision *Golden v. Ramapo*. In that case, a number of precocious land use strategies designed to control runaway growth - techniques literally invented by the Town - were sustained by the court as being within the implied legislative powers of local government. (Information about the conference can be obtained by emailing amccoy@law.pace.edu.)

The current disenchantment with sprawl and its associated traffic congestion, disappearance of open space, lack of affordable housing, and degradation of environmental quality has spurred great interest in the legal authority localities have to redirect growth patterns through “smart growth strategies.” Experts will describe a number of such strategies at the conference which is cosponsored by the National Law Journal, the ABA Section on State and Local Government Law, Pace’s Land Use Law Center, and the Government Law Center of Albany Law School.

Among the techniques examined is performance zoning, which radically alters the legal format for controlling local land use. Traditional zoning predetermines land use through use-specific zoning districts, maximum densities, lot coverage maximums, and finite building dimensions. Performance zoning is a land use invention that is a contemporary of the techniques created by the Town of Ramapo. It gained widespread attention in 1973 in Bucks County, Pennsylvania, which advocated its use by localities to provide developers more flexibility in site and building design while protecting open space and natural

resources. The model was adopted, at least in part, by most of the communities in the county.

The Bucks County model permits or prohibits developments not by reference to dimensional and use standards but by reference to performance standards that measure the impact of a development on a particular site. In Bucks County, performance zoning was limited to housing development: all types of housing were permitted in all zoning districts and were regulated by impact measures regarding impervious coverage, retained open space, and protection of wetlands, watercourses, and other natural resources.

Some aspects of traditional zoning – such as zoning districts and certain use prescriptions – were retained in the Bucks County model. Each was governed, however, by performance standards: an open space ratio, intensity factors such as building volume, trips generated, impervious coverage, and landscaping. Dense buffering was required between incompatible uses, and a site capacity calculation was used to limit development impacts on each parcel and its surroundings. Traffic impact analyses were used, density transfers were allowed to prevent hardships, and bonus densities were allowed to encourage affordable housing.

Despite its promise and growing relevance in an environmentally-challenged society, performance zoning has not gained wide acceptance. The approach is thought to be less predictable and somewhat harder to administer than the classic use- and dimension-based approach. Its principal contribution to local land use practice has been to encourage the gradual insinuation of performance standards into traditional mechanisms such as zoning ordinances and subdivision regulations. Many localities, particularly in New York, have become accustomed to administering complex and flexible environmental reviews of their land use decisions and enforcing a growing number of environmental standards that they have adopted. These developments challenge the criticisms of performance zoning as too complex and indeterminate. The recent advent of environmental standards in local land use may have proceeded far enough to merit a fresh look at performance zoning and its practicality.

Such a look is being taken by the Town of Hyde Park which may be a few months away from adopting a modern version of performance zoning. A draft of its proposed performance zoning ordinance, subdivision regulations, and performance-based community map will be discussed on November 9th as part of the conference on the legacy of Golden v. Ramapo. What follows is a brief description of the Hyde Park proposal. The draft regulations discussed below can be obtained at www.hydeparkny.us.

The Hyde Park approach to performance-based land use regulation begins with a division of the town into six areas: a greenbelt, the Hudson River waterfront, ten neighborhoods, four hamlets, a planned development district, and

a town center. Within the neighborhood, hamlet, and town center districts, core areas are established where mixed-use, higher density development is encouraged. In the waterfront district, there are five landing districts where higher density development of water related land uses is encouraged. The planned development district connects the nationally-known Franklin and Eleanor Roosevelt sites, a national park, and the Culinary Institute of America; the PDD encourages a mix of tourism-related development and open space amenities that aspire to attract a large number of visitors, fuel the local economy, and strengthen the tax base. Major subdivision of land is discouraged in the waterfront and greenbelt districts. This is the regulatory base on which the more specific performance standards rest. This overall community design appears in, and is taken from, the adopted comprehensive plan of the community.

The organizing principle of the proposed Hyde Park zoning ordinance is to encourage “organic growth in community centers. The ordinance establishes three additional “strategic directions”: enhancement of community identity, economic expansion, and civic cohesion. The zoning is calculated to encourage a pattern of land use in which mixed uses and development with higher density, scale, and intensity of use occur in community centers supported by infrastructure and services. “Outlying areas” are reserved for lower density, scale, and intensity of use and for the maintenance of open space and natural resources. Among the purposes of the new zoning are pedestrian orientation, orderly expansion of existing centers, integrity of Hudson River views, historic preservation, affordable housing, and reduction of traffic congestion.

A trilogy of performance standards guide development permitting under the ordinance: density, intensity and scale factors. “Density” refers to the relative compactness or closeness of a land use, expressed in dwelling units per acre or employment units per acre. An employment unit is one to three persons simultaneously engaged in the conduct of a business, trade, or occupation. A business employing six persons constitutes two employment units. “Intensity” references the amount of traffic caused by the proposed land use, expressed as the number of daily vehicle trips generated. “Scale” is the size or bulk of the proposed structures, calculated in gross square feet of floor area in all buildings, excluding parking.

A list of land uses is permitted in various districts; it includes six residential, 17 non-residential, and nine “community” uses. These 32 uses may be combined; the ordinance encourages mixed uses in the core areas of all districts “provided that the scale, density, and intensity of all uses” complies with the standards established for each district. Bulk regulations are established including height, size, lot coverage, and yards.

Site design requirements regulate parking, ingress and egress, separate pedestrian ways and bicycle paths, landscaping, architectural features, stormwater management, erosion control, lighting, and infrastructure. Central

water and sewer systems are required for all major developments proposed in the neighborhood, hamlet, town center and landing districts, including their core areas. Site standards list a variety of environmental performance factors, including wetland, stream, and natural area protection. The segmentation of any significant natural habitat or wildlife corridor is to be avoided. Protected open space is to be contiguous with that on adjacent lots and designed as a cohesive whole. Historic and scenic overlay districts are created.

The Hyde Park zoning ordinance proposes the use of site plan review to achieve its four strategic objectives. In neighborhood core areas, for example, residential densities up to eight units per acre, multi-family residences, bed and breakfast establishments and commercial and community uses serving the neighborhood are encouraged.

In the four designated hamlet districts, residential uses at a density of up to six units per acre are permitted along with limited non-residential uses. In the hamlet core area, densities of up to eight dwelling units per acre are allowed along with more extensive commercial uses. In the core, residential subdivision is limited to multifamily housing purposes. In the rest of the hamlet district, subdivision of land is encouraged, as is mixed residential development that gradually decreases density from the hamlet core areas outward to the district's edge.

The Hyde Park zoning draft contains guidelines for site plan review in the one designated town center. In the core of the Town Center, performance maximums are 32,000 gross square feet, 24 dwelling units, 50 employment units, and 10,970 daily vehicle trips per acre. In the Bellefield planned development district, immediately to the south of the town center district, development is encouraged that promotes tourism-related businesses while complementing the Roosevelt park, library, and homes, including a non-vehicular trail linking these sites through an environmentally sensitive area that is to be preserved. All subdivision of land must be consistent with a comprehensive plan and vision for the roughly 1,000 acre district, clustering of development is required to create small centers of development, and no more than 50 percent of the gross floor area of all development may consist of residences. Together, the town center and Bellefield PDD promise sensitively sited economic development to serve the economic needs of the residents and build a significant tax base for the community. The Bellefield PDD is to be the gateway to the town as well as a regional hub serving the tourism industry.

The zoning map that accompanies the zoning proposals depicts the size and location of all these districts. It appears that approximately 70 percent of the land area of the town is located in the greenbelt and waterfront districts. In these two districts, the performance standards allow a maximum density of one dwelling unit per four acres, a relatively low density development pattern that assures a rural context for the well-defined districts and cores.

Proposed subdivision regulations accompany the zoning proposal. These regulations authorize the town planning board to use design standards created by Dutchess County under the Hudson River Greenway compact program, directed by the Hudson River Valley Greenway Communities Council, a state agency. These standards are contained in an extensive document called Greenway Connections. The document is full of site-specific design standards regarding landscaping, signs, parking, and lighting. The draft regulations empower the planning board to require that the standards in the Greenway Connections document be followed in any proposed subdivision.

The subdivision regulations strongly recommend that all land subdivision in the Greenbelt and Waterfront districts be clustered to maintain the rural appearance and environmental resources of the town. The objective of these cluster provisions is to leave “substantial portions” of subdivided land undeveloped. The planning board is authorized to mandate clustering for any particular subdivision that may have a significant adverse impact on the community’s rural landscape or its natural resources. Interestingly, mixed uses are permitted, including non-residential development.

These zoning and subdivision regulations are a blend of conventional and performance zoning techniques. They demonstrate that performance zoning may be viable in communities accustomed to approving development proposals under New York’s flexible environmental review requirements. Further, these proposals demonstrate a new method of packaging the environmental standards that are appearing with increasing frequency in local land use regulations

The extensive performance provisions in these regulations can be understood as environmental impact mitigation features writ large: transferring mixed-use higher density development rights to defined cores comprising approximately one third of the community and greatly restricting development in designated environmental areas. The use of detailed site plan standards and of three impact factors (density, intensity, and scale) serve the same purpose as project-by-project environmental reviews: they mitigate the environmental impact of specific developments. But they accomplish more by allowing developers in designated districts and their cores great flexibility to mix uses, achieve multifamily housing development, and build at greater densities.

These proposals are a contemporary example of local innovation in land use management that rival in our time what the authors of the Ramapo growth management provisions achieved 30 years ago.