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Managing Growth: Local Governments: Drawing the Boundaries

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Abstract: Bounded growth, a concept that encourages focused development into compact areas such as preexisting town centers, or areas rich in public transportation, is a necessary concept within the smart growth paradigm. Bounding human growth patterns facilitates the creation of sustainable, eco-friendly land usage. In New York, where the state legislature gives local governments broad authority to perform land use functions, such as bounded growth, municipalities have the option of utilizing controlled growth by amending their comprehensive plans. This article discusses bounded growth and several other underutilized tools municipalities have at their disposal to help promote smart growth by directing development to delegated areas.

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In my last two columns, I discussed smart growth, an agreeable concept in search of a clear definition. At a minimum, smart growth requires government to take two related actions. The first is the designation of discrete geographical areas into which private market growth pressures are directed. The second is the designation of other areas for recreation, conservation, and environmental protection. In this column, I address the techniques that local governments may use to designate growth areas and to direct development to them. First, we should examine whether growth should be bounded and how local governments become involved in the designation of growth areas.

Bounded Growth

Should growth be bounded in this way? Michael Pawlukiewicz, who is the Urban Land Institute's Director of Environmental Land Use Policy, endorses the notion of "compact development," by which he means growth that "is focussed on existing commercial centers, new town centers, and existing or planned transportation facilities." This, he argues, is necessary to create a sense of community, promote economically viable development, ensure the ease of movement and safety of residents, and preserve open space, natural resources, and sustainable habitats. In 1979, Portland, to comply with Oregon's innovative growth management law, imposed a growth boundary encompassing the city and 23 surrounding towns. Fifteen miles from city hall, outside the bounded growth area, is the Willamette River Valley, where growth is limited to small-scale development consistent with the predominately agricultural use of the land.

Maryland's novel smart growth spending law directs state infrastructure improvements into settled communities and "priority funding areas," which are growth areas designated by county governments. A statewide coalition supporting smart growth in New York released a set of smart growth "themes" last year which encouraged the state to target its infrastructure investments in "locally-designated growth areas."

Concentrating development in designated growth areas, bounded in some specific way, is a necessary factor in the smart growth equation. Bounded growth, however, is not a novel concept. Local governments have traditionally drawn blueprints for growth in the design of their zoning codes. Zoning's primary characteristic is the creation of hard-edged districts that separate land uses into residential, commercial, and industrial zones. Traditional zoning districts separate land uses to advance a number of public purposes. The architects of zoning thought that this approach to community planning protected children in residential districts from commercial and industrial traffic, for example, and protected residential property values by placing noxious and inconsistent uses in distant locations.

Perhaps we are moving into an era of "smarter growth" where public policy encourages more compact and integrated land uses to accomplish a number of contemporary public interests, such as the reduction of car travel and air pollution and the rate of consumption of farmland, natural resources, and environmentally sensitive areas. Smart growth advocates see the designation of areas for more compact, mixed use development as a present imperative, a necessary change in the zoning blueprint needed to address the concerns expressed by Pawlukiewicz and addressed by the Oregon and Maryland growth management initiatives.

Role of Local Government

Nationally, there has been much debate as to which level of government should be responsible for drawing the boundaries of designated growth districts. In Oregon, it is the state. In Maryland, it is the county. In New York, it appears, it is the municipality. Drafts of recently proposed smart growth bills in Albany, many ideas circulated by statewide advocates, and the Governor's recent Executive Order 2000-102 all call for local governments to designate growth areas for smart growth planning purposes.

Under the Governor's Executive Order, a Quality Communities Interagency Task Force is to "make recommendations to strengthen the capacity of local governments to develop and implement land use planning and community development strategies through a voluntary program." Last session's bipartisan Hoyt-Rath bill (A. 1969-A; S. 1367-A) declared it to be the policy of the State of New York to "encourage more compact development," and "investment in infrastructure in locally-designated growth areas." Separate bills advanced by Assemblymen Brodsky and DiNapoli accepted this grassroots approach, adding incentives and penalties geared to creating intermunicipal compacts within which growth area development can be planned at a larger scale. There are no current proposals in New York suggesting that growth areas should be designated by county, regional, or state agencies.

Authority to Designate Growth Areas

If local governments are to design the basic blueprint for smart growth, how should they proceed? State law provides numerous planning tools for municipalities to use in designating growth and conservation areas. The principal among these, of course, is the comprehensive plan, without which, the Court of Appeals has said, "there can be no rational allocation of land use." (Udell v. Haas, 21 N.Y.2d 463.) State statutes suggest that local comprehensive plans include a statement of goals and objectives regarding the community's physical development and describe the specific actions to be taken to provide for the long-range growth and development of the locality. (See Town Law § 272-a, Village Law § 7-722, and General City Law § 28-a.)

Comprehensive plans can, in fact, be quite detailed, incorporating maps, graphs, and studies that can precisely locate designated growth areas and spell out the techniques to be used to encourage development in those areas. This authority is highly elastic, and can be stretched to fit all development contexts, from urban and suburban to rural, where communities wish to control growth. Growth control measures, including goals, objectives, and techniques contained in the comprehensive plan, were validated nearly thirty years ago by the Court of Appeals in Golden v. Ramapo, 30 N.Y.2d 359.

Akin to the authority that local governments have to adopt comprehensive plans is the power to formulate Local Waterfront Revitalization Plans (LWRP) when the community is located in the state's extensive coastal areas. Under the Waterfront Revitalization and Coastal Resources Act of 1981 (N.Y. Exec. Law § 910), a local government may adopt a LWRP covering part or all of the community and devoted to protecting water-related assets while providing for future land uses in the coastal zone affected by the plan. Zoning and other land use regulations are the tools of choice for implementing LWRPs. Under these plans, harbor development districts, riverfront revitalization areas, and waterfront redevelopment zones have been established – all of which are designated growth areas.

State law permits local governments to divide the community into zoning districts and to regulate the density of population, the use of land, and the size, shape, and location of buildings within each district. (See Town Law § 261, Village Law § 7-700, and General City Law § 20(24).) Although this authority has been used in some communities to impose a grid type of development pattern on the land, with residences separated from retail and commercial areas, zoning itself may be used to designate a variety of growth districts to carry out a local smart growth agenda. Municipalities have designated large parcels of land for mixed-use zones, planned unit development districts, planned residential development devices, and floating zones.

The Village of Pawling has used this authority to designate three large land areas as traditional neighborhood districts, which provide for the development of neotraditional residential communities. This is a step toward permitting neotraditional neighborhoods that contain compact, pedestrian oriented, mixed-use development and

incorporate a variety of housing types within walking distance of employment centers, retail services, and transportation links. Under New York law, traditional neighborhood district zoning of this type involves the use of traditional zoning authority in a novel, but permissible, way. It is a zoning technique for designating a growth area. The Court of Appeals long ago endorsed these inventions when it sustained "floating zoning" in Rodgers v. Tarrytown (302 N.Y. 115, 1951) with the comment: "The village's zoning aim being clear, the choice of methods to accomplish it lay with the board."

Directing Growth to Designated Growth Areas

Once a growth area has been designated, local governments have a long shopping list of techniques they may chose from to direct development into such areas. One of these is to lower the density of development and to otherwise restrict development permitted outside the growth area. This topic is beyond the scope of this column. Facilitating development within the area can be accomplished by using the following devices:

- **Designated Growth Districts**: In a designated growth zoning district, the density of development can be increased as a matter of right. Municipalities can use their traditional zoning authority to create a Designated Growth Area District with bulk, area, and use provisions that create the type of compact development pattern envisioned by the smart growth concept. In taking this approach, smart growth advocates argue, the locality needs to create a sufficient density of development to support the transportation and transit services needed to increase pedestrian traffic and reduce car travel.
- **Bulk and Area Requirements**: A designated growth zoning district can contain bulk, area, and parking provisions that encourage types of development that support smart growth principles. By establishing set-back lines to require buildings to be brought up to the sidewalk and by requiring parking and garages in the rear, pedestrian use of streets can be encouraged and an attractive neighborhood design created. Access to residential units and offices can be provided through alleys on which garages or parking spaces are located. The number of parking spaces required can be fewer if real prospects of transit services exist. Lot sizes can be reduced and zero lot line requirements can be introduced to create higher residential and mixed-use densities. Design amenities such as front porches and traditional architectural styles can be included in the zoning provisions. Attention to the quality of the design of buildings abutting streets can encourage pedestrian use, which is important in encouraging the use of transit facilities. In some parts of these designed zoning districts, narrower streets can be specified to discourage traffic and ease pedestrian use.
- **Incentive Zoning:** Significant waivers of zoning requirements can be offered to developers, including increasing the density of development allowed, as a method of directing larger-scale development into designated growth areas. (Town Law § 261-b, Village Law §7-703, and General City Law § 81-d.) Land developers can be required to provide public amenities such as transportation, parks, affordable housing, social service centers, or other infrastructure in exchange for the waivers.

In this way, some of the services needed in designated growth areas can be provided by private developers in exchange for the increased density desired in the area.

- **Special Permits:** Larger-scale developments providing for mixed uses may be approved by special permits issued by the planning board or other administrative body. This practice has been followed for decades by municipalities as a method of combining land uses in designated "planned unit" or "planned residential" zoning districts.
- **Floating Zones:** Large-scale developments can be permitted by amending the zoning code to provide for a special use zone, such as a mixed-use development district, that can be affixed to a large parcel of land upon the application of all or a majority of the landowners. That application, if successful, results in the amendment of the zoning map to redistrict the subject parcels and permit the new use.
- **Generic Environmental Impact Statements:** When any of these techniques is used to create a designated growth area, a generic environmental impact statement can be prepared that identifies negative environmental impacts and provides for their mitigation. When this happens, it is possible that developers of individual projects will not be required to prepare lengthy and costly environmental impact studies. This alone can provide a powerful incentive for developers to concentrate their projects in designated development areas.
- **Transfer of Development Rights:** State law allows New York municipalities to establish transfer of development rights programs that concentrate development in receiving districts and provide for the transfer of development rights from sending districts. In smart growth terms, the receiving district is the designated growth area and the receiving area is a conservation or natural resource protection area. (See Town Law § 261-a, Village Law §7-701, and General City Law § 20-f.)
- **Intermunicipal Agreements:** In New York, local governments have been given liberal legal authority to cooperate in the planning and zoning field. (Town Law § 284, Village Law §7-741, and General City Law § 20-g.) Through intermunicipal agreements, they can designate shared or interlocking growth districts that create real market opportunities and a complementary range of housing types, retail services, office buildings, and needed amenities. This is a particularly important technique to consider when several communities share a transportation corridor.

Techniques for Protecting the Designated Growth Area

One of the more practical limitations to the designation of development areas is the likely opposition of residents in and near the area. They will be concerned about the quality of life in their neighborhoods, the impacts of increased density, and the effect of new development on their property values.

To counter these predictable and reasonable fears, residents will need to be involved in the planning process for the designated growth area. During meetings with these residents a variety of methods of protecting their interests can be discussed. These include adopting landmark protection laws, creating historic district protections, insuring the quality of the design of new and expanded buildings, providing new parks

and recreational facilities, establishing cheaper and more convenient transportation alternatives, and explaining the benefits of a properly functioning, pedestrian-oriented neighborhood.