

Pace University

DigitalCommons@Pace

Pace Law Faculty Publications

School of Law

12-18-2002

Smart Growth: Intermunicipal Innovation in Orange County

John R. Nolon

Elisabeth Haub School of Law at Pace University

Follow this and additional works at: <https://digitalcommons.pace.edu/lawfaculty>



Part of the [Land Use Law Commons](#)

Recommended Citation

John R. Nolon, Smart Growth: Intermunicipal Innovation in Orange County, N.Y. L.J., Dec. 18, 2002, at 5, <http://digitalcommons.pace.edu/lawfaculty/699/>.

This Article is brought to you for free and open access by the School of Law at DigitalCommons@Pace. It has been accepted for inclusion in Pace Law Faculty Publications by an authorized administrator of DigitalCommons@Pace. For more information, please contact dheller2@law.pace.edu.

Intermunicipal Growth Management Innovations in Orange County

Written for Publication in the New York Law Journal
December 18th, 2002

John R. Nolon

[John R. Nolon is a Professor at Pace University School of Law, the Director of its Land Use Law Center and Visiting Professor of Environmental Law at the Yale School of Forestry and Environmental Studies.]

Abstract: This article tells the story of the town of Warwick, a rapidly developing town in Orange County, New York, made up of three separate villages. Warwick's proactive measures to prevent the sprawl development phenomenon through the use of an intermunicipal compact was met with much opposition by the three individual village governments, as well as individual citizens. Through the use of mediation, a popular alternative resolution dispute method, representatives from the villages negotiated an intermunicipal plan that satisfied the needs all three villages, while still meeting the original objectives of preserving open space, scenic views, and agricultural lands.

Introduction

In the last two installments of this column, I discussed the precocious land use inventions of the Town of Ramapo in the 1960's that catalyzed the nation's understanding of growth management and, arguably, started the trend that has become known as the smart growth movement. Tomorrow night, December 19th, at a ceremony in Warwick Town Hall in Orange County, village and town officials will sign an agreement that caps a decade-long effort to create an intermunicipal growth management initiative. The Warwick inventions, equal in complexity and inspiration to those of Ramapo thirty years ago, illustrate that the legacy of the *Golden v. Ramapo*¹ case, in which the Court of Appeals validated local growth control for the first time in the nation, is a vital and living one.

Growth Control in Warwick

In the 1990s, Orange County, where the Town of Warwick is located, became one of the fastest growing counties in New York. Until then, Warwick had been beyond the pale of sprawl, spared the task of reworking its traditional zoning ordinance. The Town of Warwick is characterized by significant open space: highly productive farming on rich black dirt in its lowland areas, associated dairy and other agricultural activity on its adjacent uplands, and

¹ 285 N.E.2d 291 (N.Y. 1972)

significant biodiversity along the Wallkill River watershed it occupies and regulates. A decade ago, this landscape began to be dotted by large lot subdivisions, threatening the town's rural character and the vitality of its agricultural economy. During that ten year period, local leaders have been searching for methods of controlling growth, like Ramapo did in the late 1960s.

In a process that is still ongoing, the town and its centrally located village, also called Warwick, are taking the following steps: adopting compatible amendments of their comprehensive plans; approving a town bond issue in the amount of \$9.5 million bond issue for the purchase of development rights on open land; adopting smart growth zoning amendments that arrange development on the land in a graduated and balanced fashion; and entering into an intermunicipal agreement implementing a joint annexation and zoning policy. This compact between the municipalities is designed to incorporate town lands into the Village of Warwick through annexation. It provides for preliminary site plan review prior to annexation, the use of floating zoning, incentive zoning, and annexation credits to govern the award of higher densities to town land that is incorporated into the village. The agreement also establishes a trust fund into which developers of annexed land will deposit payments for the additional density afforded their lands. These funds will be shared by the village and the town to carry out their comprehensive planning objectives. Here is how each of these techniques work:

Comprehensive plans: Although encouraged by state law to do so,² local governments seldom refer to neighboring communities' comprehensive plans or land use policies in drafting their own. In August of 1999, the Town adopted *The Town of Warwick Comprehensive Plan* establishing a goal of protecting agriculture and open space and adopting a strategic principle of steering new development toward the Village of Warwick through a "density transfer program." The plan notes that this program accommodates both preservation and development interests and is designed to maintain value in lands designated for protection while promoting development that is compact, orderly, and efficient. This policy is guided, in other words, by smart growth principles. The village, in turn, has prepared a draft comprehensive plan which supports the town's policy of open space and agricultural land preservation and pledges its cooperation with the town's density transfer program. An interesting fact contained in the town's plan is that operating farms in Warwick require from 25 to 61 cents in municipal services for each dollar of taxes they pay; in contrast residential subdivisions require from \$1.05 to \$1.08 in services for each tax dollar they generate.³

Purchase of Development Rights: The town's comprehensive plan also recommends that a Purchase of Development Rights (PDR) program be

² See § 272-a Town Law which states that the "town comprehensive plan may include ... consideration of regional needs and the official plans of other government units and agencies within the region."

³ This statement is based on a study entitled *Cost of Community Services* prepared by Cornell University's Local Government Program.

instituted in the town as soon as possible. Based on a study prepared by the Land Use Law Center, the town board began a campaign to float a bond issue in the amount of \$9.5 million for the purchase of development rights on open land, principally agricultural parcels.⁴ In November, 2000, the voters of the town and its three constituent villages narrowly approved the issuance of bonds in this amount for the purpose of purchasing development rights on agricultural lands in the town and the acquisition of open space resources in the villages. A dispute which erupted over this referendum and the importance of its resolution is discussed below.

Smart growth zoning amendments: In January 2002, the town board unanimously adopted a sweeping change of local zoning to achieve the objectives of its comprehensive plan.⁵ These zoning amendments create several zoning districts, including floating and overlay zones, and adopt other techniques that provide for the arrangement of development on the land in a graduated and balanced fashion. The amendments include a traditional neighborhood overlay district designed to promote higher density; mixed use development in the town's hamlets; very low density and clustering in a rural district; medium density in a suburban residential district; a senior housing floating district; and several discrete environmental protection provisions including a conservation district to protect designated environmentally sensitive areas, a ridgeline overlay district, a land conservation district, and two agricultural land protection districts.

Intermunicipal agreement regarding annexation and zoning policy: The town and the village have drafted an intermunicipal agreement designed to incorporate town lands into the Village of Warwick and its districts in a way that provides financial resources to the village and town to accomplish their comprehensive plan objectives. In recent years, the village has annexed lands under General Municipal Law, Article 17.⁶ Each time it did, it automatically provided that the annexed lands would be zoned to permit three units of housing per annexed acre, increasing allowable density nine-fold over the three acre minimum lot size provided under town zoning. This provided annexed landowners and developers a windfall density increase. Under the intermunicipal agreement, the village will annex land in cooperation with the town and zone annexed land at the same density provided under the applicable town zoning. In much of the area around the village, town zoning allows the construction of single-family homes on three-acre lots.

⁴ Open Lands Acquisition: Local Financing Techniques Under New York State Law, written by Jeff LeJave for the Land Use Law Center and published as Technical Paper Series, No. 2, by the Metropolitan Conservation Alliance, a Program of the Wildlife Conservation Society, March, 2000.

⁵ See Warwick Town Code, Article III, §§ 164-30 *ff.*

⁶ See § 703 which states the intention of the legislature to allow annexation of territory from one local government to another and establishes as prerequisites to annexation the consent of the people in the land annexed and the consent of the local government whose land is to be annexed upon the basis of its determination that the annexation is in the over-all public interest. This section provides, where this consent is withheld, for adjudication in the supreme court of the issue of whether the annexation is in the overall public interest.

Using a combination of floating and incentive zoning, the village will create an Annexation District Zone that allows its planning board to approve up to three units per annexed acre - a significant density bonus.⁷ To qualify, the annexed owner must submit a preliminary proposal for the higher density development to the village's planning board, prior to annexation, and have it approved conceptually. The agreement provides for both the town board and the village council to approve the annexation before it occurs. Following annexation, the floating incentive zone can be affixed to the annexed land by an amendment of the zoning map, allowing the landowner to develop up to three units per acre.

Using average figures, under the town's zoning as adopted by the village, a 100 acre parcel annexed by the village might yield 25 building lots, with deductions for roads and infrastructure and environmental mitigation conditions. After the application of the village's floating incentive zone to the land, the same 100-acre parcel might yield 150 lots, accounting for the same deductions and a planning board decision to allow half acre, rather than one-third acre, lots to protect the adjacent areas. This new zoning increases the parcel's yield by 125 lots [150-25]. Under New York's incentive zoning law, the developer can be required to pay a fee for this density bonus with the funds deposited into a trust fund for specific public benefits that will be secured by the incentive awarded. If this fee is established at \$50,000 per unit, a fairly modest cost for land in the area, the trust fund contribution by the developer of this 100 acre parcel would be \$6,250,000. The agreement provides that 30 percent of this amount, nearly two million dollars, will be dedicated to the purchase of development rights on lands in the town. Over four million dollars would be deposited in the trust fund for village watershed protection, urban parks and recreation, and infrastructure improvements.

Mediation of a Border War

This creative compact between the village and town and the town's Purchase of Development Rights (PDR) program were threatened by a dispute that occurred shortly after the voters approved the bond issue to raise \$9.5 million for open space development rights acquisition. The Town of Warwick in Orange County, New York, has three villages within its borders: Greenwood Lake, Florida, and Warwick. Citizens of the villages campaigned actively against the PDR bond proposition and threatened litigation to stop it after the referendum passed. The Anti-PDR Coalition was formed prior to the November referendum and led a vigorous assault against the proposition.

⁷ Local authority to adopt floating zones was determined to be within the implied zoning power of localities in *Rodgers v. Tarrytown* CITE; incentive zoning authority is delegated to villages under § 7-703 Village Law and § 261-b of Town Law. CITE. The authority of local governments to enter into intermunicipal zoning and planning agreements is found in *See* N.Y. GEN. CITY LAW § 20-g (Supp. 1996); N.Y. TOWN LAW § 284 (Supp. 1996); N.Y. VILLAGE LAW §7-741.

Before the November 2000 election, the town stressed that the PDR Program would prevent sprawling development and reduce taxes in the long run. Its campaign literature explained that every time a new home is built within the town, the addition of students into the school system causes a deficit in the school budget. By reducing the number of new homes through the PDR program, the town argued that PDR would prevent an increase in school taxes. The campaign material also extolled the benefits of retaining the Town's rural and open character.

The villages responded with their concerns. Greenwood Lake, for example, observed that it is not in the Town of Warwick's school district and would not benefit from the purported school tax savings achieved by PDR. In addition, since it is physically separated from the town by Tuxedo Mountain, its citizens reap few of the scenic and character enhancing rewards of preserving open lands in the town. All of the villages complained that the amount of funds to be spent in the villages themselves was significantly less than the sums to be derived from village taxpayers. The villages also claimed that the PDR program would cause a shift in development to the villages, which would stress their budgets and cause more traffic congestion. The local newspaper in the Village of Greenwood Lake published lead editorials urging the public to vote against the bond resolution; a local web site was established as a clearinghouse for those opposed.⁸

After the passage of the bond act, the villages of Greenwood Lake and Florida consulted with the State Attorney General and State Comptroller to see if they could opt out of the PDR Program. In addition, the villages began campaigning against the entire agricultural preservation effort. They encouraged opposition to town preservation plans, voiced objections at town meetings, and urged county and state officials not to support the town's efforts. After the unsuccessful attempt by the town to negotiate a deal with Greenwood Lake for the purchase of village property, a regional mediation program was invited to help resolve the dispute.

For five months, the mediators worked with a group of seventeen representatives from the town and the three villages to seek a mutually acceptable outcome. An agreement was reached which met the interests of the villages through a formula that returns a pro-rata proportion of the land acquisition funds to those jurisdictions. In return for this agreement, the villages agreed to support fully the town's agricultural preservation initiative and to assist efforts to raise funds from county, state and federal sources. The settlement also contained an agreement to work toward the consolidation of school districts.

The Warwick example builds on another legacy of the local officials and professionals responsible for the Ramapo growth control ordinance. One of their critical objectives was to build wide-spread community support for the novel

⁸ <http://warwick.hvnet.com/anti-pdr/index.htm>.

approach to smart growth by taking time to involve the public, hear all sides, flesh out all interests, and incorporate them in the final ordinance.