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## In Our Backyards: Analyzing Local Authority to Adopt Environmental Laws

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**Abstract:** While the authority of municipalities to partake in land use decisions is a well-established concept, a question often arises concerning local legislative authority to adopt environmental laws. This article discusses some of the arguments advocating local environmental authority by highlighting the correlation between land use law and environmental law. Also discussed in this article, is the authority granted to local governments by the state legislature and court decisions to mitigate adverse environmental impacts.

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In the past few years, the adoption of local environmental laws has proliferated. Local legislatures have adopted provisions that protect steep slopes, trees, viewsheds, watersheds, river and stream banks, wetlands, and a host of other natural resources. In a previous column, these laws were described in some detail and the point made that they are now sufficient in number to constitute a body of law that could be called *local environmental law*. (See NY Law J., February 21, 2001, p.\_\_.) These laws are implicated when developers propose projects to local administrative bodies charged with reviewing development proposals.

Traditionally, these local bodies review development proposals to determine if they comply with the provisions of zoning ordinances and subdivision and site plan regulations. These latter regulations are thought of as land use laws and are the province of land use lawyers. The question that the adoption of local environmental laws raises is whether they are an extension of *local land use law* or whether they constitute a separate body of law known as *local environmental law*. The answer to this question has more than incidental consequences. If these emerging environmental laws are an extension of land use law, they may be seen as a supplement to a coherent system that regulates land development at the local level. If they are a new body of law, they run the risk of conflicting with local land use regimes with all the consequent inefficiencies and problems that may involve. In more technical terms, the question is whether local governments derive their authority to pass environmental protection laws under their delegated land use authority or under other provisions of state law.

### The Powers of Local Governments

The context in which this question is debated is the historical understanding of the source and extent of power of local governments. In most states, it is understood that municipalities have no inherent powers, but can exercise only that authority expressly granted or necessarily implied from, or incident to, the powers expressly granted. There are three established rules of interpretation of the power delegated to local governments. First, express powers that are unambiguous are to be enforced according to their terms. Second, when ambiguous terms are used in the delegation of powers to local governments, they are interpreted in light of the state legislature's intent and purpose. When interpreting ambiguous terms contained in the express grant of power, courts vary in how strictly they limit municipal power. The courts in many states take a strict constructionist view, holding that the powers of localities should not be lightly inferred. A standard often used in this exercise is to determine whether the authority in question is necessarily implied or incident to powers expressly granted. Third, but very seldom, courts find that some powers are implied when they are deemed to be essential to the very nature of the local government even in the absence of an express grant of power. In *Moriarty v. Planning Bd. Village of Sloatsburg*,<sup>1</sup> the New York approach to statutory interpretation in the land use field was articulated. The court, in interpreting the breadth of local government to regulate site plan development, noted "Legislative intent is determined by looking to the language of the statute, the purposes of the statute, the legislative history and the established canons of statutory construction."

### **The Delegation of Authority to Control Land Uses**

The express authority delegated to local governments in New York to adopt zoning regulations is contained in what is loosely called the zoning enabling act. Parallel provisions regarding zoning are contained in the town, village, and general city law.<sup>2</sup> The express words of the enabling act empower town, village, and city legislatures to regulate the height and size of buildings, the percentage of the lot to be occupied, the size of yards, the density of population, and the location and use of buildings. For these purposes, local legislatures are empowered to divide the community into districts of such shape and area that are best suited to carry out the purposes of the enabling act. These purposes include lessening congestion, promoting the general welfare, preventing overcrowding, avoiding undue concentrations of population, and facilitating the provision of supportive infrastructure. These regulations, according to the enabling act, shall be made for the purpose of encouraging the most appropriate use of the land throughout the municipality. The New York Court of Appeals has read this language as authorizing the adoption of various "provisions classifying and regulating the use of land within its borders in the interest of public health, safety and general welfare."<sup>3</sup>

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<sup>1</sup> 506 N.Y.S. 2d 184, 188 (2d Dept. 1986).

<sup>2</sup> See N.Y. TOWN LAW §§ 261, 262 & 263; N.Y. VILLAGE LAW §§ 7-700, 7-702, & 7-704; and similar language in N.Y. GEN. CITY LAW § 20(24) & (25).

<sup>3</sup> *Wulfsohn v. Burden*, 241 N.Y. 288, 294 (1925).

Other state-delegated authority to control land use is contained in parallel provisions of the town, village, and general city laws that empower local legislatures to adopt subdivision and site plan regulations and provide for local administrative boards to review and approve applications to develop subdivided land or individual sites. The state legislative purpose for granting subdivision authority to local governments is to provide for the future growth and development of the community, the provision of adequate infrastructure, and the comfort, convenience, safety, health and welfare of its population. Before local administrative bodies approve subdivisions, they are to require the land to be of such character that it can be used as proposed without danger to health, peril from flood, drainage, or other menace to neighboring properties or to the public health, safety and welfare.<sup>4</sup>

Site plan regulations are authorized by state law to include specifications that provide for proper parking, access, landscaping, location of buildings, protection of adjacent uses and physical features as well as “any additional elements” specified by the local legislature.<sup>5</sup> The court in *Pomona Pointe Associates, LTD., v. Incorporated Village of Pomona*<sup>6</sup> has interpreted “any additional elements” broadly to include environmental considerations. In *Pomona*, the plaintiff owned two lots with slopes of varying steepness. The village’s steep slope law required the issuance of a site plan permit for the disturbance of a “very steep” or “extremely steep slope” as defined in the law. The plaintiff challenged the law arguing that the law grants authority to the planning board in excess of the authority granted by the state site plan statute. The court found that consideration of steep slope criteria was within the authority delegated to the village pursuant to the site plan review statute. The court held that “adjacent land uses and physical features” encompass the steep slope criteria “as they are directly related to the possible impact that disturbance of very/extremely steep slopes could have on water runoff and the stable cohesive integrity of the soil, rocks, trees and vegetation on such slopes.” The court thought that it was clear that site plan review can include consideration of natural resource protection especially when adjacent resources may be adversely affected.

### Questions of Interpretation

These provisions contain the express grant of authority to local governments to adopt land use regulations. The interpretive question is whether these provisions include broad authority to adopt laws designed to protect environmental resources in the community. Some guidance on this may come by looking to those sections of state law that authorize local governments to adopt comprehensive plans, to which land use regulations must conform. These provisions, loosely known as the planning enabling act, define a “land use regulation” as a local law “enacted by the [municipality] for the regulation of any aspect of land use and *community resource protection* and includes any zoning, subdivision, special use permit or site plan regulation *or any other*

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<sup>4</sup> N.Y. GEN. CITY LAW § 33(1); N.Y. TOWN LAW § 277(1); N.Y. VILLAGE LAW § 7-730(1).

<sup>5</sup> N.Y. GEN. CITY LAW § 27-a(2); N.Y. TOWN LAW § 274-a (2); N.Y. VILLAGE LAW § 7-725-a (2).

<sup>6</sup> 712 N.Y.S.2d 275 (Sup. Ct. 2000).

*regulation* which prescribes the appropriate use of property or the scale, location and intensity of development (emphasis added)."<sup>7</sup>

Using the standard approach to statutory interpretation, a strong argument can be made that local environmental laws may be adopted as part of a community's land use regime. The arguments in support of this proposition are several. First, the zoning enabling act makes it clear that one of its purposes is to encourage "the most appropriate use of the land throughout the municipality." Laws that discourage the development of steep slopes, historic viewsheds, and critical vegetative masses certainly encourage the most appropriate use of the land. This may not rise to the level of ambiguity of meaning that even triggers an inquiry as to whether such power is necessarily implied or incident to the powers expressly granted.

Second, local environmental laws can complement the authority local governments have to impose land use standards and conditions on subdivision and site plan approvals. The state law delegating subdivision authority authorizes regulations to be adopted that accommodate the comfort, convenience, safety, health, or welfare of community residents and prevent environmental damage to adjacent properties or to the public. To the extent that environmental laws impose standards on development that respond to these needs, they fall within the legislative purpose of delegating subdivision authority to local governments. When the local legislature makes a finding that site plan reviews should consider specific environmental impacts, surely such requirements are aimed at protecting "adjacent uses and physical features." Adopting environmental protection standards and requiring them to be considered in site plan review would seem to be consistent with the express words of the statute.

Third, recall that the language of the planning enabling statute defines land use regulation broadly to include provisions regulating any aspect of land use or community resource protection. This illuminates the intention of the state legislature regarding this matter, particularly when it is understood that all land use regulations must conform to the locality's comprehensive plan.

If these arguments leave any doubt about the authority of local governments in New York to adopt local environmental laws as part of their land use regimes, those doubts may be resolved by referring to additional authority contained in the Municipal Home Rule and the Statute of Local Governments.

### Municipal Home Rule Law

Prior to 1964, there was considerable doubt about whether New York's municipal governments were empowered to adopt local laws concerning their local property, affairs, and government. In *Browne v. City of New York*, local governments were found powerless to act other than pursuant to those areas of authority specifically delegated to them in state statutes.<sup>8</sup> In direct response to the resulting ambiguity that existed over

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<sup>7</sup> N.Y. GEN. CITY LAW § 28-a(3)(b); N.Y. TOWN LAW § 272-a(2)(b); N.Y. VILLAGE LAW § 7-222 (2)(b).

<sup>8</sup> 241 N.Y. 96, 119-20, 149 N.E. 211, 218 (1925).

the extent of authority of local governments, the home rule article of the New York Constitution was amended in 1964.

The express language of the new article IX and legislation passed pursuant to it suggest that local governments are given broad home rule powers.<sup>9</sup> The state legislature implemented article IX with the enactment of the Municipal Home Rule Law (MHRL), the provisions of which are to be “liberally construed.”<sup>10</sup> Under the Municipal Home Rule Law, localities are given the authority to adopt laws relating to their “property, affairs or government,”<sup>11</sup> to “the protection and enhancement of [their] physical environment,”<sup>12</sup> and to the matters delegated to them under the statute of local governments.<sup>13</sup> The statute of local governments delegates to municipalities the power “to adopt, amend and repeal zoning regulations” and to “perform comprehensive or other planning work relating to its jurisdiction.”<sup>14</sup>

The MHRL has been regarded as a source of authority to regulate land use.<sup>15</sup> It also has been interpreted to permit the enactment of purely environmental laws. For example, in *Ardizzone v. Elliot*<sup>16</sup> the court stated that the municipality had the “power to regulate the freshwater wetlands within its boundaries under the Municipal Home Rule Law.” This is consistent with the plain meaning of the MRHL authority to adopt laws to protect and enhance the “physical environment.” This broad authority is critical to enacting laws that protect resources such as wildlife and wildlife habitat that do not fit squarely within the orbit of traditional zoning laws.

The grant of authority encompassed in the MHRL provides a safety net for communities desiring to enact extensive environmental laws. This, combined with the power of local governments to adopt zoning and planning provisions under the Statute of Local Governments provides ample authority for the state’s villages, towns, and cities to create an integrated set of land use laws. Environmental laws may be added to the municipality’s suite of land use laws simply by adopting them under the MHRL and zoning enabling act or the subdivision or site plan delegation statutes and by referencing the broad language of the planning enabling acts.

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<sup>9</sup> N.Y. Const. Art. IX.

<sup>10</sup> N.Y. Mun. Home Rule Law § 51.

<sup>11</sup> N.Y. Mun. Home Rule Law § 10.1(i).

<sup>12</sup> N.Y. Mun. Home Rule Law § 10.1(ii)(a)(11).

<sup>13</sup> N.Y. Mun. Home Rule Law § 10.1.

<sup>14</sup> N.Y. Stat. Loc. Gov’ts, § 10(6) & (7).

<sup>15</sup> See *Sherman v. Frazier*, 446 N.Y.S.2d 372, 377 (2d Dept. 1982).

<sup>16</sup> 551 N.Y.S.2d 457 (1989).