

Legal Memorandum LU09

DEFINING A COMMUNITY THROUGH THE PLAN

Zoning in towns, villages and cities in New York must be enacted in accordance with a “comprehensive plan”¹ or “well-considered plan”². New York municipalities have used the traditional comprehensive planning process and zoning regulations as their primary vehicles for protecting the public interest and attaining local development objectives, as well as a unique description of present and future goals for growth. Often in a community, however, local capital construction and infrastructure spending needs dictate the public interest. By adopting a written comprehensive plan document, localities can coordinate planning, zoning and spending for capital needs and infrastructure in a dynamic framework that directs and controls growth.

Beginning in 1993, the State Legislature enacted statutes which, for the first time, defined the “comprehensive plan”, described the items for inclusion and outlined the procedures for local adoption.³ The local legislative body has the authority to adopt the comprehensive plan and use it as a guide in developing zoning and other land use regulations. The comprehensive plan would also serve as a guide for local and state agency decision-making.⁴ Indeed, in conducting environmental reviews, state and local agencies must determine whether their actions or approvals conflict with the community’s plan.⁵

In the absence of a written comprehensive plan document, the traditional rule is that zoning must be “consonant with a total planning strategy, reflecting consideration of the needs of the community. . . .”⁶ The court will review any planning documents, minutes of legislative meetings and the text or findings section of the local zoning law to determine whether a community has zoned in the public interest or, conversely, in favor of special interests.⁷ The written plan document, however, does much more than ensure the locality has considered the public interest. The comprehensive plan allows a locality to define its community and establish binding long-term goals for development.

The definition of “comprehensive plan,” encompasses the materials, written and/or graphic, including but not limited to maps, charts, studies, resolutions, reports and other descriptive material that identify the goals, objectives, principles, guidelines, policies, standards, devices and instruments for the *immediate and long-range protection, enhancement, growth and development*’ of the municipality.⁸

The comprehensive plan identifies *what* the community looks like now, what it should look like in the future (goals, objectives, principles), *how* the community intends to get there (regulatory standards, devices and legal instruments) and *why* it should be done (protection, preservation, conservation, enhancement, growth and development). The comprehensive plan may include a range of topics at the level of detail adapted to the special requirements of the municipality. It may include a set of vision statements or combine policy goals with extensive environmental and fiscal data (e.g, environmental inventories, demographic trends, housing resources, transportation facilities).⁹ Also, the plan should include provisions for inter-municipal projects, regional compacts and shared municipal services.

Defining a town, village or city’s sense of place and its vision through a plan requires extensive community input. If the comprehensive plan is adopted pursuant to the above mentioned statutes, at least one public hearing is required during preparation and another one prior to adoption. Additional hearings or meetings ensure that all interested citizens have the opportunity to participate. Although the town, village or city legislative body may prepare the plan or delegate authority to prepare it to the planning board or another specially-created board, final approval rests with the local legislative board or body.

Different methods for collecting information about a municipality (e.g., existing land uses, environmental features and resources, historical resources and other similar data) may be used to develop the comprehensive plan.¹⁰ A Generic Environmental Impact Statement (GEIS) could assess the environmental impacts of plan adoption and any related zoning amendments.¹¹ One incentive for using the GEIS is that the municipality may recover a portion of the actual costs of its preparation from subsequent proponents of developments within the geographic area covered by the GEIS.¹² Another incentive is that in the GEIS a municipality could establish thresholds for the level of environmental review and scrutiny required for subsequent projects.

Another important but very different tool for developing the plan is a well-designed Geographic Information System (GIS),¹³ often confused with the GEIS discussed above. The Geographic Information System is a data base map which displays information visually. A locality could show plan elements to make their interrelationships more understandable to the general public. The GIS helps localities answer complex questions like:

- Where are the most desirable locations in our community to locate a new business or recreational facility?
- What is the most efficient route from the fire house to a fire at the Industrial Park at various times of day?
- Is there a relationship between the location of an old dump site and the incidence of childhood cancer nearby?
- How has the habitat of the white tail deer changed over the last five years and what is causing the change?
- What intersections have been the sites of personal injury accidents in the past three years?
- How will a proposed manufacturing plant affect our community's water supply?

The written comprehensive plan described in the State's zoning enabling statutes is really a blueprint for integrating many sectors of the local scene – e.g., transportation, human services, recreation, environment, and fiscal and economic development - into a single, cohesive document. It requires continual updating. Changing outdated planning and zoning practices requires residents to paint a picture of what their community looks like today, what it should look like tomorrow and fifty years from now, and frame that picture in a written comprehensive plan document.

¹ Town Law § 263; Village Law § 7-704.

² General City Law §20 (25)(well-considered plan).

³ Town Law § 272-a; Village Law § 7-722; General City Law § 28-a.

⁴ Town Law § 272-a(11), Village Law § 7-722(11), General City Law § 28-a(12).

⁵ See, for example, the State Environmental Quality Review Act (SEQRA) regulations at 6 NYCRR § 617.7(c)(1)(iv).

⁶ *Town of Bedford v. Village of Mount Kisco*, 33 NY2d 178, 188 (1973); *Udell v. Haas*, 21 NY2d 463 (1968).

⁷ *Asian Americans for Equality v. Koch*, 72 NY2d 121, 131 (1988).

⁸ Village Law, §7-722(2)(a); Town Law § 272-a(2)(a); General City Law § 28-a (3)(a).

⁹ See Village Law § 7-722(3), Town Law §272-a(3), General City Law § 28-a(4) for the list of elements.

¹⁰ See Village Law, §7-722(4); Town Law, §272-a(4); General City Law, §28-a(5).

¹¹ 6 NYCRR § 617.10(b).

¹² 6 NYCRR § 617.13.

¹³ <http://www.nysgis.state.ny.us>