Department of State
Local Government

Zoning and the Comprehensive Plan

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES

A Division of the New York Department of State

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Revised: 2015

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ZONING AND THE COMPREHENSIVE PLAN

Introduction

New York's zoning enabling statutes (the state statutes which give cities, towns and villages the power to enact local zoning laws)[1] require that zoning laws be adopted in accordance with a comprehensive plan. The comprehensive plan should provide the backbone for the local zoning law.

To understand the power to zone, one must understand the comprehensive plan. The comprehensive plan is the culmination of a planning process that establishes the official land use policy of a community and presents goals and a vision for the future that guides official decision-making. The comprehensive plan invariably includes a thorough analysis of current data showing land development trends and issues, community resources, and public needs for transportation, recreation, and housing. Zoning is merely one method – albeit an important one - for implementing the goals of the plan. Having a comprehensive or well-considered plan ensures that forethought and planning precede zoning and zoning amendments.

Comprehensive Plan Statutes

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

A comprehensive plan can be prepared using either state statute or common law rules for plan preparation. Municipalities that choose not to utilize the formal process provided in the State enabling statutes must nonetheless comply with the older, more general statutory requirement that zoning must comport with a "comprehensive plan". They do this by referring to the substantial body of court decisions which historically have provided New York's understanding of the comprehensive plan. In either instance, a comprehensive plan that is kept current is necessary before a local government can lawfully adopt or amend zoning.

This publication describes how the terms "comprehensive plan" came into being, analyzes case law to determine how the courts have defined the term, and explains how a formal comprehensive plan is adopted under the enabling statutes.

Historical Perspective

In describing the historical development of zoning and the events precipitating the adoption of New York's first zoning enabling act, Edward M. Bassett wrote:

> It may fairly be said, however, that the zoning enabling act embodied in the New York City charter and the building zone resolution of that city constituted the first comprehensive zoning of height, area, and use in this country.[2]

Bassett described earlier land use regulations as having a single purpose only--such as to establish height limitations, or to prohibit certain uses.[3]

The concept of *comprehensiveness*, both as to purposes and geographical scope, instead distinguished the first modern zoning laws. It was their comprehensiveness, though, that caused early proponents of zoning to fear whether those laws could withstand constitutional attack. Conversely, it was that very same comprehensiveness that ultimately protected the laws from declarations of unconstitutionality. The concept of *comprehensiveness* still applies, in the statutory requirement that zoning be adopted in accordance with a *comprehensive (*or *"well considered") plan*.[4]

Early Challenges to Zoning

Common law has long recognized that certain uses of property were, or could be, so undesirable that neighboring landowners, or the community as a whole, had the right to request their termination. Thus arose the theory of *nuisance*.[5] Although governmental regulation of the use of property through zoning has gone well beyond common-law nuisance, the landmark United States Supreme Court case upholding zoning, *Euclid v. Ambler Realty Co.*, looked to traditional nuisance law as a foundation to determine whether government possessed the power to restrict the use of land by legislative act:

> Thus the question whether the power exists to forbid the erection of a building of a particular kind or for a particular use, like the question whether a particular thing is a nuisance, is to be determined, not by an abstract consideration of the building or of the thing considered apart, but by considering it in connection with the circumstances and the locality....A nuisance may be merely a right thing in the wrong place, - like a pig in the parlor instead of the barnyard. If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control.[6]

The Court looked to states' case law and, most importantly for this analysis, to the works of planning experts of the time:

> The matter of zoning has received much attention at the hands of commissions and experts, and the results of their investigations have been set forth in comprehensive reports. These reports, which bear every evidence of painstaking consideration, concur in the view that the segregation of residential, business, and industrial buildings will make it easier to provide fire apparatus suitable for the character and intensity of the development in each section; that it will increase the safety and security of home life; greatly tend to prevent street accidents....
>
> If these reasons, thus summarized, do not demonstrate the wisdom or sound policy in all respects of those restrictions which we have indicated as pertinent to the inquiry, at least, the reasons are sufficiently cogent to preclude us from saying, as it must be said before the ordinance can be declared unconstitutional, that such provisions are clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare.[7]

The comprehensive scope of the City of Euclid's zoning law was used in the Supreme Court's decision to justify its finding of constitutionality, but the door was left open for constitutional

challenge should a different community's zoning law be found to lack a substantial relationship to public health, safety, morals or general welfare. It was left to future decisions and fact situations to provide further detail and clarity as to what that relationship really means.

The Zoning Enabling Laws

Early zoning enabling laws were fashioned with the view that zoning risked being declared unconstitutional because it had the potential to severely limit zealously-guarded property rights.[8] To safeguard against that outcome, the drafters required the actual regulations to be based on a logical and "comprehensive plan" for the betterment of the whole community. The comprehensive plan was to provide the means to connect the circumstances and the locality to the zoning law. It was, and is, insurance that the law bears a "reasonable relation between the end sought to be achieved by the regulation and the means used to achieve that end."[9]

The comprehensive plan is insurance that the ordinance bears a "reasonable relation between the end sought to be achieved by the regulation and the means used to achieve that end."

The comprehensive plan requirement also provided the means to remove the planning process from immediate political considerations and allow for more objective analysis of community growth and need:

> Inasmuch as [the zoning laws] have an intimate effect upon land they should be framed so far as possible with the knowledge and cooperation of the landowners. The enabling act requires preparatory procedure to make sure that the system is worked out as a coordinated whole. This involves the appointment of a zoning commission to prepare the proposed ordinance and zoning map, the making of a preliminary report to the local legislative body, the holding of preliminary hearings thereon, and the holding of a public hearing by the legislative body. The ordinary state enabling act provides checks and precautions to prevent hasty and impulsive changes.[10]

In Accordance with a Comprehensive Plan

In New York, the zoning enabling acts continue to require that zoning be undertaken "in accord with a well considered plan"[11] or "in accordance with a comprehensive plan."[12] Unless the town, city or village has adopted a comprehensive plan document using the more recently-enacted statutes (described later herein), local officials must refer to the extensive body of case law to determine how zoning can meet the more general "comprehensive plan" requirement.

"Comprehensive" has been defined as "covering a matter under consideration completely or nearly completely: accounting for or comprehending all or virtually all pertinent considerations".[13] "Plan" has been defined as "a method of achieving something: a way of carrying out a design: a detailed

and systematic formulation of a large-scale campaign or program of action...."[14] Put together, the words "comprehensive plan" intimate that the method proposed must be capable of being discerned and it must be inclusive. Case law has agreed.

From a planner's perspective, a plan is inclusive and comprehensive when it addresses a wide range of planning issues, perhaps through a series of component, topic-related plans. These components could include such matters as transportation patterns and future needs, natural and built resource inventories, and population trends. From a lawyer's point of view, a zoning law or amendment is inclusive when it has been enacted after and in accordance with careful study and consideration, and when it carries out a greater purpose of the community.

A common theme in the cases interpreting the requirement that zoning be in accordance with a comprehensive plan is that the zoning law (or amendment) be carefully studied before it is enacted. In *Thomas v. Town of Bedford,*[15] the New York Court of Appeals upheld a rezoning from residential to research-office use, finding that it had been enacted after careful study and consultation with experts and after extensive public hearings. In another decision, *Udell v. Haas*, the Court of Appeals stated that "one of the key factors" to be used by the courts in determining whether zoning is "in accordance with a comprehensive plan" is whether forethought has been given to the community's land use issues. The court went on to say:

> Where a community, after a careful and deliberate review of "the present and reasonably foreseeable needs of the community", adopts a general developmental policy for the community as a whole and amends its zoning law in accordance with that plan, courts can have some confidence that the public interest is being served [citations omitted].[16]

Another court has stated:

> The phrase "in accordance with a comprehensive plan" may be understood to mean (1) conforming to a master plan, (2) broad in scope of coverage, (3) all inclusive in control of use, height and area, or (4) internally consistent zoning based on a rational underlying policy.[17]

Where a local government can show that suitable studies and deliberations preceded adoption of the zoning law amendment, the potential that a zoning action will be found to reflect comprehensive planning increases. To this end, environmental assessments and impact statements can support a conclusion that a local zoning enactment "reflected a sufficient degree of comprehensiveness of planning."[18]

Environmental Reviews and Zoning

The State Environmental Quality Review Act (SEQRA) requires expansive environmental review

and thoughtful consideration of alternatives to governmental actions.[19] Since SEQRA's enactment in the mid-1970's, court challenges to zoning actions have often been based both on comprehensive planning grounds as well as on grounds involving SEQRA compliance.

The process of evaluating environmental impacts under SEQRA, "affords an excellent opportunity for the local decision maker to weigh factors that courts have traditionally used in looking at whether an underlying context of comprehensive planning was maintained."[20] The adoption and amendment of zoning laws are "actions" for purposes of SEQRA.[21] Prior to undertaking most actions, a government agency must determine their potential "significance" by evaluating the possible significant adverse environmental impacts the action may have.[22] If the agency determines that the action may include the potential for at least *one* significant adverse environmental impact, then it must require the preparation of an environmental impact statement (EIS).[23] An EIS "must assemble relevant and material facts upon which an agency's decision is to be made. It must analyze the significant adverse impacts and evaluate all reasonable alternatives."[24]

Compliance with SEQRA has been defined by the courts to require that a governmental agency take a "hard look" at the record, which includes potential environmental impacts and alternative decisions, and make a "reasoned elaboration of the basis for its decision."[25] This standard is similar to the *Udell v. Haas* requirement for "careful and deliberate review" as evidencing comprehensive planning (discussed above). Perhaps for this reason, the courts have upheld zoning law amendments where they have found evidence that a local legislative body studied a well-prepared EIS prior to adoption of the zoning amendment.[26]

Spot Zoning

Perhaps the most important theme in the leading cases interpreting the requirement that zoning be in accordance with a comprehensive plan is the language in those cases indicating that the courts will look to see whether zoning is for the benefit of the whole municipality. This requirement does not, however, preclude future zoning amendments that "respond to changed conditions in the community...". The question is whether the change "conflict[s] with the fundamental land use policies and development plans of the community ...".[27] Against this background principle, the concept of improper "spot zoning" arose.

The question of whether a rezoning constitutes "spot zoning" should be answered by determining whether the rezoning was done to benefit individual owners rather than pursuant to a comprehensive plan for the general welfare of the community

Spot zoning refers to the rezoning of a parcel of land to a use category different from the surrounding area, usually to benefit a single owner or a single development interest. Size of the parcel is relevant, but not determinative. Illegal spot zoning occurs whenever "the change is other than part of a well-considered and comprehensive plan calculated to serve the general welfare of the community."[28]

A review of the relevant cases reveals that spot zoning is the antithesis of zoning undertaken in accordance with a well-considered plan. The landmark case in the field of spot zoning is *Rodgers v. Village of Tarrytown*,[29] in which the Court of Appeals defined the rezoning of relatively small parcels of land in terms of the comprehensive planning requirement:

> Thus, the relevant inquiry is not whether the particular zoning under attack consists of areas fixed within larger areas of different use, but whether it was accomplished for the benefit of individual owners rather than pursuant to a comprehensive plan for the general welfare of the community"[30]

The fact that a rezoning will benefit a landowner will not on its own invalidate the action, so long as the action accords with a comprehensive plan. But to be in accordance with the plan, the rezoning must also further some clearly identified public purpose. In *Save Our Forest Action Coalition, Inc. v. City of Kingston,* a 107-acre parcel within a residential district was rezoned "light industrial" in order to accommodate a local manufacturing firm and the local development corporation. The court rejected a spot zoning challenge:

> Here, the primary motivation for the zoning amendment was to support local economic development through retention of the City's largest employer and to reap associated economic and tax benefits in connection with the development of a business park. The determination was made after an extensive review process, including a consideration of the impact on adjoining residential areas, consistency with existing zoning plans, environmental concerns and the availability of other suitable sites....In our view, the record discloses that sufficient "forethought has been given to the community's land use problems".... and that there was a "reasonable relation" between the rezoning determination and the worthwhile goal of improving the economic health of the community....[citations omitted].[31]

If the record shows that the zoning amendment seeks to accomplish valid public purposes and that "sufficient forethought" has been given it, the comprehensive plan requirement is met, even where the zoning amendment provides distinct treatment to a relatively small parcel.[32] If the evidence reveals that the rezoning was not enacted to benefit the community as a whole, or was enacted without regard to the community, the rezoning will fail to meet the comprehensive plan requirement.[33]

Zoning regulations should be based on a comprehensive plan which examines the housing needs of the community and the region

Regional Housing and the Comprehensive Plan

Zoning must be enacted to benefit the community, but what constitutes a "community" when housing is at issue?

In 1975, the Court of Appeals decided the case of *Berenson v. Town of New Castle*[34] which broadened the concept of

comprehensive plans to include an assessment of regional housing needs. Although the case is often cited for its impact on so-called "exclusionary zoning" practices, the decision actually extends the statutory mandate that zoning be in accordance with a comprehensive plan.

The zoning law in question in *Berenson* excluded multi-family residential housing as a permitted use in any zoning district in the town. The court recognized the right of a municipality to set up various types of use zones, with no requirement that each must contain some sort of housing balance. The court stated that its concern was not whether each *zone* was a balanced entity, but instead whether the municipality itself was to be "a balanced and integrated community." The court then proceeded to lay down a test for this determination, the first branch of which was that a "properly balanced and well-ordered plan for the community" had been provided (citing *Udell v. Haas*, *supra*). It is the second branch of the test that expands the concept of comprehensive plans, namely, whether a zoning law demonstrates that consideration is given to regional needs and requirements. The court stated that:

> ....There must be a balancing of the local desire to maintain the *status quo* within the community and the greater public interest that regional needs be met. Although we are aware of the traditional view that zoning acts only upon the property lying within the zoning board's territorial limits, it must be recognized that zoning often has a substantial impact beyond the boundaries of the municipality. Thus, the court, in examining an ordinance, should take into consideration not only the general welfare of the residents of the zoning township, but should also consider the effect of the ordinance on the neighboring communities.[35]

The "regional needs" portion of the *Berenson* decision has not been expanded beyond consideration of regional housing needs, much less does it require that a particular development project include low-income housing.[36] Instead, the question is whether the needs of both the community itself and the region have been accommodated somewhere in the zoning law.[37]

Evidence of Comprehensive Planning

Finally, how may a comprehensive plan be discerned? A comprehensive plan need not be a single document. It need not be a formally adopted plan.[38] Instead, the question of whether an inclusive scheme of action exists or has been undertaken is a conclusion reached only after considering an entire complex of facts, rather than by looking for a single planning document. For instance, the courts may find evidence of a plan in the zoning law *itself*, if the regulations set out in the law form a coherent pattern that furthers a land use policy that benefits the entire community.[39] In *Asian Americans for Equality v. Koch*, the Court of Appeals stated:

> A well-considered plan need not be contained in a single document; indeed, it need not be written at all. The court may satisfy itself that the municipality has a well-considered plan and that authorities are acting in the public interest to further it by examining all available and relevant evidence of the municipality's land use policies. [40]

Environmental reviews, environmental impact statements, and SEQRA findings "provide a constant source of readily identifiable considerations by which all those involved in the planning process can measure the background progress and effect of land use decisions".[41] Legislative findings relating to the adoption of a zoning law could evidence the plan,[42] as could minutes of the legislative body[43] and relevant studies.[44] A previously-adopted master plan or comprehensive plan may show evidence of comprehensive planning.[45] In *Town of Bedford village of Mount Kisco* the Court of Appeals held that:

Examples of where courts have found evidence of comprehensive planning

- ***a zoning law***
- ***environmental reviews & findings***
- ***legislative findings relating to adoption of a law or ordinance***
- ***minutes of the legislative body***
- ***studies***
- ***previously adopted plan***

> ....zoning changes must indeed be consonant with a total planning strategy, reflecting consideration of the needs of the community....What is mandated is that there be comprehensiveness of planning, rather than special interest, irrational *ad hocery*. The obligation is support of comprehensive planning, not slavish servitude to any particular comprehensive plan. Indeed sound planning inherently calls for recognition of the dynamics of change [citations omitted].[46]

What must such evidence show? The "courts have required the municipal governing body to zone in accordance with a land use policy which is in the interest of the overall community."[47] The local governing body must show that it has given "some thought to the community's land use problems"[48] and, implicitly, must have fashioned its zoning as a regulatory means to address these problems:

> The function of land regulation is to implement a plan for the future development of the community....Its exercise is constitutional only if the restrictions are necessary to protect the public health, safety or welfare. The requirement of a comprehensive or well-considered plan not only insures that local authorities act for the benefit of the community as a whole but protects individuals from arbitrary restrictions on the use of their land. [49]

The connection between *planning* and *regulation* serves both the underlying constitutional need to find a reasonable relationship between the ends sought to be achieved and the means chosen, as well as the strong underlying policy concern that regulation through zoning should serve the entire community. The "challenged zoning resolution itself need not be a well-considered plan, as long as it is in accord with one."[50]

Adoption of a Comprehensive Plan

Until the 1990's, the court-fashioned definitions of "comprehensive plan" alone provided guidance to towns, villages and cities as they drafted and enacted zoning laws. While these definitions provide guidance in determining whether a zoning law has a rational basis, they do not require or allude to a particular *process* for developing a plan. Recent statutory change has filled that void.

Chapter 209 of the Laws of 1993 amended the zoning enabling statutes to define a "comprehensive plan" and provide an optional process for adopting one. Under these provisions a comprehensive plan:

> ....means 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 town located outside the limits of any incorporated village or city.[51]

What may a comprehensive plan address?

• Goals, objectives and policies for the immediate and long-range enhancement growth and development of the community
• Existing and proposed land uses, and their intensity
• Agricultural uses, historical resources, cultural resources, natural resources, coastal resources and sensitive environmental areas
• Population, demographic and socio-economic trends
• Transportation facilities
• Utilities and infrastructure
• Housing resources and needs
• Infrastructure
• Other governmental plans and regional needs;
• Economic development;
• Proposed means to implement goals, objectives and policies.

Adoption of a comprehensive plan under the current State zoning enabling provisions is voluntary. If a city, town or village chooses to utilize the process, the resulting plan may range from a set of policy or vision statements to a very lengthy document composed of many subject-specific component plans (e.g., components relating to transportation, natural resources, historic resources, or population statistics). Once an actual plan is adopted, however, all land use regulations must be in accordance with it.[52] This usually means (though it is not mandated) that plan adoption is followed by the adoption of a series of zoning laws designed to "implement" the comprehensive plan. For these communities, then, the statutory requirement that zoning be "in accordance with a comprehensive or well-considered plan refers to the comprehensive plan pursuant to Town Law, §272-a, Village Law, §7-722 or General City Law, §28-a, as the case may be. For those communities which choose not to adopt a comprehensive plan pursuant to these statutes, the traditional court-fashioned definition continues to apply. [53]

A comprehensive plan may include, "at the level of detail adapted to the special requirements of the [community]," statements of goals, objectives or policies, transportation facilities, agricultural practices, housing resources, existing land uses, educational and cultural facilities, parklands,

economic strategies and anything else consistent with the orderly growth and development of the local government.[54] While the governing board ultimately adopts the plan, that board has several options for the plan's preparation: it may either prepare the plan itself, or instead delegate that function to the local planning board or to a "special board" created for the purpose. If prepared by a planning board or special board, that board must refer the proposed plan to the governing body.[55]

Benefits of a comprehensive plan

- **Provides a process for identifying community resources, long range community needs, and commonly held goals**
- **Provides a process for developing community consensus**
- **Provides a blueprint for future governmental actions**

Local governments considering adopting a comprehensive plan must follow SEQRA procedures as early in their deliberations as possible.[56] Adoption of a comprehensive plan is a "Type 1 Action" for purposes of SEQRA review, meaning that it is an action "more likely to require the preparation of an EIS."[57] The local governing body, as the agency responsible for adopting the plan, must be the "lead agency", and is therefore responsible for assuring and documenting that SEQRA requirements are met.[58]

The board preparing the comprehensive plan must hold one or more public hearings and other meetings, as it deems necessary, to assure full opportunity for citizen participation.[59] Additionally, the governing body must hold a public hearing on the proposed plan prior to its adoption.[60]

The proposed comprehensive plan must be submitted to the appropriate county or regional planning agency for review under General Municipal Law, §239-m.[61] Adopted plans and amendments are filed with the municipal clerk and with the county planning agency. [62] Adopted[62] plans must be reviewed periodically by the local government that has adopted it.[63]

Once a comprehensive plan is adopted using the State zoning enabling statutes, all land use regulations of the community must be consistent with the comprehensive plan. In the future, the plan must be consulted prior to adoption or amendment of any land use regulation. In addition, other governmental agencies that are considering capital projects on lands covered by the adopted comprehensive plan must take the plan into consideration.[64]

Conclusion

New York requires that zoning be adopted in accordance with a well-considered or comprehensive plan. This requirement reflects both underlying constitutional considerations and a public policy that views zoning as a tool to plan for the future of communities. Over the years, the New York courts have defined the comprehensive plan to be the governing body's process of careful consideration and forethought, resulting in zoning that is calculated to serve the community's general welfare.

During the 1990's the zoning enabling statutes were amended to provide a process for adoption of a comprehensive plan--a formal planning document that can provide goals and objectives for the community. Once the plan is adopted, the community's land use regulations must be consistent with it. For those communities that choose not to adopt a formal plan according to the statutes, the requirement that zoning be "in accordance" with a comprehensive plan still applies, but the long-standing, court-fashioned definition of comprehensive planning continues.

ENDNOTES

1. General City Law §20(25); Town Law §263; Village Law §7-704.

2. Bassett, Edward M., *Zoning*: *The Laws, Administration, and Court Decisions During the First Twenty Years* (1940) p. 23.

3. *Id.* at pp. 22-23.

4. See note 1.

5. Rohan, Patrick J., *Zoning and Land Use Controls* (1998) §16.02[2].

6. *Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926).

7. *Id.,* at 394.

8. See *Golden v. Planning Board of the Town of Ramapo*, 30 N.Y.2d 359, 370, fn 4 (1972), *app. dism.* 409 U.S. 1003 (1972).

9. *Fred F. French Investing Co., Inc. v. City of New York*, 39 N.Y.2d 587, 596 (1976), *app. dism.*, 429 U.S. 990 (1976).

10. Bassett, *supra*, p. 28.

11. *Gen. City Law §20(25)*.

12. *Town Law §263; Village Law §7-704.*

13. *Webster's Third New International Dictionary (Unabridged), 2002*.

14. *Id.*

15. 11 N.Y.2d 428 (1962).

16. 21 N.Y.2d 463, 470 (1968).

17. *Udell v. McFadyen*, 40 Misc.2d 265, 267 (Sup. Ct., Nassau Co., 1963), citing Haar, *In Accordance With a Comprehensive Plan*, 68 Harvard Law Review 1154.

18. *Daniels v. Van Voris*, 241 A.D.2d 796, 798 (3rd Dept., 1997).

19. *Environmental Conservation Law, Art. 8; Title 6, Official Compilation of Codes, Rules and Regulations of the State of New York (NYCRR) Part 617*. Earlier zoning cases held, on comprehensive planning grounds alone, that deliberate and careful consideration of proposed zoning actions should include a review of reasonable alternatives. See *Udell v. Haas*, *supra*. See also *Northeastern Environmental Developers v. Town of Colonie*, 72 A.D.2d 881 (3rd Dept., 1979). *app. dism.* 49 N.Y.2d 800 (1980).

20. See Damsky, Sheldon W., *SEQRA and Zoning Law's Requirement of a Comprehensive Plan*, 46 Albany Law Review 1292, 1297 (1982).

21. 6 NYCRR §617.2(b)(3).

22. 6 NYCRR §617.7.

23. 6 NYCRR §617.7(a)(1).

24. 6 NYCRR §617.9(b)(1).

25. This is commonly referred to as the "hard look" test. See *H.O.M.E.S. v. New York State Urban Development Corp.*, 69 A.D.2d 222 (4th Dept., 1979) and *Neville v. Koch*, 173 A.D.2d 323 (1st Dept., 1991), aff'd 79 N.Y.2d 416 (1992); *Matter of Jackson v. New York State Urban Development Corp.*, 67 N.Y.2d 400 (1986); *Akpan v. Koch*, 75 N.Y.2d 561 (1990), *mot. to am. den.*, 76 N.Y.2d 846 (1990); *Kahn v. Pasnik*, 90 N.Y.2d 569 (1997).

26. See *Gernatt Asphalt Products, Inc. v. Town of Sardinia*, 87 N.Y.2d 668 (1996); *Skenesborough Stone, Inc., v. Village of Whitehall*, 254 A.D.2d 664 (3rd Dept., 1998); *Akpan v. Koch*, *supra*.

27. *Gernatt Asphalt Products, Inc. v. Town of Sardinia*, *supra* at 685, citing *Udell v. Haas*, *supra* at 472.

28. *Collard v. Village of Flower* Hill, 52 N.Y.2d 594, 600 (1981), citing *Rodgers v. Village of Tarrytown*, 302 N.Y. 115, 124 (1951).

29. 302 N.Y. 115 (1951).

30. *Id.,* at 124.

31. 246 A.D.2d 217, 221-222 (3rd Dept., 1998).

32. Similarly, floating zones--which are zoning districts created within the text of a zoning law for placement on the map at a later time--have been upheld in the face of spot-zoning claims, where it was shown that comprehensive planning supported the change. See *Beyer v. Burns*, 150 Misc.2d 10 (Sup. Ct., Albany Co., 1991).

33. *Cannon v. Murphy*, 196 A.D.2d 498 (2nd Dept., 1993); *Schoonmaker Homes-John Steinberg, Inc. v. Village of Maybrook*, 178 A.D.2d 722 (3rd Dept., 1991), *lv. to app. den.*, 79 N.Y.2d 757 (1992); *Lazore v. Board of Trustees of Village of Massena,* 191 A.D.2d 764 (3rd Dept., 1993); *Daniels v. VanVoris, supra*; *Rye Citizens Committee v. Board of Trustees for the Village of Port Chester*, 249 A.D.2d 478 (2nd Dept., 1998).

34. 38 N.Y.2d 102 (1975).

35. *Id.* at 110-111.

36. In *Gernatt Asphalt Products*, *Inc., supra*, at 685, the Court of Appeals specifically declined to expand the *Berenson* test for exclusionary zoning to encompass industrial uses.

37. *Asian Americans for Equality v. Koch*, 72 N.Y.2d 121, 133 (1988).

38. *Neville v. Koch*, *supra*.

39. In *Gernatt Asphalt Products, Inc. supra,* at 685, the Court of Appeals found that "[t]he amendments at issue in this case are, by their very nature, in accord with the comprehensive plan manifested in the Zoning Ordinance of the Town of Sardinia originally enacted."

40. *Asian Americans for Equality*, *supra* at 131.

41. Damsky, *supra* at 1297; *Schoonmaker Homes, supra*; *Rye Citizens Committee*, *supra.*

42. This was the case in *Town of Bedford v. Village of Mount Kisco*, 33 N.Y.2d 178 (1973). See also *Gernatt Asphalt Products, Inc., supra*, at 684-686. Conversely, in *Eggert v. Town Board of the Town of Westfield*, 217 A.D.2d 975, 977 (4th Dept., 1995) the relevant zoning amendment was struck down for failure to comply with the comprehensive plan requirement with the explanation that, "... [t]he record does not contain any detailed explanation by the Town Board for changing the permitted uses in the district... ."

43. *Lazore*, *supra*.

44. *Cohen v. Vecchio*, 197 A.D.2d 499 (2nd Dept., 1993), *lv. to app. den.* 83 N.Y.2d 751 (1994).

45. *Tilles Investment Co. v. Town of Huntington*, 74 N.Y.2d 885 (1989). The decision also implies that subsequent amendments to a zoning ordinance need not indicate an intent to abandon a previously-adopted plan. Note, however, that the latter principle would *not* apply to a comprehensive plan adopted under the current enabling statutes (see inset, p. 1). Where the current statutes are used to adopt a plan, all further land use actions (including zoning amendments) must comport with the plan.

46. 33 N.Y.2d 178, 188 (1973).

47. Damsky, *supra* at 1295.

48. *Eggert*, at 181.

49. *Asian Americans for Equality*, *supra* at 131.

50. *Neville v. Koch*, *supra* at 324.

51. Town Law, §272-a(2)(a); similar definitions exist for villages (Village Law, §7-722(2)(a)) and cities (General City Law, §28-a(3)(a)).

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

53. The new statutes specify that "[n]othing herein shall be deemed to affect the status or validity of existing master plans, comprehensive plans, or land use plans." Town Law, §272-a(1)(h); Village Law, §7-722(1)(h); General City Law, §28-a(2)(h).

54. Town Law, §272-a(3); Village Law, §7-722(3); General City Law, §28-a(4).

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

56. Town Law §272-a(8); Village Law §7-722(8); General City Law §28-a(9). See *King v. Saratoga Board of Supervisors*, 89 N.Y.2d 341 (1996).

57. 6 NYCRR §617.4(a), (b)(1).

58. 6 NYCRR §§617.2(u), 617.6(b), 617.7(a), 617.9(a), 617.11. See also *Matter of Coca-Cola Bottling Co. v. Board of Estimate*, 72 N.Y.2d 674 (1988).

59. Town Law, §272-a(6); Village Law, §7-722(6); General City Law, §28-a(7).

60. *Id.* Note that a lead agency may hold a public hearing under SEQRA, after acceptance of a draft EIS. See 6 NYCRR §617.9(a)(4). This hearing may be held concurrently with hearings under the zoning enabling laws so long as both statutory time periods for notice of the hearings are met. See 6 NYCRR §617.9(a)(4). As to the SEQRA hearing, note the post-hearing comment period. See 6 NYCRR §617.9(a)(4)(iii).

61. Town Law §272-a(5)(b); Village Law §7-722(5)(b); General City Law, §28-a(6)(b).

62. Town Law §272-a(12); Village Law §7-722(12); General City Law §28-a(13).

63. Town Law §272-a(10); Village Law §7-722(10); General City Law §28-a(11).

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