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The Control of Urban Growth:
Case Studies and Constitutional Issues

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THE CONTROL OF URBAN GROWTH:
CASE STUDIES AND CONSTITUTIONAL ISSUES

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ABSTRACT

THE CONTROL OF URBAN GROWTH: CASE STUDIES AND CONSTITUTIONAL ISSUES

By

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The objectives of this thesis are 1) to describe the change in public opinion in the U. S. from the encouragement of urban expansion to support for the first stages of a nogrowth movement, 2) to outline the traditional bounds of control over urban development, 3) to describe an innovative form of urban growth management known as development timing or sequential growth, and 4) to survey the major constitutional challenges to development timing, i.e., violations of due process, equal protection and the right to travel. As a vehicle for accomplishing objectives 3 and 4, the growth management experiments of Ramapo, New York and Petaluma, California and the litigation resulting from them will be examined.

This thesis illustrates the changing role of state and federal courts in land use litigation from one of deference to local mandates to one of advocating regionally balanced planning. It also recommends ways to develop plans that can better withstand legal assault.

To
Stephen, who persevered, and Ariel, who was patient

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Introduction

Post World War II urban development in the United States is responsible for the common usage of many new terms: suburban sprawl, urban blight, leapfrogging, strip development and megalopolis, to name a few. These terms reflect an emerging consensus that rapid, generally unplanned growth produces adverse consequences on the urban landscape despite any benefits it may bring. Adverse consequences, however, are not limited to the physical landscape. Local governments also bear equally formidable, if more subtle, negative effects in the tide of rapid growth. These effects include higher tax rates, a shrinking tax base in the inner city, overburdened public facilities and an inability to finance expanded facilities and services.¹

In response to the growing awareness of the consequences of rapid growth, a public movement began in the late 1960's to slow down and control the rate of urban development. The number of communities enforcing growth constraints in 1973 was reported by the Urban Land Institute to be 39.² In 1974 the International City Management Association listed 258, or 23 percent of all cities surveyed as growth control

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1. Chapter 1 of this thesis traces the evolution of attitudes toward urban development in the U.S. from the encouragement of development to support for the first stages of a nongrowth movement.
 2. Earl Finkler, William J. Toner and Frank J. Popper, Urban Nongrowth: City Planning for People (New York: Praeger Publisher, 1976), pp. 2-3.

communities.³ By 1975, a research project of the National Science Foundation was considering over 500 communities for the title.⁴

The growing sentiment to constrain urban development in non-traditional ways has come to be known inappropriately as the "nongrowth" movement or "nongrowth". What nongrowth supporters are objecting to is not growth itself, but unplanned change which lowers the quality of life. The nongrowth movement is therefore not a plea for the cessation of development, but a search for more effective methods of urban growth management.

Under the nongrowth or growth control concept urban development is allowed, but at a slowed or timed rate and in controlled proportions according to types of land uses. Since this kind of growth management extends beyond the scope of zoning as it is traditionally used, there is no well-established planning technique available to carry out its objectives.⁵ Growth control therefore remains a concept in search of a form.

As Earl Finkler and David Peterson noted in 1974 the response to the nongrowth movement from established professions such as planning, law, economics and sociology has been disappointing so far.⁶ Professionals are

3. Earl Finkler, William J. Toner and Frank J. Popper, Urban Nongrowth: op. cit., p. 2-3.

4. Ibid.

5. Norman Williams, Jr. American Planning Law: Land Use and the Police Power, Volume III. (Chicago, Ill.: Callaghan and Company, 1975), p. 347.

6. Earl Finkler and David L. Peterson, Nongrowth Planning Strategies - The Developing Power of Towns, Cities, and Regions (New York: Praeger Publishers, 1974), p. viii. It should be noted that since 1974 the American Law Institute has produced a new "Model Land Development Code" to replace standard state zoning enabling legislation. The new code provides for nongrowth management techniques.

taking a conservative view of nontraditional growth control, generally avoiding public commitment to its aims until the movement either establishes itself as the wave of the future or passes into oblivion.

While professionals hesitate in the wings, local government officials are thrust on center stage. Faced with fiscal chaos and public discontent with rapid change, municipalities are developing their own growth control policies and implementation techniques. As one result, a variety of growth management experiments are available for review. As a further result a multiplicity of legal and philosophical viewpoints exist as to the allowable bounds of growth management. Neither the courts nor public opinion has yet established how much control may be exercised for the public good over private development decisions.

This thesis attempts to shed some light on the legal and philosophical issues surrounding the nongrowth or growth control movement. As a vehicle, one technique of management - development timing or sequential growth, as it is often called - will be examined as it was applied in the two communities of Ramapo, New York and Petaluma, California. The experiments of these two communities were selected for review because both were highly innovative growth management schemes which generated considerable public debate and professional commentary. Also, both techniques were challenged in the courts on slightly different grounds and upheld as constitutionally valid exercises of the police power. Together Ramapo and Petaluma provide a forum for reviewing some of the legal and public viewpoints on the bounds of growth control.

In reviewing the Ramapo and Petaluma techniques, the litigation which upheld the constitutionality of each system is the main focus. This was done for several reasons. First, in reviewing the litigation the central challenges to development timing or growth control techniques become apparent. These challenges can be categorized as violations of the constitutional rights of 1) due process, 2) equal protection and 3) the right to travel. Under these headings the rights of an individual to the use of his land or land which he could acquire and the degree of control that a government may exercise over those rights for the public good are discussed.

The second reason for focusing on litigation in this thesis is to illustrate the different emphases which are likely in state and federal court systems respectively. The Ramapo case was heard in the New York State court system while the Petaluma case was heard in the federal courts. In the Ramapo case the Court of Appeals decision focused primarily on whether or not development timing was a proper zoning function legitimately granted to the municipality by the State. In the Petaluma case the rights of individuals to use their land or to enter into and abide in Petaluma were central. The New York court was thus concerned primarily with interpreting the scope of state delegated powers while the federal courts in California were concerned with the effects of the Petaluma plan individual and property rights.

Although not illustrated by the litigation presented in this thesis, important differences also exist among the state courts in deciding similar cases. For example, in Lomarch v. Mayor of Englewood

the New Jersey state courts invalidated a one year "freeze" on development as an unconstitutional "temporary taking".⁷ The Ramapo plan, on the other hand, prevented the development of some town lands for 18 years but was not held to be taking since development restrictions were not considered permanent. Also, schemes which interfere with the regional availability of housing are usually declared invalid in New Jersey, as was the case in the landmark Mount Laurel decision.⁸ Other states, particularly New York and California, often allow plans to stand if the local welfare is enhanced, even if the regional welfare is not.

A third reason for focusing on litigation in this thesis is to illustrate the persuasiveness of the arguments for and against development timing. Both the Ramapo and Petaluma techniques were overturned in the lower courts but upheld on appeal to higher courts. Also, neither the Ramapo nor Petaluma case was accepted for rehearing on final appeal to the United States Supreme Court. In one author's opinion this illustrates the basic confusion and differences of opinion that exist in this country over development timing and growth control techniques. By

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7. Jerome G. Rose, "The Courts and the Balanced Community: Recent Trends in New Jersey Zoning Law", Journal of the AIP, Volume 39, No. 4 (July, 1973), p. 273.
 8. Ibid., p. 272. Also see Randal W. Scott, "Court Finds Municipalities Must Act in Context of Regional General Welfare," AIP Newsletter, Volume 10, No. 6 (June, 1975), pp. 11-12; Norman Williams, Jr. "Recent Developments in Exclusionary Zoning - The Mount Laurel Case", in Addendum to American Planning Law, Volume III, op. cit.; and Barry Israel, "Some Emerging Techniques in Growth Control", AIP Newsletter, Volume 9, No. 7 (July 1974), pp. 7-9.

refusing to hear the cases, the Supreme Court was implying that the issues have not yet been clearly defined through public debate and experimentation. A premature Supreme Court decision would stifle the forum needed to clarify the growth control controversy.

It is hoped that the information contained in this thesis will allow planners to respond more affirmatively in the growth control debate. It should provide a framework for determining what challenges will arise to growth control measures and how the courts are likely to reply to them. With this information, planners can better design growth management systems and influence public opinion regarding their use.

The topics examined in this thesis and the order of their presentation will be as follows: Chapter One describes the changes in public opinion from the encouragement of urban development to support for the first stages of a nogrowth movement. Chapter Two outlines the nature of zoning to illustrate the traditional bounds of control over urban development. In doing so, the need for new control devices plus the standards against which these devices will be measured become apparent. Chapter Three describes the development timing technique used in Ramapo, New York. The legal and constitutional issues of the Ramapo case are discussed in Chapter Four. Chapter Five describes Petaluma, California's development quota system for timing urban growth while the legal and constitutional issues of that system are discussed in Chapter Six. Chapter Seven suggests the lessons to be learned by planners and the public from the experiences of Ramapo and Petaluma.

Chapter I

Toward a New Consensus on Urban Growth

In the 1850's when Horace Greely used the expression "Go west, young man and grow up with the country", he was referring to the settlement of the nearly uninhabited western sections of what is now the continental United States. This philosophy - that more land is available just beyond existing development - continued to dominate the thinking of most people in the U.S. even until recent times. Vacant land was thought to be an almost unlimited commodity which could always be assembled for development with relative ease. If there was none available in one particular spot, there was plenty more "out west" or beyond the central city or beyond the suburbs.

This "prairie psychology" as one British observer called it,¹ prevailed through the settling of the country, through the Great Depression, through two World Wars and through the post World War II construction boom. Writing in 1960, John Delafons still found it "very rare in America to encounter any antipathy to new development."² Growth, in the form of new construction and land consumption, was actively sought by financial and political leaders in order to increase the tax base of a community, and to bring new jobs, income and opportunities to its citizens. The effects, it was believed, would be lowered unemployment,

1. John Delafons, Land-Use Controls in the United States (Cambridge, Massachusetts: The MIT Press, 1969), p. 4.

2. Ibid., p. 114.

increased average family income and added revenues to the city treasury.³ The search for development which would increase the local tax base put cities in "a competitive stance, forever chasing any and all ratables" and absorbing almost all development that was offered.⁴

While political and financial leaders were competing to bring development to their cities, the general public provided eager support. Residents were proud to belong to a rapidly expanding community and considered a move to the new suburbs a sign of affluence and upward mobility. These attitudes were reflected in the "pro-growth" - which was synonymous with progress - leaders who were elected. "(T)he very mention of any form of nongrowth", in fact, "was enough to ensure political defeat"⁵ at the ballot box until recently.

National infatuation with the growth ethic, born of the confidence that the supply of land is virtually unlimited,⁶ began to waver and then erode in the late 1960's as the consequences of rapid and generally unplanned development became apparent. A pattern was being established: seeking large tracts of relatively inexpensive land, developers chose to locate rows of housing, all the same age and often monotonously similar, farther and farther away from central cities.

3. Earl Finkler, William J. Toner and Frank J. Popper, Urban Nongrowth: City Planning for People (New York: Praeger Publishers, 1976), p. 214.

4. Earl Finkler and David L. Peterson, Nongrowth Planning Strategies - The Developing Power of Towns, Cities, and Regions (New York: Praeger Publishers, 1974), pp. xix-xx.

5. Ibid., p. 16.

6. Delafons, op. cit., p. 4.

Public facilities were extended to these areas at great expense, thereby justifying the location of even more suburbs farther out. It then became necessary to raise taxes in order to finance the facilities to catch up with development. With increased populations, school enrollment in rural and newly suburban areas quickly exceeded capacity, making double sessions frequent occurrences. Pursuing the labor force, and drawn by the clean air, lowered crime rate and green open spaces available in the suburbs, businesses and industries followed the developers in the exodus from the central cities. In the central cities, meanwhile, the tax base was eroding, unemployment and crime rates were rising and the poor and minorities who could not afford suburban housing were left in deteriorating units.

This pattern, created by what the New York Court of Appeals called "the sweet will" of the developer,⁷ means that "land relatively close to developed centers often remains idle or unoccupied, while "land further from the center is being freshly developed."⁸ Resource waste comes in the form of vacant lots and empty buildings near the urban center. Private transportation and time costs consume additional resources as travellers are obliged to cover greater distances in their daily activities.

Perhaps the most unexpected consequences of rapid urban and suburban growth between World War II and the late '60's involved the local economy, particularly the tax base. As Richard Lamm pointed out,

7. Charles Haar, "Wanted: Two Federal Levers for Urban Land Use - Land Banks and Urbanks (excerpts)", in Land Use Controls: Present Problems and Future Reform, David Listokin, ed. (Rutgers University: Center for Urban Policy Research, 1974), p. 372.

8. Ibid.

"(t)he argument that development '(increases) the tax base' has echoed through county commissioners meetings, city halls, and state legislatures from time immemorial."⁹ Development does, in fact, increase the tax base. But as Lamm further notes, "it often increases the demand against that tax base even faster."¹⁰ It was precisely in those areas where economic and population growth were most accelerated that taxes increased dramatically.¹¹ This reflected the inability of public treasuries to pay for the expanding infrastructure required by growth.

Individuals were forced to endure not only higher taxes, but also higher housing costs because of rapid development. "Growth", it seemed, "did not bring more housing that was less expensive. It brought less housing that was more expensive."¹² The economic burdens of growth fell upon the lower and middle income taxpayers of the community - those most adversely affected by increases in the cost of living.

The economic instability accompanying new growth affected more than the tax rate and the cost of housing. While new growth did

9. Richard D. Lamm, "Local Growth: Focus of a Changing American Value", in Management and Control of Growth: Issues-Techniques-Problems-Trends, Volume III, Randall W. Scott, ed. (Washington, D.C.: The Urban Land Institute, 1975), p. 212.

10. Ibid.

11. Finkler, et al., Urban Nongrowth, op. cit., p. 214.

12. Ibid.

add jobs, income and opportunities for local residents, it neither lowered unemployment nor increased average family income. This was because new growth attracted new residents, all of whom wanted jobs and higher wages. "When the pie was finally divided, too many people had less of it. Incomes leveled off or decreased; unemployment increased or stayed about the same."¹³

In many areas of rapid growth, the construction industry experienced "one long track of feast and famine", as the economist William Toner has noted.¹⁴ Periods of high employment and overbuilding were followed by layoffs and demands for higher union wages. This instability eventually affected the public sector in the form of requests for public support. During layoff periods construction and allied workers required unemployment compensation, welfare, food stamps and so forth. "The economic health of the local public sector (began) to reflect that of its private clientele."¹⁵

In addition to the economic instability brought to areas of rapid growth, a general decline in the standard of living was eventually perceived by the once staunchest supporters of growth-new suburbanites. Finkler summarized their perceptions in the following manner:

"Individuals (saw) a supposedly well-planned subdivision go up, endure(d) the mud and dust, and push(ed) their children into overcrowded school buses. Often the planned parks and community

13. Finkler, et al., Urban Nongrowth, op. cit., p. 214.

14. Finkler and Peterson, Nongrowth Planning Strategies, op. cit., p. xvi.

15. Ibid.

centers never (saw) the light of day. Then taxes (went) up and entire tracts of homes start(ed) deteriorating all at once. They...deteriorate(d) even more quickly if some planner forgot the area was in a flood plain, or if the planning commission chose to ignore the fact. The inhabitants of some rather remote subdivision cheer(ed) when they (got) their first filling station and drive-in restaurant, but then despair(ed) when it (was) followed by mile after mile of fast-food, fast-furniture, fast-muffler, strip commercial developments."¹⁶

Despite the disadvantages accruing from rapid growth, it did bring benefits to a group that Finkler has called "the select few". These included large landowners, real estate and development companies, bankers, newspaper publishers, utilities, union chiefs and so forth. "Dollars and power were the incentives for the growth winners. More growth meant more dollars and more power. But only for the growth winners. Everyone else was on the long list of growth losers. The costs of growth fell onto ordinary citizens throughout the community."¹⁷ Unfortunately, most of the decisions which lead to rapid growth, both in government and industry, are either made or highly influenced by the "growth winners".

Although "growth winners" and "growth losers" are useful analytical categories, individuals rarely perceive their circumstances so simplistically. Not all kingpins of big industry, big finance, big government and real estate considered themselves growth winners and not all ordinary taxpayers and suburbanites would have admitted to being growth losers. Nevertheless, by the end of the 1960's a consensus was being reached on the nature of rapid growth itself. It had come to be unsympathetically referred to as "urban sprawl," a

16. Finkler and Peterson, Nongrowth Planning Strategies, op. cit., p. 151.

17. Finkler, et al., Urban Nongrowth, op. cit., p. 213.

form of blight created in the process of "leapfrogging" from one undeveloped tract of relatively cheap land to another'.¹⁸

John Delafons, in describing the changed attitude toward land use in America between his 1960 and 1969 analyses, concluded that "(p)erhaps the most significant change that has occurred in America over the past decade has been a growing public awareness of the problems of the urban environment and a growing demand for greater public participation in the planning process."¹⁹ Fred Bosselman and David Callies noted the same phenomenon and attributed the "quiet revolution in land use controls" almost wholly to it. The single predominant cause of the quiet revolution, they wrote, is a change in the concept of the term "land". "Basically we are drawing away from the 19th century idea that land's only function is to enable its owner to make money."²⁰ Land has become a "scarce resource" rather than an economic "commodity".

Once the general public and local governments were openly denouncing the adverse consequences of growth, the voice of another group - the environmentalists - began to be heeded. Although environmentalists and conservationists had long been preaching and lobbying for the

18. Fred P. Bosselman, "Can the Town of Ramapo Pass a Law to Bind the Rights of the Whole World?", Florida State University Law Review, Volume I (Spring, 1973), 245.

19. Delafons, op. cit., p. 114.

20. Fred Bosselman and David Callies, The Quiet Revolution in Land Use Control (Washington, D.C.: Council on Environmental Quality, 1971), pp. 314-315.

preservation of natural resources and control of the destructive tendencies of growth, they were seldom acknowledged. In an era of the "pro-growth ethic" they were considered a small and harmless group of eccentric university professors, students, and elderly bird watchers. But by the early 1970's, as Norman Williams observed, it was "strikingly apparent" that environmental considerations were crucial, if not one of the most significant aspects of land use matters.²¹

As environmentalists and conservationists were gaining public support for their philosophies, an issue emerged which added to their strength - the energy crisis. The pattern of urban sprawl had been based on the assumption that most suburban residents would use the private automobile for transportation. It was further assumed that virtually unlimited low-cost fuel would be available for transportation whenever needed.²² These assumptions were proven invalid by the fuel shortages and energy crises of the late 1960's and early 1970's. As scientists began predicting the end of fossil fuels, Americans became more cautious about wasting energy. It was feared that lifestyles based on a high consumption of resources would not be possible in the future.

In addition to being alarmed by the scarcity of resources, people in the United States began to fear the losses of natural beauty in the landscapes. Environmentalists and conservationists had been warning developers, governments and the public that relatively uncontrolled growth would eventually destroy the aesthetic amenities of

21. Norman Williams, Jr., American Planning Law: Land Use and the Police Power, Volume I (Chicago: Callaghan and Company, 1974), pp. xlviii-xlix.

22. Ibid., p. xlviii.

*Mills
in the
spread.*

nature. Suburbanites found this prophecy to be true, and were increasingly disenchanted with the "loss of neighborhood and small town character" that nonending development brought to the once green open spaces of the suburbs.²³ This was especially significant since most residents had moved to the suburbs to find these very qualities. To make matters worse, the Sunday drive in search of pleasant natural vistas became longer and longer and less and less fruitful.

The total effect of the disenchantment many Americans were feeling with growth was to create a "new mood" for non-growth. The "new mood", Bosselman wrote, involves a changed perception of suburban economics. Instead of believing that growth brings economic benefits, people are beginning to believe that growth only increases taxes.²⁴

The nongrowth movement is not based on any particular political ideology. At a typical zoning hearing, Bosselman continued, "an elderly dowager who's voted straight Republican since McKinley and her granddaughter from a commune where they live on nuts and berries" might both be trying to stop new development. Arguing against them for development will be a bank president and "an afro-coiffed attorney from

23. Randall W. Scott, ed., Management and Control of Growth: Issues-Techniques-Problems-Trends, Volume I (Washington, D.C.; The Urban Land Institute, 1975), pp. 6-7

24. ~~Bosselman~~ *et al.* "The Right to Move: The Need to Grow", Planning, the ASPO Magazine, Volume 39, No. 8 (September, 1973), p. 10.

the NAACP." The latter two had just been fighting each other over minority hiring procedures, but are now united in support of new jobs and housing.²⁵

Since the new mood is not associated with a particular political philosophy, popular support for no-growth issues can cut across party lines, often producing substantial majorities. Whereas opposing new development once meant almost sure defeat at the polls, "in many communities a planner or politician can now be criticized or defeated if he or she becomes too closely associated with a prodevelopment image."²⁶ This trend has led to a new type of suburban political leader, especially in those communities actively supporting no-growth. As Bosselman explained, suburban governments have traditionally been dominated by businessmen, especially real estate brokers, who considered growth good for business. Recently, however, voters have ousted the incumbents and replaced them with a new type of local official - housewives, engineers, truck drivers, junior executives. These new representatives are typical suburban homeowners "whose only contact with the community is to live in it, not to make money off it."²⁷

The indicators - political, social and economic - are clear. In the United States the attitude toward urban development has evolved

25. Bosselman, "The Right to Move", op. cit., p. 10.

26. Finkler and Peterson, Nongrowth Planning Strategies, op. cit., p. 16.

27. Bosselman, "The Right to Move", op. cit., pp. 10-11.

from one of pro-growth into the first stages of a non-growth movement.²⁸ What is being called for is a change from the crime and pollution "that follows in the wake of those newly profane words 'growth' and 'development'".²⁹ Citizens are asking for a better living environment "and they really don't care whether it's built by private enterprise or public agencies. They are telling their elected officials, 'Do something about it.'" ³⁰

What can be done about it? What tools and techniques exist for controlling the adverse effects of rapid urban and suburban growth? The following chapter briefly examines the capacity of the traditional major tool of urban planning - zoning - to respond to the demands of the no-growth movement. With this as a basis, the remainder of this thesis analyzes the nontraditional techniques utilized by two communities, Ramapo, New York and Petaluma, California, to successfully manage growth in areas of rapid development.

28. This term does not mean that growth should not occur. It is, of course, logical to assume that urban growth is inevitable as long as the population continues to expand. "Non-growth" as commonly used refers to a greatly reduced rate of growth with greater control over the types and locations of development. "

29. Bosselman, "The Right to Move", op. cit., pp. 9-10.

30. Ibid.

Chapter II

The Nature of Zoning

Zoning stands as the only major tool of the planning profession to tackle the problems of growth. The basic philosophies of zoning are the threads which weave the American fabric; its techniques have been validated by the public and the Supreme Court alike. Basic changes in the concept of zoning, therefore, cannot be made lightly. The delicate balance of public and private rights regarding the use of land embodied in zoning law must be preserved if control measures are to continue to receive widespread acceptance.

Despite the existence of zoning, the problems of post World War II urban development are not being solved. If zoning techniques cannot control the adverse consequences of growth, then new forms must arise to accomplish the task. Because zoning protects constitutional rights regarding the ownership and use of land, it is the standard against which all other forms of growth control will be carefully measured.

In view of these considerations, this chapter attempts to accomplish two objectives:

- 1) to consider the nature of zoning to determine if it is equal to the task of post World War II development control, and
- 2) to outline the basic philosophies of zoning since they are the standards against which all other control techniques will be measured.

Although some types of land use control have been in existence in America since the founding of the Massachusetts Bay Colonies,¹ rudimentary "zoning ordinances" as we recognize them today did not appear until after the turn of the century. Around 1909, Boston and Los Angeles enacted ordinances regulating building height and land use. In the next decade many cities passed local ordinances dividing real estate into districts which permitted some uses and excluded others.² The nation's first comprehensive zoning ordinance, however, was not adopted until 1916, and then by the City of New York.³ This move was followed in 1924 by the first model Standard State Zoning Enabling Act which was

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1. Fred P. Bosselman and David Callies, The Quiet Revolution in Land Use Control (Washington, D.C.: Council on Environmental Quality, 1971), p. 1 and Fred P. Bosselman "Can the Town of Ramapo Pass a Law to Bind the Rights of the Whole World?", Florida State University Law Review, Volume I, No. 2 (Spring, 1973), p. 235.
 2. Bosselman and Callies, The Quiet Revolution in Land Use Control, op. cit., p. 22.
 3. Edward N. Reiner, "Traditional Zoning: Precursor to Managed Growth", in Management and Control of Growth-Issues-Techniques-Problems-Trends, Volume I, Randall W. Scott, ed. (Washington, D.C.: The Urban Land Institute, 1975), pp. 214-215.

eventually adopted in some form by all states in the U.S. Through the model act, the power to zone was granted by a state to a local legislative body for the purpose of "promoting the health, safety, morals, or the general welfare of the community."⁴

*promoted
to keep
people happy*

Although the scope of zoning has expanded over the years, its essential nature remains the same as that embodied in the Standard State Zoning Enabling Act. Thus current zoning regulations "had their origins in the 1920's, the golden age of free enterprise and speculation in land."⁵ They were developed for urban areas as a very limited use of local control to regulate only the most obvious nuisances and to protect property values.⁶ This degree of control was entirely in keeping with the then current assumption that "any development which did not reduce the value of the surrounding land should not be prohibited."⁷

Most early regulations, the National Commission on Urban Problems concluded, were remarkably lax and prohibited only a handful

4. Reiner, op. cit., pp. 215-217.

5. John Delafons, Land-Use Controls in the United States (Cambridge, Massachussetts: the MIT Press, 1969), p. 106.

6. National Commission on Urban Problems, "Land-Use Controls: Zoning and Subdivision Regulations", (excerpts), in Land Use Controls: Present Problems and Future Reform, David Listokin, ed. (Rutgers University: Center for Urban Policy Research, 1974), p. 24.

7. Bosselman and Callies, The Quiet Revolution in Land Use Control, op. cit., p. 24.

of specified commercial and industrial uses even in the most restrictive residential districts. Overzoning for business and industry "beyond the dreams of land promoters" was the rule rather than the exception. It was hoped that such optimism would attract growth and keep speculative property values high.⁸

Since zoning was conceived as a solution to the problems of overcrowding (both of structures and people) in urban areas, rural dominated state legislatures willingly left the content and administration of zoning to the particular cities or localities adopting ordinances. Zoning thus came to reflect urban problems and aspirations. In addition to protecting property values and minimally regulating dangerous and nuisance uses in residential districts, zoning had other objectives, at least in theory. These included preventing the over-exploitation of land, regulating population and building densities, regulating parking and fostering public service efficiency.⁹ In carrying out these objectives, the role of the regulating government was essentially negative. Its aim was to "keep out the bad rather than to achieve the good. Development initiative was left with private builders."¹⁰

The limited concept of zoning seemed sufficient to accomplish the objectives of urban control until World War II. After that time, the increased pressures of the post W.W. II construction boom led to an expansion of the concept of zoning. Ordinances then came to specify

8. National Commission on Urban Problems, op. cit., p. 24.

9. Stephen Sussna, Land Use Control...More Effective Approaches (Washington, D.C.: The Urban Land Institute, 1970), p. 6 and National Commission on Urban Problems, op. cit., pp. 21-22.

10. National Commission on Urban Problems, op. cit., p. 24.

the uses permitted in a district rather than to merely list prohibited uses. Also, the practice of pyramid zoning, or allowing in lower districts all uses found in higher districts was eliminated. Instead, zoning ordinances became noncumulative. In addition to these changes, regulations became more restrictive, often requiring larger residential lots and prohibiting strip commercial development. Finally, the new techniques of performance standards, conditional rezoning and planned unit developments were incorporated into zoning ordinances.¹¹

The effect of expanding the concept of zoning after W.W. II was to give it more of a positive rather than a negative or prohibitory role in urban development. The adoption of the post W.W. II items listed above served to "(plug) loopholes and (establish) more clearly the intent of the regulations to guide development affirmatively in desired directions."¹² Governments, however, still could not control the rate and seldom dictated the aesthetic character of development except in the broadest terms. For example, in an area of town zoned for a variety of uses, any proposal which conformed to these uses was usually permitted without respect to the aesthetic quality of the building and site design or the established character of the neighborhood. As the rate of urbanization increased, these limitations proved to be serious impediments to functional and attractive land development (see Chapter I).

11. National Commission on Urban Problems, op. cit., p. 25.

12. Ibid.

Despite an expansion of the zoning concept after W.W. II, two characteristics of traditional land use controls remained unchanged and were serious problems. These were local focus and local administration. Zoning had been delegated to local governments by the enabling act because at that time most urban problems were thought of as falling neatly within municipal boundaries. After W.W. II, however, the boundaries of cities expanded into one another, creating metropolitan areas and megalopolises. Governmental jurisdictions regulating important urban services often overlapped, placing one problem under the auspices of several agencies, each working with different techniques and often at cross purposes to one another. The results of this system were bureaucratic confusion, inefficiency and excessive public costs. As Norman Williams observed, the results "are often unattractive, monotonous, and impersonal - and fall far short of what could be achieved with no great difficulty, within the available financial resources and design potentials (of local governments)."13

In addition to being inefficient, the local administration of land use controls was often charged with being ineffective and corrupt. This is perhaps, as Williams strongly asserts, because "(l)ocal government is traditionally the weakest point of the American democratic system."14

13. Norman Williams, Jr., American Planning Law: Land Use and the Police Power, Volume V (Chicago, Illinois: Callaghan and Company, 1975), p. 428.

14. Ibid., pp. 428-429.

The local administration of land use controls, he charges, is ignorant, parochial and corrupt. Land use decisions are made in return for political favors or money with little concern for adopted local policies or the rules of law as laid down by the higher courts.¹⁵ Even adhering to local policies is often inadequate, Williams further believes, because local policies may arbitrarily "forbid what is really harmless, or actively prevent something good."¹⁶

Although Williams may be overstating his case, the consensus of a growing number of observers is that local administration of land use controls is usually inefficient, is costly both in time and money, and attempts to function on an inappropriate scale (local rather than metropolitan or regional).

To correct some of the shortcomings of American land use controls it has been suggested that these regulations be administered at a regional level. The major impetus for implementing regionalism came "with the requirement in the Federal Highway Act of 1963 that no federal highway funds would be available in metropolitan areas except where a 'continuing comprehensive transportation planning process' was in operation."¹⁷

15. Williams, op. cit., p. 429.

16. Ibid.

17. Ibid., p. 389.

Since transportation plans cannot be made without land use plans, the Federal Highway Act led to the creation of "large-scale general regional planning agencies for the major metropolitan regions."¹⁸

The number and types of regional planning agencies have increased significantly since 1963, mainly as a response to federal and state requirements regulating the receipt and expenditure of funds locally. Regional planning agencies, however, do not have the power to zone. Under current zoning law the power to zone must be delegated by the state to a local legislative body. Since regional or metropolitan government does not yet exist in the U.S., there is no legislative body empowered to enact and enforce a zoning ordinance regionally. Regional planning agencies therefore have only review and advisory functions. Their power to control urban growth has consequently been as ineffective as that of local government thus far.

The American system of land use control, relying almost exclusively on zoning, has been inadequate since World War II to control the rate, extent, and, in most cases, aesthetic character of growth in urban areas. In 1974 the American Society of Planning Officials (ASPO) reported on the weaknesses of traditional zoning and subdivision controls. It was being charged, ASPO summarized, that these controls had failed to halt urban sprawl and were inadequate to guide or regulate

18. Williams, op. cit., p. 389.

urban development.¹⁹ ASPO further reported that the traditional controls often operated against the public interests, especially in metropolitan regions, and were used primarily to correct fiscal problems in local government. In addition to never carrying out a comprehensive plan, zoning interfered with housing opportunities for the poor and minorities, the report continued

All of this is not to say that zoning has failed to perform its function. As Edward Reiner correctly observed, "zoning for fifty years substantially achieved its main objectives: segregation of inconsistent uses, provision of public services, and preservation of property values."²⁰ Zoning was simply not intended to regulate the rate or ultimate extent of development.

Given this situation what can be done? One often quoted writer has called for a quiet burial of zoning.

"We have unnecessarily prolonged the existence of a land use control device conceived in another era when the true and frightening complexity of urban life was barely appreciated. We have, through heroic efforts and with massive doses of legislative remedies, managed to preserve what was once a lusty infant not only past the retirement age but well into senility. What is called for is legal euthanasia, a respectful requiem, and a

19. American Society of Planning Officials, "Problems of Zoning and Land Use Regulation", in Listokin, ed. op. cit. pp. 35-36. For this presentation the order of the charges as they appeared in the article were rearranged and many were left out.

20. Reiner, op. cit., pp. 221-222

search for a new legislative substitute sturdy enough to survive in the modern urban world."²¹

Other writers see no need for a radical departure from zoning, but believe it will evolve, as it has been doing, until it becomes an effective tool of managed growth. Zoning, it is argued, "was never allowed to encompass or accomplish the broad and multifaceted objectives of contemporary managed growth programs."²² The newly emerging concepts of growth management, including sequential growth and population "caps", have evolved out of traditional zoning. If zoning continues to evolve it is believed that an effective growth control mechanism will result.

Still other writers believe that zoning itself is adequate to manage urban growth if it is administered by a competent authority. Bosselman and others therefore suggest that the States take back much of the power to control land use that has been delegated to municipalities. With state level administration, it is reasoned, much of the parochialism that characterizes local zoning administration can be eliminated. Local corruption and graft in land use matters, unconcern for the environment, and encouragement of rapid growth for questionable fiscal benefits can be reduced if the states are the zoning authority, many believe. This is possible because of the states' greater funding potential, larger reservoir of professional expertise and ability to apply the same land use policy in all localities.

21. John Reps, "Requiem for Zoning", (excerpts), in Land Use Controls: Present Problems and Future Reform, op. cit., p. 29.

22. Reiner, op. cit., p. 211.

The attitude that zoning in its present form is now inadequate to control urban growth has fueled what Bosselman calls "the quiet revolution in land use controls".²³ What the revolution is calling for are new concepts and techniques to effectively manage the timing, extent and character of urban development. It is too early to predict what the future nature of land use controls will be in this country if the quiet revolution succeeds. The widespread acceptance of new tools has not yet occurred. Instead, the "revolution" is in a stage of experimentation to arrive at new legislative and administrative forms.

It should be noted that although zoning alone has been unable to manage rapid growth successfully, it is playing an important role in the search for new control forms. Since zoning is an accepted legal and philosophical device, new growth management techniques are being incorporated into existing ordinances. Experimentation is thus possible without suspending existing controls. Considerable legal and philosophical controversy nonetheless surrounds any introduction of substantially different techniques into zoning, as the cases of Ramapo and Petaluma illustrate.

The remainder of this thesis examines the managed growth experiments of two communities - Ramapo, New York and Petaluma, California. First, the planning program and specific techniques utilized by each community will be explained. This is followed by a survey of

23. Bosselman and Callies, op. cit., p. 3.

the major constitutional and legal criteria which will determine the acceptance or rejection of each technique in the American system.

The thesis concludes with an evaluation of the implications that managed growth may have on the future of planning and land use control.

Chapter III

Ramapo, New York: Controlling Growth Through Development Timing

This chapter begins the analysis of the managed growth technique developed in Ramapo in the 1960's. Four topics will be discussed: 1) Ramapo's Location and Growth History; 2) Ramapo's Planning Process; 3) The Nature of Ramapo's Growth Control Technique, and 4) The Results of Ramapo's Plan on Its Development. The following chapter will examine the legal and constitutional implications of Ramapo's system of development timing.

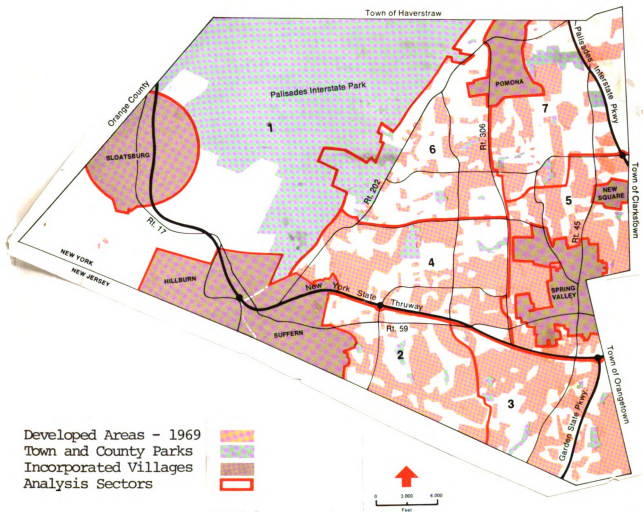
Ramapo's Location and Growth History

The Town of Ramapo is located in Rockland County, New York approximately 30 miles northwest of New York City on the west side of the Hudson River and just north of the New Jersey state line. Ramapo consists of the six incorporated villages of Sloatsburg, Hillburn, Suffern, Spring Valley, New Square and Pomona plus the unincorporated areas (See Figure 1). Included in the unincorporated area are 12 square miles of land in Palisades Interstate Park which are not to be developed. The seven governmental units (six incorporated areas plus the unincorporated remainder of the township) cover 89 square miles while the unincorporated area alone is 48.6 square miles. This makes Ramapo geographically larger than most cities in New York State.¹ It should

1. Manuel S. Emanuel, "Ramapo's Managed Growth Program: A Close Look at Ramapo After Five Years Experience", Planners Notebook, Volume 4, No. 5 (October, 1974), p. 1.

Figure 1

Town of Ramapo County, New York



Developed Areas - 1969
 Town and County Parks
 Incorporated Villages
 Analysis Sectors

Taken from Manual S. Emanuel, "Ramapo's Managed Growth Program: A Close Look at Ramapo After Five Years Experience," Planners Notebook, Volume 4, No. 5 (October, 1974), p. 6.

be noted that planning activities for the Town of Ramapo apply only to the unincorporated areas of the township - not to the incorporated villages.

With the opening of the Tappan Zee Bridge across the Hudson River, Ramapo became an easy 25 mile commuting distance from the heart of New York City, and thus "accessibly suburban to New York City."² This spurred a rapid increase in development activity and population. From 1940 to 1963 the population of New York State increased by 31.3 percent while that of Rockland County and Ramapo increased by 118.2 and 285.9 percent respectively.³ According to the U.S. Census, Ramapo had 35,000 people in 1960 and 76,702 in 1970. At that rate of growth 125,000 people were expected to reside in Ramapo by 1979.⁴

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2. Israel Stollman, "Ramapo: An Editorial and the Ordinance as Amended", in Management and Control of Growth: Issues-Techniques-Problems-Trends, Volume I, Randall W. Scott, ed. (Washington, D.C.: The Urban Land Institute, 1975), p. 5.
 3. Randall W. Scott, "The Ramapo Case : Five Zoning Digest Commentaries", in Management and Control of Growth: Issues-Techniques-Problems-Trends, Volume II, Randall W. Scott, ed. (Washington, D.C.: The Urban Land Institute, 1975), p. 36.
 4. Robert H. Freilich, "Golden v. Town of Ramapo: Establishing a New Dimension in American Planning Law", The Urban Lawyer, Volume 4, No. 3 (Summer, 1972), p. xi. Stollman, op. cit., p. 5 reported that Ramapo's population was expected to be 120,000 by 1985.

The fastest rate of growth in Ramapo was occurring in the unincorporated suburban areas. Between 1960 and 1966 alone, this population increased by 78.5 percent, "a faster rate than any other unincorporated township in the state."⁵ By 1964 "a little more than one half of the unincorporated land was considered developed and unavailable for future growth, including all active use areas as well as the large state park holdings."⁶

Despite its rapid growth, Ramapo attracted almost no industrial and little new commercial development. "Commercial development was of a local service nature, with the major retail centers remaining in the older villages, particularly Spring Valley and Suffern. Industrial development growth was extremely limited, also confined in or near the older population centers."⁷

Without an employment base Ramapo was developing as a wealthy, white bedroom suburb of New York City. "In 1960, over 91 percent of the homes in the unincorporated area of Ramapo were single family dwellings, much larger than the county percentage of 80.6 percent."⁸ Of these households, less than one-half of one percent were black. By 1970 only a little more than one percent of all households in the

5. Emanuel, op. cit., p. 1.

6. Ibid., pp. 1-2.

7. Ibid.

8. Ibid., p. 2.

unincorporated area were occupied by blacks.⁹ The asking price for housing in Ramapo's unincorporated area in 1970 exceeded \$50,000 per unit according to the U.S. Census except for one tract bordering Spring Valley where prices were \$33,300.

Ramapo's Planning Process

"Development timing", as Ramapo's growth control technique is known, was officially instituted in the 1969 amendments to the Town's zoning ordinance. These amendments, however, were actually the implementation device for a series of planning decisions which had been made between 1964 and 1969. Development timing in Ramapo therefore includes several pre-1969 documents: a master plan, a comprehensive zoning ordinance, sewer district and drainage studies, a capital budget, and a capital program. As the courts later pointed out, all of these documents are necessary for the constitutionality of development timing. Without them the amended zoning ordinance would have been arbitrary and unreasonable, and therefore invalid.

The basis of development timing in Ramapo began in 1964 with the granting of a federal 701 planning assistance grant to write a comprehensive master plan. The completed document, which was adopted by the town Planning Board in July, 1966 contained "statements of basic development policies, planning principles and recommendations with respect

9. Herbert M. Franklin, "Controlling Urban Growth: But For Whom? The Social Implications of Development Timing Controls", in Management and Control of Growth: Issues-Techniques-Problems-Trends, Volume II, Randall W. Scott, ed. (Washington, D.C.: The Urban Land Institute, 1975), p. 84.

to: residential development; commercial and industrial development; traffic circulation, streets and highways, and transportation; recreation facilities and open areas; and public and semi-public facilities, such as public schools, town office and garage facilities, fire stations, post offices, libraries, hospitals, sewage disposal, water supply, refuse disposal and storm drainage."¹⁰

Embodied in the Master Plan's recommendations were two key development policies which were "basic to Ramapo's managed growth program."¹¹ They were: 1) "The population increase provided for in the Town's Development Plan should be kept to a moderate level so that the existing rural, semirural and suburban character in different parts of the Town can be maintained and so that the existing and projected public facilities will not be overburdened" ;¹² and 2) "Provision should be made for adequate public facilities (e.g., transportation, circulation, education, recreation, etc.) consistent with the anticipated needs of a growing population."¹³

It also became Planning Board policy in the master plan that residential densities should be greatest in the Villages while decreasing outwardly and that "(r)esidential densities should be consistent with the character and density of surrounding developed areas,

10. Emanuel, op. cit., p. 2.

11. Ibid.

12. Ibid.

13. Ibid.

topography, the adequacy of circulation and other community facilities and the overall objective of providing for a moderate population increase in the unincorporated portion of the Town."¹⁴ To this end three residential zone districts were specified in the plan - a low density zone of one family or less per acre, a medium low density zone of one to two families per acre, and a medium density zone of two to four families per acre.

Based upon the recommendations of the master plan a preliminary list of capital improvements was made which included recommended priorities, preliminary cost estimates and probable sources of funds. The priorities were expressed in three groupings: highest, to be undertaken in three to six years; second highest, to be undertaken in six to ten years; and third highest, to be undertaken in ten to fifteen years. These recommendations were to form the basis of a detailed capital improvements program to be developed at a later date.

"To protect the integrity of the master plan, and the proposed changes in the zoning ordinance and zoning map which were under consideration upon completion of the Master Plan",¹⁵ the Interim Development Law was adopted. This law prohibited the issuance of building permits for six months in those areas designated for change in the Master Plan. The legality of the Interim Development Law - the first of its kind in planning history - was upheld in Rubin v. McAlevey as a "constitutional and a valid protection of the planning process and

14. Emanuel, op. cit., p. 2

15. Ibid.

orderly growth of the community."¹⁶

On the basis of the Master Plan and capital improvement recommendations, the Town Board adopted a comprehensive revised zoning ordinance on December 29, 1966. Its stated purpose was "to limit development to an amount equal to the availability and capacity of public facilities and services."¹⁷ Using the zoning bulk and lot size requirements of the new ordinance, "the Town was able to calculate population capacity in different areas and to establish a reasonably exact evaluation of the deficiencies and needs for sewers, highways, recreational facilities, drainage facilities and firehouses and other things."¹⁸

An official map was developed as the next step in the Ramapo planning process. This was done with the information supplied by the population and public facility calculations, the zoning ordinance and the Master Plan projections. The official map, which was adopted in August, 1967 identified existing and proposed highways, parks and drainage facilities. The map was a crucial element in the planning program since no building permit could be issued for construction in the bed of any existing or proposed street or highway shown on the official map.

With the basic components of Ramapo's desired future thus defined, three detailed studies were conducted: a drainage study, a

16. Emanuel, op. cit., p. 3.

17. Ibid.

18. Ibid.

sewer study and a recreational facilities study. The results of these studies were used to refine and amend the Master Plan and the official map. In addition, these studies "were extremely critical in establishing the elements, cost estimates and priorities of the capital improvement program."¹⁹

Armed with the results of the planning process begun in 1964, the Town prepared and adopted a capital budget in November, 1968. The capital budget provided a firm commitment for the development of capital improvements for a period of six years. For the twelve year period following the effective period of the capital budget, a capital plan was developed. The capital budget and the capital plan together provided for the location and sequence of capital improvements in Ramapo for 18 years. This was the period in which the Master Plan anticipated the full development of the Town.

As the final step in establishing a growth control mechanism in Ramapo, the zoning ordinance was amended to create both a timing device for the staging of public and private development and a point system upon which development permits were to be granted. These implementation techniques were adopted into the zoning ordinance in October, 1969 and constitute what most people refer to as Ramapo's system of development timing. (The entire text of the proposed amendments of 1969 is reprinted in Appendix A). It should be noted that throughout the process culminating in development timing and thereafter documents were continually amended and updated as new information became available.

19. Emanuel, op. cit., p. 3.

The Nature of Ramapo's Growth Control Technique

The 1969 amendments to Ramapo's zoning ordinance applied only to residential development proposals. Nonresidential development is not subject to the timing devices and point system of development timing. The primary objectives of the amendments are the principles established in the Master Plan:

"1) To economize on the costs of municipal facilities and services to carefully phase residential development with efficient provision of public improvements; 2) to establish and maintain municipal control over the eventual character of development; 3) to establish and maintain a desirable degree of balance among the various uses of the land; and 4) to establish and maintain essential quality of community services and facilities."²⁰

To achieve the goals of the Master Plan, an additional class of special permit use, a Residential Development Use, was added to the zoning ordinance. "It requires a residential developer to obtain a special permit for such use from the Town Board prior to the issuance of any building permit, special permit from the Board of Appeals, subdivision approval or site plan approval by the Planning Board."²¹ Furthermore, no special permit shall be issued unless the residential development has 15 development points based on the availability of various facilities classified under the following headings: 1) sewers, 2) drainage, 3) improved public park or recreational facility, 4) state, county or town major, secondary, or collector

20. Stollman, op. cit., p. 10.

21. Emanuel, op. cit., p. 4.

road(s) improved with curbs and sidewalks, and 5) firehouse. Using these categories a possible maximum of 23 points may be given to the proposed development according to the availability and quality of the facilities listed under each heading (for a complete description of the point system, see Appendix A).

Under the Ramapo plan, no developer would be denied use of his land for a period exceeding 18 years. If the particular parcel to be developed did not have access to enough public facilities to acquire the needed 15 points for special use approval, the developer could install the facilities at his own expense to acquire the points. He could otherwise wait until the Town installed the improvements since the capital program and budget specified when and where the various services and facilities would be available during the Town 18 year development period.

"Hence, no developer would have to wait more than 18 years for enough points to permit subdivision of his property, and he would, in fact, be able to calculate the precise year in which he would accumulate the sufficient number of points. This would be a vested property right (i.e., one which could be sold or assigned to others) in that the property owner would obtain a permit in the year specified by the capital program, even if the facilities had not been completely installed in his area."²²

Under the Ramapo plan then, a developer could be granted a post-dated permit to build in the year that the capital program specified

22. Scott, "The Ramapo Case: Five Zoning Digest Commentaries", op. cit., p. 33.

adequate facilities would be available to his development site. This system related

"residential development to capital investment, linking the private initiative to the public capacity... Since the restrictions on the land were only temporary - limited to a foreseeable period, or the period of the plan - it would not be a permanent restriction on development. These restrictions would be reasonable, since the public would be under a correlative duty to fulfill the capital budget and plan."²³

In addition to providing improvements himself or accepting a present permit to develop at a future date when the Town will have installed the necessary improvements, other options are open to an owner or developer of residential land. The developer may apply to the Town Board for a variance in the number of points needed to develop his parcel. This variance may be granted if the Board determines that such a modification is consistent with the on-going development plan.²⁴ As another alternative, a developer may apply for a reduction in the assessed valuation of his land to reflect the temporary restrictions on its use.

As an important corollary to the managed growth program the Town in 1967 passed a law creating the Development Easement Acquisition

23. Scott, "The Ramapo Case: Five Zoning Digest Commentaries", op. cit., p. 36.

24. Court of Appeals of New York, "Ramapo: The Case Decision", in Management and Control of Growth: Issues-Techniques-Problems-Trends, Volume II, Randall W. Scott, ed. (Washington, D.C.: The Urban Land Institute, 1975), p. 16.

Commission (DEACOM). Its purposes are to maintain lands as open space, to control the rate of development of the Town and to enhance the conservation of natural and scenic resources. Under the DEACOM program a developer who does not expect to be eligible for development approval under the point system for a number of years may request the Town to acquire his land as a development easement for a period of not less than five years. "If such an easement is acquired, the assessed valuation of a given parcel of land is proportionately reduced, upon advice of the Town Assessor, by reason of the prospective limitation on the future use of the land."²⁵

The Results of Ramapo's Plan on Its Development

In establishing development timing in Ramapo the town was not trying to limit its growth or exclude prospective residents. At the end of 18 years the entire town was expected to be fully developed. "Ramapo merely wanted", as Finkler and Peterson pointed out, "to stretch out a complete buildup of its area from the expected 'natural' period of nine years to a 'planned' period of 18 years."²⁶ Attorney for the Town of Ramapo, Robert Freilich, predicted, in fact, that at the end of the 18 year capital plan Ramapo would have "greater population and

25. Emanuel, op. cit., p. 7.

26. Earl Finkler and David L. Peterson, Nongrowth Planning Strategies - The Developing Power of Towns, Cities, and Regions (New York: Praeger Publishers, 1974), p. 20.

density and economic mix than most suburban communities."²⁷

Planning has slowed the rate of growth in Ramapo. Writing in 1975 Sylvia Lewis reported that town officials were approving approximately 350 building permits per year, down from 620 annually before 1969.²⁸ As shown in Table 1 approximately 350 lots and 367 dwelling units excluding 203 public housing units received permits between 1969 and June, 1974. Furthermore, most of these units were constructed close to existing development in areas of high activity, avoiding sparsely developed areas.²⁹ This filling in pattern has been a major goal of the managed growth program.

In regard to the point system, total mean values appearing on applications during the five year period were as follows: special permits, 16.10 points; variances granted, 10.57 points; variances denied, 9.49 points. The mean number of lots for special permits averaged 13.96 lots per application; 4.44 for variances granted; and 9.42 for variances denied. "This indicates that variances granted tend to be for small numbers of lots while those denied are for larger numbers."³⁰

Like development timing the DEACOM program has also been

27. Scott, "The Ramapo Case: Five Zoning Digest Commentaries", op. cit., p. 39.

28. Sylvia Lewis, "The Jury's Out on Growth Control", Planning, the ASPO Magazine, Volume 41, No. 1 (January, 1975), p. 8.

29. Emanuel, op. cit., p. 7.

30. Ibid., p. 8.

TABLE 1

Managed Growth Activity From 1969 to June, 1974¹

Sector Number ²	Permits ³			Variances Granted			Variances Denied		
	Special Applica- tions	Lots	Acres	Applica- tions	Lots	Acres	Applica- tions	Lots	Acres
1	0	0	0	3	3	5.52	0	0	0
2	8	108	132.07	19	81	63.15	4	50	41.56
3	26	277	341.20	23	55	48.83	0	0	0
4	9	203	196.61	29	89	68.59	3	20	19.37
5	18	253	173.70	30	195	90.84	2	7	4.14
6	8	126	196.71	30	53	60.95	1	18	20.67
7	2	24	43.83	12	172	150.23	2	18	14.86
Totals	71	991	1,084.12	146	648	488.11	12	113	100.60

1. Taken from "Ramapo's Managed Growth Program: A Close Look at Ramapo After Five Years Experience" by Manuel S. Emanuel in Planner's Notebook, Volume 4, Number 5, October, 1974, p. 7.

2. See Map 1 for Sector identification.

3. Includes all Special Permits granted for present or future date.

successful in controlling the rate of growth and preserving open space. "As of July, 1974, there were over 150 properties, constituting almost 1,700 acres of land, still taking advantage of the DEACOM law. These properties would normally be assessed in the aggregate at approximately \$7.5 million; under DEACOM abatement their combined assessment totaled about \$3.5 million."³¹ In addition to reducing property taxes for certain individuals, DEACOM insures the preservation of open space during a crucial phase of community development, in some cases up to 24 years.

Community pride in Ramapo has risen significantly since the inception of development timing. Residents feel that the town's amenities are not being swept away by the tide of rapid, unplanned development. "As for the feeling of the place, 'It's Changed', said Leah Chanofsky, deputy administrator to the town's boards and commissioners. 'You can see beautification projects everywhere, even in renovations. Also, schools are no longer overcrowded. Our system has improved the lives of people here'."³² While not all residents of Ramapo are as satisfied with development timing, particularly those denied permits for immediate development, the system has proved successful in controlling the rate and character of new residential growth.

This chapter completes the discussion of Ramapo's system of growth management. Development timing, as the Ramapo technique is called, was in effect without interruption from 1969 until it was challenged in

31. Emanuel, op. cit., p. 7.

32. Lewis, op. cit., p. 8.

in a legal suit in 1971. The following chapter examines the legal and constitutional issues which arose in the Ramapo case litigation.

Chapter IV

Legal and Constitutional Issues of the Ramapo Case

In Golden v. Planning Board of Ramapo and the companion case, Rockland County Builders Association v. John McAlevey, the legality of development timing in the Ramapo plan was challenged by a coalition of landowners and homebuilders.¹ The case was first heard in the lower court of New York where the legality of the Ramapo plan was upheld. This decision was appealed to the State Appellate Division which ruled in favor of the plaintiffs, declaring Ramapo's amended zoning ordinance unconstitutional. On further appeal to the New York State Court of Appeals the Appellate Division ruling was reversed on May 3, 1972. Thus the Court of Appeals upheld the constitutionality of the ordinance. A final appeal to the United States Supreme Court was dismissed on November 14, 1972 for want of a substantial federal question.²

As can be seen from the appeals process in the Ramapo case both the arguments for and against development timing are persuasive and have been accepted by the courts at some level. The central

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1. Randall W. Scott, "The Ramapo Case: Five Zoning Digest Commentaries", in Management and Control of Growth - Issues-Techniques-Problems-Trends, Volume II, Randall W. Scott, ed. (Washington, D.C.: The Urban Land Institute, 1975), p. 40.
 2. Ibid.

constitutional issues debated in this case and in similar cases in other states have been the same despite the court's final ruling.³ In the Ramapo case the petitioners charged, among other things, that the plan violated their constitutional guarantees of "due process" and "equal protection".

In the remainder of this chapter, the due process and equal protection arguments of the Ramapo case are discussed. The "pro" and "con" positions expressed will be those presented to the New York State Court of Appeals which rendered the final decision on the case. All references to the decision and opinions of the court will refer to those of the Court of Appeals unless otherwise indicated.

DUE PROCESS

"Due process" refers to the guarantees of the fourteenth amendment to the U.S. Constitution. When used in zoning and development timing cases the concept covers several interrelated legal arguments. These arguments as they relate to the Ramapo case in particular can be summarized as follows:

All state legislatures have adopted some type of enabling act which confers to municipalities the power to regulate land use. In the enabling act this power is regarded as a function of the "police power" granted to a municipality so that it may protect the health,

3. Most development timing and exclusionary zoning cases focus on the constitutional issues of due process, equal protection and the right to travel. In the Ramapo case, due process and equal protection were central. The right to travel was not a major issue.

safety, morals or general welfare of its citizenry. In exercising its police power a municipality must inevitably restrict the rights of some citizens to act. This restriction is not, however, considered a violation of state and federal constitutional freedoms if it promotes the general welfare of the community and is not in itself unreasonable and arbitrary.⁴

To establish that a land use regulation is an unconstitutional violation of due process it must usually be shown that: 1) its exercise is not legitimately granted to the municipality by the state enabling legislation, or 2) it does not fall within the "police power" and therefore does not protect the health, safety, morals or general welfare of the community, or 3) the regulation is arbitrary and unreasonable. It may also be charged that specific constitutional rights have been denied to a party without "due process" (the proper exercise of a legitimate power). For example, in zoning challenges it is frequently argued that the use of a person's land has been denied without "due process" or just compensation.

In Golden v. Planning Board of Ramapo the plaintiffs charged that the amended zoning ordinance of 1969 "was ultra vires and void because the power to control growth through sequential development

4. United States Court of Appeals, Ninth Circuit, "Construction Industry Association of Sonoma County v. The City of Petaluma", Case Decision, 522 Federal Reporter, 2d Series (August, 1975), p. 906.

limitations had not been delegated to the town (by the state enabling legislation)."⁵ Although it was accepted that the municipality had the power to zone, development timing was not considered a legitimate zoning function.

In its dissent to the majority opinion, the Court of Appeals took a narrow interpretation of the powers granted in the enabling legislation. Quoting the latter it held that

"For the purpose of promoting the health, safety, morals, or the general welfare of the community, the town board is hereby empowered...to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes."⁶

The ordinance "says nothing about exercising control in time."⁷ The latter is therefore not a legitimate zoning function.

5. Fred P. Bosselman, "Can the Town of Ramapo Pass a Law to Bind the Rights of the Whole World?", Florida State University Law Review, Volume I, (1973), p. 241

6. Court of Appeals of New York, "Ramapo: The Case Decision", in Management and Control of Growth - Issues-Techniques-Problems-Trends, Volume II, Randall W. Scott, ed. (Washington, D.C.: The Urban Land Institute, 1975), pp. 26-27.

7. Ibid., p. 27.

The above argument was rejected in the majority opinion.

"(T)he challenged amendments are proper zoning techniques, exercised for legitimate zoning purposes. The power to restrict and regulate...includes within its grant, by way of necessary implication, the authority to direct the growth of population for the purposes indicated (in the Ramapo plan), within the confines of the township. It is the matrix of land use restrictions,...a necessary concomitant to the municipalities' recognized authority to determine the lines along which local development shall proceed."⁸

"The court looked to the basic purpose of zoning and considered the 'effects of the statutory scheme taken as a whole, and its role in the propagation of a variable policy of land use and planning.'"⁹ The legitimate purposes of zoning, it was ruled,

"are designed to secure safety from various calamities, to avoid undue concentration of population and to facilitate adequate provision of transportation, water, sewerage, schools, parks and other public requirements."¹⁰

These purposes are also the rationale for development timing, it was concluded, making the latter a legitimate zoning function.

After setting aside the charge that development timing was not a delegated zoning function, the court reviewed the plaintiffs' charge that the Ramapo scheme violated the general welfare of the

8. Court of Appeals of New York, op. cit., p. 17.

9. Scott, "The Ramapo Case: Five Zoning Digest Commentaries", op. cit., p. 33.

10. Court of Appeals of New York, op. cit., p. 17.

community and so was not an exercise of the police power.¹¹ Persons, especially those seeking multi-family or public housing, who could not find housing in Ramapo would be forced to locate in other parts of the region. Then the region would suffer from overcrowding while Ramapo would enjoy the luxury of a select and limited population.¹² This scheme, "(i)n operation and in total effect... is detrimental to the public interest because it adversely affects the general welfare of the region over an extended period of time."¹³

In addition to regional hardships the Ramapo plan was challenged with adversely affecting the general welfare of individuals by creating undue hardships for developers and inequities for landowners wanting to develop. Aspects of the plan constitute "taking" and impose "an unconstitutional and special burden on landowners who...are forced to provide public services at private expense on land which they are not developing or which they do not own."¹⁴

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11. Scott, "The Ramapo Case: Five Zoning Digest Commentaries", op. cit., p. 41.
 12. Herbert M. Franklin, "Legal Dimensions to Controlling Urban Growth", in Management and Control of Growth - Issues-Techniques-Problems-Trends, Volume II, Randall W. Scott, ed. (Washington D.C.: The Urban Land Institute, 1975), pp. 228 and 235, and Court of Appeals of New York, op. cit., p. 29.
 13. Scott, "The Ramapo Case: Five Zoning Digest Commentaries", op. cit., p. 43.
 14. Ibid., p. 41.

The court rejected the above arguments, affirming that the Ramapo plan contributed to the general welfare of the community.

"(T)he present amendments merely seek, by the implementation of sequential development and timed growth, to provide a balanced cohesive community dedicated to the efficient utilization of land. The restrictions conform to the community's considered land use policies as expressed in its comprehensive plan and represent a bona fide effort to maximize population density consistent with orderly growth... We may assume, therefore, that the present amendments are the product of foresighted planning calculated to promote the welfare of the township."¹⁵

Although the court expressed the need to consider the regional impact of plans, it saw its role as one of evaluating only the effects of the plan on Ramapo itself. Where the "challenge of population growth" had been confronted "with open doors", the court is "rightfully reluctant to strike down such schemes".¹⁶ Dictating that broader regional schemes should be employed was a task the court chose to leave to the legislature.

In response to the charge that the plan creates undue hardships on individuals, the court stated that

"(e)very restriction on the use of property entails hardships for some individual owners... (T)he pecuniary profits of the individual must in the long run be subordinated to the needs of the community."¹⁷

15. Court of Appeals of New York, op. cit., p. 21.

16. Ibid.

17. Ibid., p. 22.

In any case, the taking of land was not an issue in the Ramapo plan since the restrictions placed on property were temporary, not to exceed 18 years. "(T)he landowner", the court declared, "might be compelled to chafe under the temporary restriction, without the benefit of...compensation, when that burden serves to promote the public good."¹⁸ To further obviate the taking issue, the court pointed out that other uses were open to owners who were denied development permits. Under the plan an owner

"is not deprived of either the best use of his land or of numerous other appropriate uses, still permitted within various residential districts, including the construction of a single-family residence, and consequently, (the ordinance) cannot be deemed confiscatory."¹⁹

The final major argument used to establish that a land use regulation is a violation of due process is that it is arbitrary and unreasonable. This was charged by the plaintiffs in the Ramapo case and affirmed in the dissenting court opinion.²⁰ The latter held that

"clever drafting (in the Ramapo ordinance) unreasonably stretched the (enabling) statute's references to controlling population density, and to providing for public facilities."²¹

18. Court of Appeals of New York, op. cit., p. 22.

19. Ibid.

20. Scott, "The Ramapo Case: Five Zoning Digest Commentaries", op. cit., p. 42.

21. Israel Stollman, "Ramapo: An Editorial and the Ordinance as Amended", in Management and Control of Growth - Issues-Techniques-Problems-Trends, Volume II, Randall W. Scott, ed. (Washington, D.C.: The Urban Land Institute, 1975), p. 6.

The dissent also found another aspect of the plan unreasonably novel:

"the departure from traditional city development in which private investment comes first, compelling the later assumption of public responsibility for the costs of providing services."²²

Other unreasonable aspects of the plan noted by the dissent were its 18 year moratorium on development and its unsound "social and economic ramifications for the locality, region and state."²³ Included in the latter charge was the plan's assumed effect of "impair(ing) the freedom of movement or residence of those outside their (Ramapo) borders."²⁴

In the majority opinion all of these arguments were dismissed. The court reviewed Ramapo's entire planning process and gave great weight to it in determining that the amended zoning ordinance was reasonable and not arbitrary. As Robert Freilich, Attorney for Ramapo, observed,

"No other community or region can adopt...timing controls and succeed in withstanding a similar legal assault, if they have not also done all of the other things necessary to demonstrate that what they are

22. Israel Stollman, "Ramapo: An Editorial and the Ordinance as Amended", in Management and Control of Growth - Issues- Techniques-Problems-Trends, Volume II, Randall W. Scott, ed. (Washington, D.C.: The Urban Land Institute, 1975), p. 6.

23. Court of Appeals of New York, op. cit., pp. 27-30.

24. Ibid., p. 30.

doing is a part of and consistent with rational community planning and not an effort to halt growth or exclude people."²⁵

The court itself affirmed the reasonableness of the Ramapo plan with these words:

"Considered as a whole, it represents both in its inception and implementation a reasonable attempt to provide for the sequential, orderly development of land in conjunction with the needs of the community, as well as individual parcels of land, while simultaneously obviating the blighted aftermath which the initial failure to provide needed facilities so often brings."²⁶

As discussed above, the court also found development timing to be an entirely appropriate zoning function to direct the growth of population and "to phase residential development to the Town's ability to provide...facilities or services."²⁷ As summarized in the court opinion,

"Where it is clear that the existing physical and financial resources of the community are inadequate to furnish the essential services and facilities which a substantial increase in population requires, there is a rational basis for 'phased growth' and hence, the challenged ordinance is not violative of the Federal and State Constitutions."²⁸

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- 25. Scott, "The Ramapo Case: Five Zoning Digest Commentaries", op. cit., p. 39.
 - 26. Court of Appeals of New York, op. cit., pp. 21-22.
 - 27. Ibid., p. 16.
 - 28. Robert H. Freilich, "Golden v. Town of Ramapo: Establishing a New Dimension in American Planning Law", The Urban Lawyer, Volume 4, No. 3 (Summer, 1972), p. xiii.

To the challenge that the 18 year moratorium on development was unreasonable and arbitrary the court replied that it was temporary, and merely conditioned, but did not deny, applications for development permits.²⁹ Paraphrasing the court's opinion, Bosselman noted that

"(T)he town will never need to deny an application for a development permit, but can merely delay the effective date of the permit until such time as the needed facilities are to be constructed."³⁰

Furthermore, the potentially unreasonable and arbitrary nature of the moratorium is removed through "certain savings and remedial provisions" of the amendment.³¹ For example, 1) a present permit to develop at a future date may be issued, 2) a developer may install the improvements himself to acquire the points needed for a permit, 3) the number of points required for a permit may be varied by the Town Board in special circumstances and 4) tax relief is offered to compensate for the decreased value of property while the moratorium is in effect.

The court also did not consider the plan's effect on the locality, region and state to be unreasonable or to impair freedom of movement. In fact, the court found the plan beneficial to the area since it coupled its timing controls with "provisions for low

29. Bosselman, "Can the Town of Ramapo Pass a Law to Bind the Rights of the Whole World?", op. cit., p. 240, footnote #27.

30. Ibid., p. 240.

31. Court of Appeals of New York, op. cit., p. 16.

and moderate income housing on a large scale" which might not have been built otherwise.³² The intended effect of the plan was not to deny persons residence in Ramapo but to phase the town's growth over an 18 year period. As Freilich pointed out,

"Ramapo at the end of the 18 year capital plan will have greater population and density and economic mix than most suburban communities. It is not excluding growth but timing and sequencing its growth."³³

Equal Protection

Although most of the arguments presented to the Court of Appeals against the Ramapo plan relate to violations of due process, violations of equal protection were also cited. As was frequently the case with due process violations, issues overlap and much of the evidence presented to substantiate equal protection violations was also used in due process arguments. Nevertheless, charged violations of equal protection in the Ramapo case fall under two categories:

1) violations against property and 2) violations against persons.

32. Court of Appeals of New York, op. cit., pp. 21-22. It should be noted that a major point of the dissent was that the Town of Ramapo allowed only 198 units of low income housing to be built and did not provide for additional apartments, multifamily housing or row housing in its zoning ordinance. (See David W. Silverman, "A Return to the Walled Cities: Ramapo as an Imperium in Imperio", in Management and Control of Growth, op. cit., p. 53 and Herbert M. Franklin, "Controlling Urban Growth: But For Whom? the Social Implications of Development Timing Controls", in Management and Control of Growth, op. cit., pp. 84 and 88. Also see footnotes 37 and 38 of this chapter.

33. Freilich, op. cit., p. xiv.

In regard to property, the Appellate Division found the ordinance of 1969 unconstitutional since "The constitutional law...requires that a regulatory use within the established zoning district must be applicable to all property located within the district."³⁴ Under the Ramapo plan all residential property is not treated alike. A residential development permit is not required of persons applying for a single permit to build a single family home on a private lot. Only those developers or landowners desiring to build more than one unit on subdivided lots are required to secure a residential development permit. Also, other uses such as commercial and industrial uses, do not require similar permits before construction may begin.³⁵ These aspects of the plan, the plaintiffs held, violate equal protection of property.

In regard to persons, it was charged that the amended zoning ordinance "unconstitutionally excluded new residents from the community in a manner that violated the equal protection of the laws."³⁶ This charge referred particularly to the exclusion of low income and racial minorities since the effect of the plan was to make housing more expensive and to prevent the development of multifamily housing.³⁷

34. Silverman, op. cit., p. 58.

35. Ibid., p. 55.

36. Bosselman, "Can the Town of Ramapo Pass a Law to Bind the Rights of the Whole World?", op. cit., pp. 240-241.

37. Franklin, "Controlling Urban Growth: But For Whom?", op. cit., p. 92.

The latter effect would occur despite the fact that a public housing authority was established under the Ramapo plan and 198 units of low income housing actually built. In 1966 the Town's administration "eliminated apartments from the town's zoning, thus effectively blocking any additional lower income and public housing in residential areas."³⁸

Ramapo's zoning ordinance establishes six residential districts with various lot size restrictions ranging from a minimum of 80,000 square feet per lot to one district allowing 7,500 square foot minimum lots.

"This last district covers only one percent of the vacant land suitable for development. Of all vacant...(residential) land...fully 65 percent is limited to...'large lot' zoning with minimum required lot areas of 25,000 to 80,000 square feet." (original emphasis)³⁹

These restrictions led Silverman to conclude that Ramapo has no zoning "for the more modest house whose cost is within the means of the median wage earner."⁴⁰

In its opinion the Court of Appeals did not deal specifically with the charge that the Ramapo plan violated the rights of equal protection of property. Apparently the opinion that it was reasonable to require a permit of some developers of residential land and not others assumed that it was also equally fair to all developers. Nevertheless,

38. Franklin, "Controlling Urban Growth", op. cit., p. 84.

39. Ibid., p. 85.

40. Silverman, op. cit., p. 53.

the court did point out that the Planning Board already had the right to refuse subdivision approval in the absence of certain plat improvements developers were required to make. This scheme was not seen as an unfair prohibition applied to subdividers and not to other developers. The Ramapo plan was merely conditioning the approval of subdivision on the provision of adequate facilities as the town had done prior to the amended zoning ordinance. Under the plan, however, more of the responsibility for providing facilities was shifted to the developer. This did not trouble the court. "Whether it is the municipality or the developer who is to provide the improvements, the objective is the same - to provide adequate facilities, off-site and on-site."⁴¹

In regard to persons, the Court of Appeals also failed to find a violation of equal protection. In fact, the majority opinion noted that a public housing authority had been established during the administration of the plan and that 198 units of low income housing had been built. The court considered these acts laudatory and noted that the plan provided for "low and moderate income housing on a large scale."⁴² "(F)ar from being exclusionary", the court opinion continued,

"the present amendments merely seek, by the implementation of sequential development and timed growth,

41. Court of Appeals of New York, op. cit., p. 18.

42. Ibid., pp. 21-22.

to provide a balanced cohesive community dedicated to the efficient utilization of land...and in so doing testify to this community's continuing role in population assimilation."⁴³

The court never recognized that Ramapo's zoning ordinance prohibited multifamily and row housing. Nor did it recognize that the 198 low income housing units were the only ones constructed under the plan and that no others were anticipated or scheduled. Perhaps the court chose to deal only with the stated intentions of the plan and the accomplishments of the Town Board under it. At any rate, the court refused to consider what would occur if the Town Board failed to meet its objective of creating a socially and economically "balanced community". In so doing the Court of Appeals adopted an attitude taken by the trial court: "(There is no) justification in reason or in law for us to assume that the Town Board will renege on its commitment to (the provisions of the plan)."⁴⁴

This chapter concludes the discussion of Ramapo's system of development timing and the legal challenges which arose to it. In the following chapters the growth control technique developed in Petaluma, California and the legal challenges which were brought against it will be discussed. Although the Ramapo and Petaluma techniques are similar in operation and effect, the suits brought against them

43. Court of Appeals of New York, op. cit., p. 21.

44. Norman Williams, Jr., American Planning Law: Land Use and the Police Power, Volume III (Chicago, Illinois: Callaghan and Company, 1975), p. 363.

respectively focused on different legal issues. Also, the court opinions upholding the constitutionality of each system were based on entirely different rationales and legal precepts. For example, the primary charges brought against the Ramapo plan were violations of due process and equal protection. In the Petaluma case, violations of the right to travel were emphasized by the plaintiffs. In the former case, the New York Court of Appeal's opinion focused primarily on whether or not development timing was a properly delegated zoning function. In the Petaluma case, the Federal Court of Appeals found the question of reasonableness to be central in determining the plan's constitutionality. Also of major concern to the court in the Petaluma case was the plan's effect on the rights of individuals. As will be discussed in the conclusion to this thesis, the differences between the Ramapo and Petaluma litigations illustrate the range of viewpoints which are possible in considering the constitutionality of nontraditional techniques of growth management.

Chapter V

Petaluma, California: Controlling Growth Through Residential Development Quotas

In this chapter the growth control technique of development quotas instituted in Petaluma, California will be discussed. The topics examined are: 1) Petaluma's Location and Growth History, 2) Petaluma's Planning Process, 3) The Nature of Petaluma's Growth Control Technique and 4) The Results of Petaluma's Plan on Its Development. In the following chapter the legal and constitutional implications of development quotas will be considered.

Petaluma's Location and Growth History

The City of Petaluma is located on the Petaluma River in Sonoma County, California approximately 30 miles north of San Francisco. Before 1956 population growth was slow in the city, increasing by only 3,500 persons between 1940 and 1955.¹ With the relocation and widening of U.S. Highway 101 in the city in 1956 development pressures began to be felt in Petaluma.² In the 1960's Petaluma became easily accessible to the San Francisco Bay area with the completion of the Interstate freeway. Population growth then accelerated rapidly, reaching the

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1. William C. McGivern, "Putting a Speed Limit on Growth", The ASPO Magazine, Volume 38, No. 10 (November, 1972), p. 263.
 2. Frank B. Gray, "The City of Petaluma: Residential Development Control", in Management and Control of Growth - Issues-Techniques-Problems-Trends, Volume II, Randall W. Scott, ed. (Washington, D.C.: The Urban Land Institute, 1975), p. 149.

following levels at the dates indicated:³

10,315 persons - 1950	19,050 persons - 1965
" - 1955	24,870 persons - 1970
14,000 " - 1960	29,500 " - 1971
17,000 " - 1962	30,500 " - 1972*

*After Residential Development Control System

Petaluma's General Plan predicted the population of the Petaluma area would soar to 77,000 persons by 1985 if post-1956 growth rates continued.⁴

Most of Petaluma's growth was occurring in east Petaluma between U.S. 101 and the Sonoma Mountains. In fact, almost 95 percent of the entire town's new construction since 1965 consisted of residential development in that area. West or "old" Petaluma between the Petaluma River and the western hills experienced almost no growth. The same "no-growth" fate was being experienced in central Petaluma where much of the area's older residential, commercial and industrial development built between 1930 and 1950 is located. Petaluma's post-1964 growth rate is reflected in the number of completed residential units shown below:⁵

270 units - 1964

379 units - 1968

3. McGivern, op. cit., p. 263; Malcolm A. Misuraca, "Petaluma vs. The T.J. Hooper: Must the Suburbs be Seaworthy?", in Management and Control of Growth, op. cit., p. 190; United States Court of Appeals, Ninth Circuit, "Construction Industry Association of Sonoma County v. The City of Petaluma", Case Decision, 522 Federal Reporter, 2d Series (August, 1975), p. 900, and John Hart, "The Petaluma Case - From Cry California," in Management and Control of Growth, op. cit., p. 128.

4. Gray, op. cit., p. 149. Also see footnote #20 of Chapter VI for a discussion of the projected population controversy.

5. United States Court of Appeals, op. cit., p. 900.

440 units - 1965	358 units - 1969
321 units - 1966	591 units - 1970
234 units - 1967	891 units - 1971

It was because of this increased growth that Petaluma began consideration of growth management.

Early in its history Petaluma was a thriving shipping and commercial core with poultry production a primary industry. Later, these activities shifted downstream to the San Francisco Bay Area. During the rapid residential growth of the '60's Petaluma was expected to attract substantial amounts of new commerce and industry, possibly becoming a deep-water port with access down the Petaluma River to the San Francisco Bay. This goal was unrealistic, however, since Petaluma lacked major rail and trucking linkages to other industrial centers.

Also,

"(d)velopment of the deep-water port depended on very active and affirmative programs by the U.S. Corps of Engineers and the concurrence of other regional governments, neither of which was very likely in view of the other, already developed areas that were vying for expansion of their own facilities."⁶

Not attracting a significant amount of industry or commerce during its rapid suburban growth period, and not becoming a deep-water port, Petaluma instead began to develop as a commuter suburb of San Francisco. This trend frightened long time residents who, remembering the town's early prosperity and relative self-sufficiency had "no desire to see vast residential tracts encroach on industrial or agricultural land and cause total assessed valuation to stagnate."⁷ In an effort

6. Misuraca, op. cit., p. 190.

7. McGivern, op. cit., p. 263.

to avert the trend the City annexed a large tract of land along U.S. 101 in the late 1960's, zoned it for industry and supplied it with extensive water and sewer connections. This move nonetheless failed to attract the desired development, and Petaluma, like Marin County, became a suburban community with rising taxes and expensive housing.

In addition to being dissatisfied with a lack of industry the residents of Petaluma found the character of the town's new residential growth unsavory. Tracts of new housing, all the same age and monotonously similar, were being laid out in concentrated sections of town. In its case to the U.S. Court of Appeals, the City complained that between 1960 and 1970 housing had been laid out in regular grid patterns with almost unvarying 6,000 square foot lots, creating a density of approximately 4.5 units per acre.⁸ The City also noted that between 1960 and 1970 88 percent of all housing permits issued were for single family detached homes. By 1970 this rate caused 83 percent of all units to be of the single family type. Since most new development was occurring in the eastern section of the city, a large deficiency in moderately priced multifamily and apartment units was found in that section of town, City attorneys also noted.

Rapid residential growth was seriously overtaxing the City's

8. United States Court of Appeals, op. cit., p. 900.

ability to provide water, according to Petaluma officials.⁹ In 1974 Petaluma was entitled to 4.0 million gallons per day (mgpd) from the Russian River but was using between 4.5 and 5.0 mgpd. This overconsumption was possible because other customers in the water system were not drawing their full entitlements. In an attempt to balance demand against supply, Petaluma began voluntarily rationing water until the existing capacity could be increased.

Sewage treatment was also a major problem. The capacity of city facilities for secondary treatment and waste water discharge was limited. Growth pressures were forcing the Petaluma plant to discharge secondarily treated effluent into the Petaluma River in violation of Regional Water Quality Control standards. To control pollution, the federal Environmental Protection Agency had ordered the City to expand its secondary treatment facilities. New facilities, however, were not expected to be completed until the summer of 1976. By 1969 "it became obvious to the city council and citizens of Petaluma that uncontrolled growth was having serious impact on the fiscal and physical capabilities of the city."¹⁰ The eastside schools where new development had concentrated were overcrowded and deficient (whereas schools on the older westside were not), taxes and housing costs were rising and the overall quality of life in Petaluma was felt to be declining.

9. Gray, op. cit., p.155. The discussion of Petaluma's water and sewage treatment facilities in this chapter is according to Gray, then Director of Petaluma's Department of Community Development. These figures were the subject of a controversy which the Courts did not attempt to resolve. Also see footnotes #20 and 21 of Chapter VI.

10. Gray, op. cit., p. 149.

Petaluma's Planning Process

The recent history of Petaluma's "Residential Development Control System" (RDCS) began in 1970 when the Planning Director, the City Engineer and the City Manager met to calculate the impact on Petaluma of the barrage of subdivision proposals which had been and were to be filed with the planning department. Out of their concern came a planning department study, "The Impact of Projected Residential Development on School Facilities for the Area East of Highway 101." This report concluded that if the city's growth rate continued at its 1969-1971 rate, it would be impossible to provide school and other public facilities for the increased population.

Following this report the City Manager in November, 1970 outlined a nine point program to deal with the growth problem. It included:¹¹

- Assistance to the school districts;
- Rezoning and pre-zoning to a lower density per acre than the required 6,000 square foot lots;
- Discouragement of annexation;
- Encouragement of new trunk lines on the western side of the city to encourage growth in that direction;
- An emergency ordinance in regard to recreation and park requirements to obtain additional money for these developments; and
- A plan for city/developer/lending institution cooperation to phase subdivision development over a longer period of time than proposed by developers.

10. Gray, op. cit., p. 150.

In January, 1971 a moratorium on the rezoning of all land - including residential, commercial and industrial areas - was adopted until all existing city plans and zoning ordinances could be updated. This was followed by a moratorium on the annexation of land to the City. These moves were designed to give the city council an opportunity to study the problems of growth and the desired future of the community.

To assist in determining the future of Petaluma, questionnaires were sent to all city residents eliciting opinions on urbanization, growth control, and the desired character of Petaluma. The majority of all respondents favored restricting the population to 40,000 persons or below, but still desired industrial growth (a contradiction). In addition, most respondents did not want their town to become a "bedroom community".

In April, 1971 the Petaluma Development Policy Conference was held with the public, planning department staff members and planning consultants attending. As a result of this conference the city adopted an official development policy covering the following items: fundamental development policies at a city-wide level; policies related to urban form and amenities; open space and agriculture; housing and residential development; commercial and industrial areas; special land use problems; circulation, public facilities and utilities; and, administration and enforcement of zoning, subdivision and related ordinances.¹²

12. Gray, op. cit., p. 151.

As the next step in Petaluma's planning process an important document, the Environmental Design Plan, was prepared by over 100 citizens, members of the planning commission and city council, planning staff members and private consultants. This plan, which took nine months to prepare, was adopted by the city council in March, 1972. Its primary purpose was to describe the means by which the development policy would be carried out.

Using the results of the planning process up until this point, the Residential Development Control System was then designed and subsequently adopted by the City in August, 1972. This system, which is Petaluma's famous growth control technique, is used to evaluate and allocate the residential units permitted to be built in the city annually. To provide a statistical basis for the allotments the Housing Element of the General Plan was also adopted. It is updated annually to determine the appropriate number of units to be built in a given year as well as their type and location within the city.

The Nature of Petaluma's Growth Control Technique

Petaluma's Residential Development Control System (RDCS) is actually a tool to implement the planning decisions contained in three documents: the Petaluma General Plan, the Environmental Design Plan and the Housing Element of the General Plan. Each of these documents develops policies in an increasing order of specificity with the latter document being updated annually. The RDCS regulates only residential subdivision development involving five or more lots. A single family home to be built on a single existing lot is not subject to RDCS

regulation.

The RDCS establishes a 500 unit quota as the total number of new residential units which may be constructed annually between 1972 and 1977. The quota is allocated among different areas of the city and for different housing types with the city council retaining the authority to raise or lower the quota by up to ten percent for any area. If the quota is adjusted by the council in one year, subsequent annual quotas must be correspondingly adjusted up or down. The City Council can also require that between eight and twelve percent of each year's quota be allocated to low and moderate income housing.

In addition to the quotas, the RDCS requires that developers dedicate portions of a greenbelt around Petaluma's urban area upon receiving permission to develop. The greenbelt, "a landscaped strip park 'approximately 200 feet in width'"¹³ is intended to define Petaluma's boundary for urban expansion for ten or twenty years (until 1982 or 1992).

"No residential development will be permitted outside the greenbelt, and the city will refuse annexation and utility extension to that nonurban area, and will solicit the cooperation of Sonoma County to prevent residential development outside the greenbelt."¹⁴

To receive permission to build, all developers must submit applications to build in one year by a certain date in the preceding year. The Residential Development Evaluation Board (RDEB), composed of

13. Herbert M. Franklin, "Legal Dimensions to Controlling Urban Growth", in Management and Control of Growth, op. cit., p. 224.

14. Ibid.

representatives from the City Council, the Planning Commission, business and professional interests, the local school districts, and the public, evaluates the applications for conformance to the General Plan and the Environmental Design Plans. This involves rating each development proposal with respect to two categories of criteria: 1) Public Utilities and Services and 2) Quality of Design and Contribution to Public Welfare and Amenity. The former category rates the accessibility of fire stations, water systems, sanitary sewers, drainage facilities, streets and schools. The latter category evaluates the quality of the proposed site, architectural design and landscaping. It also evaluates the capacity of the proposal to contribute to community wellbeing through parks, low and moderate income housing, better roads, bicycle paths, and so forth. (For a complete listing of the criteria in each of these categories see Appendix B).

In rating the proposals, each of the criteria in the first category (Utilities and Services) has a point value of 0 to 5. In the second category (Design and Public Welfare) each criteria has a value range of 0 to 10. To receive approval by the RDEB a proposal must earn at least 25 points in the first category and 50 points in the second. All ratings are published by the RDEB and an appeals process is provided for developers who feel that their proposals were unfairly evaluated.

After receiving a rating all proposals are sent at one time to the City Council which grants permission to develop based on the building quotas established for each section of the city and the ratings of projects proposed for each sector. Once granted permission to build,

a developer may have his permit rescinded if he fails to begin construction in six months. In this case the number of units allocated to the cancelled project may be given to the next highest applicant or added to the quota for the ensuing year.

For the year 1973-74 the city allowed 500 units to be built according to the following allocation: 125 multifamily and 125 single family units in the east side of Petaluma; 130 multifamily and 120 single family units in the west side of Petaluma.

The Results of Petaluma's Plan on Its Development

As in the Ramapo case, most published accounts of the effects of the Petaluma plan on its growth have been favorable. One would suspect, however, that there has been dissatisfaction with development quotas, mainly among developers and landowners who have been denied permission to build. That most of Petaluma's residents were satisfied with the RDCS was demonstrated in a public referendum in which 85 percent of the voters expressed approval of the system.

The Residential Development Control System operated in Petaluma for two years before the construction industry filed suit to stop it. During that time "the system operated effectively to achieve desired community goals. Construction was occurring in a balanced manner between sectors of the city, housing types were beginning to achieve balance among the sectors, and a sense of community was generated within Petaluma.¹⁵

According to Dennis Boehlje, Petaluma Planning Director,

15. Gray, op. cit., p. 158.

"requests for building permits and the population growth rate both have been cut in half; schools have returned to single sessions; and building activity no longer exceeds water and sewer capacity."¹⁶

School attendance dropped under the system and fewer residences are being built. In 1973, for example, less than 350 dwelling units were built although 500 building permits were allotted.¹⁷

Despite the construction decline,

"Many new real estate firms have been prospering in Petaluma and the appreciation rate on housing is approximately the same as that of the surrounding neighborhood",

according to Frank Gray, former Director of the Department of Community Development.¹⁸ City officials are now claiming that "Petaluma isn't turning away all newcomers."¹⁹ In 1975 the city had a population of 30,000 and with a future improved water supply expected to reach 75,000 or 80,000 by 1990. Clean industry was also being sought to keep pace with population growth.

In the following chapter the major constitutional issues which arose in the litigation against the Petaluma plan will be discussed. Although the plaintiffs challenged many aspects of the plan, the court opinions focused primarily on the right to travel and the due process issues. Violations of equal rights were considered only implicitly as they related to the former issues.

16. "Petaluma Wins on Growth Control", Planning, the ASPO Magazine, Volume 42, No. 4 (May, 1976), p. 6.

17. Sylvia Lewis, "The Jury's Out on Growth Control", "Planning, the ASPO Magazine", Volume 41, No. 1 (January, 1975), p. 8.

18. Gray, op. cit., p. 158.

19. Lewis, op. cit., p. 8.

Chapter VI

Legal and Constitutional Issues of the Petaluma Case

In Construction Industry Association of Sonoma County v. The City of Petaluma the constitutionality of the Petaluma plan was challenged by the San Francisco, Peninsula, Redwood Empire Building Association; the Construction Industry Association and Land Investors Research. The case was first heard in the United States District Court for the Northern District of California where the plan was declared unconstitutional in an April 26, 1974 decision. This decision was appealed and reheard in the United States Court of Appeals, Ninth Circuit. An August 13, 1975 decision found the plan to be constitutional and valid, thus reversing the lower court decision. An appeal to the United States Supreme Court was denied on February 23, 1976, thus allowing the Court of Appeal's decision to stand.

The plaintiffs in the Petaluma case charged that the residential development control system violated the Constitutionally guaranteed rights of due process, equal protection and travel and that it also interfered with interstate commerce.¹ In the remainder

1. Attorneys for Appellants (City of Petaluma), "The Petaluma Decision: On Appeal to the Ninth Circuit", in Management and Control of Growth - Issues-Techniques-Problems-Trends, Volume II, Randall W. Scott, ed. (Washington, D.C.: the Urban Land Institute, 1975) p. 160. A violation of privileges and immunities was also charged.

of this chapter the due process, equal protection and right to travel arguments of the case are discussed. Unless otherwise indicated, the court opinions expressed will be those of the U.S. Court of Appeals, Ninth Circuit, which rendered the final decision on the case.

Due Process

As discussed in Chapter IV, violations of due process is the central charge brought against most development timing and restrictive zoning schemes.² To establish that a plan or regulation violates the due process clause of the 14th Amendment to the U.S. Constitution it must usually be shown that: 1) its exercise is not legitimately granted to the municipality by the state enabling legislation, or 2) it does not fall within the "police power" and therefore does not protect the health, safety, morals or general welfare of the community, or 3) the regulation is arbitrary and unreasonable.

Unlike the Ramapo case, the plaintiffs in the Petaluma case did not charge that the plan was the exercise of a power not legitimately granted to the municipality. Neither was it charged that the Petaluma zoning ordinance went beyond the scope of the police power. In the court proceedings, therefore, it was assumed that the enactment of the plan was the exercise of a police power legitimately granted. This is illustrated in the Court of Appeal's description of Petaluma as "a local entity (exercising), in its own self-interest,

2. See Chapter IV of this thesis for the rationale used in charging due process violations in development timing cases.

police power lawfully delegated to it by (the) state."³ The plan itself was referred to as a "...reasonable exercise of city's police power."⁴

Instead of focusing on the "delegation of authority" and "police power" arguments, the plaintiffs in the Petaluma case charged that the Petaluma plan violated due process rights by being unreasonable and arbitrary.⁵ The original intent of the plan, "to protect its (Petaluma's) small town character and surrounding open space" and to avoid rapid and uncontrolled growth,⁶ was considered an unreasonable rationale for a plan that significantly limited the entrance of newcomers into the community. This charge was upheld in the U.S. District Court which quoted the following case precedent:

"There is no doubt that many of the residents of this area are highly desirous of keeping it the way it is, preferring, quite naturally, to look out upon the land in its natural state rather than on other homes. These desires, however, do not rise to the level of public welfare. This is purely a matter of private desire which zoning regulations may not

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3. United States Court of Appeals, Ninth Circuit, Case Decision, "Construction Industry Association of Sonoma County v. The City of Petaluma", 522 Federal Reporter, 2d Series (August, 1975), p. 899.
 4. Ibid.
 5. Herbert M. Franklin, "Legal Dimensions to Controlling Urban Growth", in Management and Control of Growth, op. cit., p. 225 and United States Court of Appeals, op. cit., p. 905.
 6. United States Court of Appeals, op. cit., p. 899.

be employed to effectuate."⁷

On appeal to the Court of Appeals, the opposite view was taken. The majority opinion held that "(t)he concept of the public welfare is broad and inclusive", representing spiritual and aesthetic values as well as physical and monetary ones.⁸ The legislature has the authority under the police power, the court continued, to determine that the community be "beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled."⁹

The Court of Appeals cited the recent Belle Terre and Los Altos Hills court decisions which together held that the preservation of quiet neighborhoods and rural environments are legitimate governmental interests falling within the concept of the public welfare.¹⁰ The zoning power, these decisions affirmed, is extremely broad and may be used to restrict uncontrolled growth and to make a community attractive to families. Such goals were considered legitimate zoning functions for promoting the general welfare even if in pursuing them some persons are excluded from residing in the community. Finding the Petaluma plan far less restrictive and exclusionary than either the Belle Terre or Los Altos Hills ordinances, the Court of Appeals judged the plan to fall within the rules established in the cited cases. The majority

7. United States District Court, N.D. California, "Petaluma: The Case Decision", in Management and Control of Growth, op. cit., p. 142.

8. United States Court of Appeals, op. cit., p. 906.

9. Ibid.

10. Ibid., pp. 907-908.

opinion therefore concluded that

"the concept of the public welfare is sufficiently broad to uphold Petaluma's desire to preserve its small town character, its open spaces and low density of population, and to grow at an orderly and deliberate pace."¹¹

Other unreasonable provisions of the Petaluma plan, the plaintiffs contended, were the annual 500 unit building permit quota for developments of five or more units and the urban extension line. The building permit quota, it was argued, "limited new housing units to approximately one-third to one-half of the demographic and market demand of the 1970-1971 period."¹² The urban extension line and density limitations within it, even in the absence of the development quota, were found to

"set a maximum population of the city at approximately 55,000 as against the 1962 projection of 77,000 by 1985. Such a limitation (was held to be) a substantial interference with demographic and market demand for housing and the immigration of new residents."¹³

The plaintiffs further charged that Petaluma officials had unreasonably contracted with the Sonoma County Water Agency for only enough water to serve a population of 55,000 through 1990.¹⁴ The City had, it was argued, "selected an arbitrary growth rate, in defiance of

11. United States Court of Appeals, op. cit., p. 909.

12. United States District Court, op. cit., p. 137.

13. Ibid. Also see footnote #20 for a discussion of the projected population controversy.

14. United States District Court, op. cit., p. 137.

demographics, and then tailored its public facilities to meet only the smaller burden."¹⁵ The city water contract was seen as an attempt to justify the building permit quota on the grounds that available public services could not support a larger population.

In replying to these charges of unreasonableness, the court addressed the plaintiff's central argument - the plan's effect on demographics and market demand. Although contending that the development quota and urban extension line interfered with "demographics and the market demand for housing", the plaintiffs never defined the latter terms.¹⁶ Definition was elusive, the court implied, since the 500 unit quota did not apply to all housing, but only to projects of five or more units. Because the plaintiffs

"failed to introduce any evidence whatsoever as to the number of exempt units expected to be built during the five-year period, the effect of the 500 development-unit limitation on the natural growth in housing (remained) uncertain."¹⁷

The majority opinion thus argued that the total market demand for housing in Petaluma could be estimated based on pre-development quota building statistics, but that the plan's effect on the market demand could not and had not been estimated. The court did assume, however, that the 500 unit quota was on some indeterminate scale "below

15. Malcolm A. Misuraca, "Petaluma vs. The T.J. Hooper: Must the Suburbs be Seaworthy?", in Management and Control of Growth, op. cit., p. 195.

16. Attorneys for Appellants (City of Petaluma), op. cit., p. 162.

17. United States Court of Appeals, op. cit., p. 902.

the reasonably anticipated market demand for such units."¹⁸ Without data to establish that the quota unreasonably held supply below demand, the court rejected the plaintiffs' charge that the plan was unreasonable.¹⁹

The court did not specifically reply to the plaintiffs' charge that the City had contracted for only enough water to serve a population of 55,000 through 1990. This was a prudent omission since the quantity of water available to the city, the capacity of city sewage facilities and the projected city population were all subjects of unresolved controversies.²⁰ The court, nonetheless, considered the

18. United States Court of Appeals, op. cit., p. 902.

19. It should be noted that the defendants presented data establishing that the 500 unit development quota was approximately the average annual rate for the issuance of building permits in Petaluma between 1967 and 1971. The accelerated average between 1970 and 1971, precipitating the growth control plan, was 1,000 units per year. Thus the 500 unit quota had a reasonable basis and was not arbitrary according to city attorneys. See Attorneys for Appellants (City of Petaluma), op. cit., p. 172.

20. Petaluma officials had projected a maximum population of 55,000 for the city with residential development control by 1985 using higher densities than the city had experienced prior to the plan. The projected city population of 77,000 by 1985 claimed by the plaintiffs was erroneous. The 77,000 figure referred to the Petaluma area, covering 94 square miles. The city itself covered only 7.7 square miles. For a discussion of the water and sewer capacity arguments see United States District Court, op. cit., pp. 137-138; Attorneys for Appellants (City of Petaluma), op. cit., p. 163; and Frank B. Gray, "The City of Petaluma: Residential Development Control", in Management and Control of Growth, op. cit., p. 155.

discussion of water and sewage facilities unnecessary. The majority opinion viewed the plan as a reasonable program for achieving reasonable goals, i.e., the protection of a small town character and the control of rapid growth. Consideration of water and sewer capacities for a current or projected population was thus unnecessary and not germane to establishing the reasonableness of the plan.²¹

Equal Protection

Violations of equal protection were charged by the plaintiffs in the Petaluma case but were not replied to by either the District Court or the Court of Appeals. The former invalidated the plan as a violation of the constitutional right to travel and therefore did not consider it necessary to examine the other violations charged by the plaintiffs. The Court of Appeals found the plan to be a "reasonable and legitimate exercise of the police power"²² after disposing of the "right to travel", "due process" and "interstate commerce" charges. The court did not consider it necessary to examine the "equal protection"

21. See United States Court of Appeals, op. cit., p. 902, footnote #5. The City had, in fact, contracted for enough water "until 1984 or 1985 at a growth rate 33% greater than the growth rate contemplated by the plan", according to City attorneys (See Attorneys for Appellants (City of Petaluma), op. cit., p. 163.) The plan contemplated a growth rate of approximately 500 housing units per year. At this rate the city population would be 55,000 in approximately 1990. Finding the growth rate contemplated in the plan reasonable, the court would probably have found the water plan also reasonable if it had chosen to examine the issue.

22. United States Court of Appeals, op. cit., p. 909.

charge.

In the Court of Appeals decision, most references to the unequal treatment of persons related to the alleged loss of housing quality and opportunities for persons in the regional housing market seeking housing in Petaluma. Discrimination against persons was therefore addressed as a violation of the right to travel.

The Right to Travel

The central charge made by the plaintiffs in the Petaluma case was that the plan violated the constitutional right to travel. This was also the violation for which the District Court found the plan to be unconstitutional and invalid. "The express purpose and the intended and actual effects of the 'Petaluma Plan'", the District Court ruled, "have been to exclude substantial numbers of people who would otherwise have elected to immigrate into the city."²³ Since the freedom to travel, including "the right to enter and live in any state or municipality"²⁴ has been upheld by the Supreme Court as a basic constitutional right, the District Court concluded that in the Petaluma plan, "the City has violated the people's right to travel."²⁵

In judging the plan to be exclusionary, the District Court considered "the potential effects that the (plan) would have if it were

23. United States District Court, op. cit., p. 142.

24. Ibid., p. 141.

25. Ibid., p. 142.

proliferated throughout the region itself."²⁶ Since the court considered the San Francisco metropolitan region to be a generally self-contained and unitary housing market, excluding persons from one suburb would cause them to go to another suburb for housing, it was argued. The latter suburb would then absorb more than its share of regional residents, eventually causing it to adopt exclusionary methods of its own. Housing prices would then rise as the regional supply became limited, forcing people to live in substandard units because affordable replacement units would not be available.

"The aggregated effect of a proliferation of the 'Petaluma Plan' throughout the San Francisco region would be a decline in regional housing stock quality, a loss of the mobility of current and prospective residents and a deterioration in the quality and choice of housing available to income earners with real incomes of \$14,000 per year or less",

the District Court concluded.²⁷ The majority opinion then instructed Petaluma officials to choose "less drastic means", such as expanding public facilities, to accomodate growth pressures.

On appeal to the Court of Appeals, the majority opinion quickly dismissed the "right to travel" argument on several grounds. It first maintained, as the attorneys for the City had argued, that the appellees did not have standing to raise the "right to travel" argument. Only those persons who have personally suffered some threatened or actual injury resulting from illegal action may be granted standing to sue; a party may not sue in the interest of others who have suffered or

26. United States District Court, op. cit., p. 139.

27. Ibid., p. 141.

may suffer injury.²⁸ Since neither the construction industry association nor the landowners bringing suit against Petaluma officials personally had their mobility impaired by the plan, they did not have standing to say that the plan violated their right to travel. Arguing that the plan violated the right to travel of third parties (potential residents) was not sufficient to maintain the suit, the Court of Appeals ruled.

To insure that new litigation was not brought against Petaluma officials by parties actually denied the right to travel under the plan, the court eliminated the issue from further consideration:

"Although due to appellees' lack of standing we do not reach today the right to travel issue", the court stated in a footnote to the majority opinion, "we note that the Petaluma Plan is not aimed at transients, nor does it penalize those who have recently exercised their right to travel."²⁹

Thus, the court implied, the plan is "no infringement of anyone's right to travel."³⁰

The Court of Appeals also struck down the arguments that the plan was exclusionary and would cause a decline in regional housing supply and quality.

28. United States Court of Appeals, op. cit., pp. 898-899; Randall W. Scott, "The Petaluma Decision: Another Sign That Federal Courts Don't Want To Get Into Land Use", AIP Newsletter, Volume 10, No. 10 (October, 1975), p. 8; and Attorneys for Appellants (City of Petaluma), op. cit., p. 166.

29. United States Court of Appeals, op. cit., p. 907, footnote #13.

30. Ibid., pp. 906-907, footnote #13.

"If...the Plan were considered by itself and with respect to Petaluma only, there is no evidence to suggest that there would be a deterioration in the quality and choice of housing available there to persons in the lower and middle income brackets" 31

the majority opinion stated. "Actually", the opinion continued, "the Plan increases the availability of multi-family units (owner-occupied and rental units) and low-income units which were rarely constructed in the pre-Plan days."³² The plan, in addition to being inclusionary if considered for Petaluma only, increased the overall supply of housing by providing for construction at higher densities than in the pre-plan days.

The majority opinion chose to consider the effects of the plan on Petaluma only. In doing so, the court deferred to the state legislature's implicit policy that local zoning ordinances should address local problems. The court did admit, however, that unilateral land use decisions by one locality affect the needs and resources of an entire region.³³ But since the state legislature had not officially recognized the regional impact of local decisions and had provided no mechanisms for regulating or controlling such impact, the federal court hesitated to force localities to adopt regional viewpoints. The court's conservatism was expressed in its conclusion that

31. United States Court of Appeals, op. cit., p. 902.

32. Ibid.

33. Ibid., p. 908.

"If the present system of delegated zoning power does not effectively serve the state interest in furthering the general welfare of the region or entire state, it is the state legislature's and not the federal court's role to intervene and adjust the system... (T)he federal court is not a super zoning board and should not be called on to mark the point at which legitimate local interests in promoting the welfare of the community are outweighed by legitimate regional interests."³⁴

This chapter concludes the analyses of the Ramapo and Petaluma growth control plans and the constitutional issues which arose in the legal challenges of these plans. In the following chapter the lessons to be learned by planners, city officials and the public from the Ramapo and Petaluma experiences are discussed. Based on these lessons, conclusions may be drawn regarding the future of the growth control movement in the U.S.

34. United States Court of Appeals, op. cit., p. 908,

CHAPTER VII

The Lessons of Ramapo and Petaluma

Important lessons can be learned from the experiences of Ramapo and Petaluma on developing a growth control system capable of withstanding legal assault. Perhaps the most important lesson is: "Plan Ahead". In both the Ramapo and Petaluma litigation careful prior planning provided the ultimate justification for the plans in general and for many challenged provisions in particular. Both the Ramapo and Petaluma planning processes documented the effects of rapid growth on the respective community's housing stock, environment, public facilities and services, and fiscal capacity.¹ These reports were either followed or accompanied by statements of goals and objectives for community development. Based on these efforts each community then formulated innovative planning techniques to alleviate existing problems and to accomplish the stated goals. A cause and effect relationship was thus clearly established between existing and potential problems and proposed planning techniques.

Because of prior planning in the Ramapo case, the Court of Appeals was able to conclude that the plan was "a reasonable attempt to provide for the sequential, orderly development of land in conjunction

1. See Chapters III and IV.

with the needs of the community."² The court also observed that the restrictions placed on individuals and land use by the plan

"conform(ed) to the community's considered land use policies as expressed in its comprehensive plan... (and were therefore) the product of foresighted planning calculated to promote the welfare of the township."³

In a similar manner, the careful consideration given to problems and their solution in the Petaluma plan allowed the court to find the plan reasonable and not arbitrary. Since the development quota system was accomplishing many of the plan's objectives in the years before being challenged, the argument that the plan promoted the general welfare of the community was strengthened. Also, because of the rigorous public process which resulted in the plan's stated objectives, the court was able to reject a central charge made by the plaintiffs - that the plan was "designed solely to insulate Petaluma from the urban complex in which it (found) itself."⁴ An orderly process of problem statement, goal formation and technique development was thus critical in upholding the constitutionality of both the Ramapo and Petaluma plans.

Another important lesson to be learned from the Ramapo

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2. Court of Appeals of New York, "Ramapo: The Case Decision", in Management and Control of Growth - Issues-Techniques-Problems-Trends, Volume II, Randall W. Scott, ed. (Washington, D.C.: The Urban Land Institute, 1975), pp. 21-22.
 3. Ibid., p. 21.
 4. United States Court of Appeals, Ninth Circuit, Case Decision, "Construction Industry Association of Sonoma County v. The City of Petaluma", 522 Federal Reporter, 2d Series (August, 1975), p. 906.

and Petaluma cases involves the changing role of the courts in land use litigation. Traditionally, local legislative mandates such as zoning ordinances were given a "presumption of validity", that is, they were presumed to be valid so long as they fell within the general scope of powers delegated in the state enabling legislation.⁵ Consequently, zoning provisions were usually upheld when challenged if their validity was fairly debatable. The courts struck down zoning ordinances only when clear abuses of legislative discretion were apparent.⁶

The "presumption of validity" is based on the separation of powers in government. Under this concept it is the function of the legislature to formulate policies and to enact laws to implement those policies. The courts' main function is to determine whether or not the laws have been properly applied, rather than to challenge the substance of the laws.

In the Ramapo and Petaluma cases and in other recent land use litigation the traditional role of the courts is changing. Courts are now showing a greater propensity to look behind the veil of presumed validity to determine if the intent of the enabling legislation

5. Edward N. Reiner, "Traditional Zoning: Precursor to Managed Growth", in Management and Control of Growth - Issues-Techniques-Problems-Trends, Volume I, Randall W. Scott, ed. (Washington, D.C.: The Urban Land Institute, 1975), p. 217; and Randall W. Scott, Management and Control of Growth, Volume I, op. cit., p. 16.

6. Scott, Management and Control of Growth, Volume I, op. cit., p. 16.

has been realized in the local ordinance.⁷ Judicial opinions in land use cases now frequently comment on the inadequacies of local zoning ordinances as well as state enabling legislation to promote the general welfare, especially the regional welfare.⁸

Although the courts are pointing out the inadequacies of ordinances to accomplish their stated objectives, judicial opinion does not usually go beyond observation. The courts are still unwilling, except in rare circumstances, to outline the kinds of affirmative action which must be undertaken to correct the shortcomings of state land use policies and local zoning ordinances.⁹ This latter task is being left to the legislative forum where open debate can determine an acceptable balance of public and private rights.

7. Reiner, op. cit., p. 220.

8. Ibid., pp. 219-220. Also see Norman Williams Jr., "Recent Developments in Exclusionary Zoning - The Mount Laurel Case", in Addendum to American Planning Law: Land Use and the Police Power, Volume III (Chicago, Illinois: Callaghan and Company, 1975), and Jerome G. Rose, "The Courts and the Balanced Community: Recent Trends in New Jersey Zoning Law", Journal of the AIP, Volume 39, No. 4 (July, 1973), pp. 265-276.

9. In one rare case, a Court master was appointed by a lower court in the Petaluma litigation to ensure that affirmative action was undertaken to protect the public welfare. This action was overturned by a higher court. See Rose, "The Courts and the Balanced Community", op. cit., p. 274.

In refusing to outline improved forms of land use control, the courts are demonstrating their reluctance to perform a legislative function. This attitude is well demonstrated in both the Ramapo and Petaluma litigation. In both cases, the courts commented on the need for a regional perspective in determining whether an ordinance promotes the general welfare. But the existing state enabling legislation in both New York and California failed to provide for regional perspectives in local zoning ordinances. Each court therefore limited its scrutiny of the respective plan to its effects on the jurisdiction enacting the ordinance. The Court of Appeals in the Petaluma case summarized this rationale by stating that

"If the present system of delegated zoning power does not effectively serve the state interest in furthering the general welfare of the region or entire state, it is the state legislature's and not the federal courts' role to intervene and adjust the system."¹⁰

Another important lesson to be learned from the Ramapo and Petaluma litigation is that differences exist among the state court systems, and between the federal and state court systems in ruling on challenges to land use controls. The Ramapo case was heard in the New York State courts while the Petaluma case was heard in the federal courts. The Court of Appeals decision in the Ramapo case focused on whether or not development timing was a proper zoning function under the existing state enabling legislation. In the Petaluma case the majority opinion of the Court of Appeals dealt primarily with the rights of individuals to use their land or to abide in

10. United States Court of Appeals, op. cit., p. 908.

Petaluma and the meaning of "the public welfare". The New York court appeared more concerned with the scope of state delegated powers; the federal court with the rights of individuals.

As Jerome Rose and others have carefully pointed out, one state may invalidate a zoning provision upheld in similar form by another state. Thus in Lomarch v. Mayor of Englewood the New Jersey state courts found a one year freeze on development to be an unconstitutional "temporary taking" of property.¹¹ The Ramapo plan, on the other hand, prevented the development of some town lands for as long as 18 years, the period of the town's anticipated full development. This did not constitute taking, according to the New York courts, since the 18 year restrictions on property rights were only temporary.

Where inconsistencies occur among state court systems in land use case decisions, the United States Supreme Court is frequently reluctant to intervene and establish general rules. This is especially true in regard to controversial issues such as development timing where the points of contention are not yet clearly defined. In refusing to rehear either the Ramapo or Petaluma case, the Supreme Court may have been implying that further debate and experimentation are needed before the issues of urban growth management can be resolved.

As suggested above, the need for regional perspectives

11. Rose, "The Courts and the Balanced Community", op. cit., p. 273.

in land use controls is another important lesson to be gleaned from the Ramapo and Petaluma litigation. In the Ramapo case, the Court of Appeals' dissenting opinion found the plan unsound because it failed to consider "the social and economic ramifications for the locality, region, and state."¹² The majority opinion also condemned the lack of state and regional planning in New York. "Undoubtedly", it continued,

"current zoning enabling legislation is burdened by the largely antiquated notion...that the regulation of land use and development is uniquely a function of local government - that the public interest of the State is exhausted once its political subdivisions have been delegated the authority to zone."¹³

The U.S. District Court in the Petaluma case also condemned the lack of regional or state perspective in the Petaluma plan. "The aggregated effect of a proliferation of the 'Petaluma Plan' throughout the San Francisco region", the majority opinion warned,

"would be a decline in regional housing stock quality, a loss of the mobility of current and prospective residents and a deterioration in the quality and choice of housing available to income earners with real incomes of \$14,000 per year or less."¹⁴

12. Court of Appeals of New York, op. cit., p. 29.

13. Court of Appeals of New York, op. cit., p. 18.

14. United States District Court, N.D. California, "Petaluma: The Case Decision", in Management and Control of Growth, Volume II, op. cit., p. 141.

In both the Ramapo and Petaluma cases it was feared that the local solution would become a "regional dilemma", to use Randall Scott's terminology.¹⁵ Residents excluded from one locality because of the restricted housing supply would be forced to take up residence in another part of the region. This would cause the latter area to absorb more than its "fair share" of regional residents. Housing prices would then rise throughout the region, causing some residents to remain in substandard units because affordable replacements would not be available. Since at the macro, or regional (or State or National, depending on the area being examined), scale growth will occur as long as the population continues to expand, excluding residents from one locality (the micro scale) ultimately creates problems elsewhere.

The final majority opinions in the Petaluma and Ramapo cases recognized the potential regional dilemmas of local growth control measures but did not invalidate the respective ordinances for failing to respond to them. Other courts, however, have not been as passive. In New Jersey, for example, the Madison Township Zoning Ordinance was declared invalid in 1971 by a Superior Court for failing to promote a balanced community regionally.¹⁶ This ruling was followed in 1975 by the landmark Mount Laurel decision which established that every community must make housing opportunities

15. Scott, Management and Control of Growth, Volume I, op. cit., p. 12.

16. Rose, "The Courts and the Balanced Community," op. cit., p. 272.

realistically possible for a fair share of all persons regionally who may desire to live there, including low and moderate income persons.¹⁷ These rulings established a statewide trend of declaring local ordinances invalid if they failed to provide for a fair share of regional housing needs.

Given the trends in recent growth control litigation, how can planners and local governments prepare themselves to meet the challenges of growth more effectively? Several authors have suggested that local officials learn to control "the principle cause of local growth - the local economy."¹⁸ This task requires the realization that economic growth benefits the community and its residents only if that "growth corresponds to precise community needs."¹⁹ As explained in Chapter I, for some communities no economic growth is beneficial; for others only certain types of economic growth will improve the local standard of living.

Perhaps the most effective stance for a community to assume in controlling economic growth is that of the monopolist - the most powerful economic figure. Instead of accepting virtually

17. Williams, Jr., "Recent Developments in Exclusionary Zoning - The Mount Laurel Case", op. cit., p. 5.

18. Earl Finkler, William J. Toner and Frank J. Popper, Urban Nongrowth; City Planning for People (New York: Praeger Publishers, 1976), p. 82. Also see Earl Finkler and David L. Peterson, Nongrowth Planning Strategies - The Developing Power of Towns, Cities, and Regions (New York: Praeger Publishers, 1974) and Norman Williams, Jr., American Planning Law: Land Use and the Police Power, Volume V (Chicago, Illinois: Callaghan and Company, 1975).

19. Finkler, et al., Urban Nongrowth, op. cit., p. 93.

any development proposed, communities, through official policies and regulations, should learn to say "no" to those proposals which would not enhance the general welfare. As monopolists, communities could extract higher prices from some potential developers than others. These prices might come in the form of required job training programs, user fees, promises to hire locals first, environmental protection devices, conditional zoning and so forth. Having to reject some development, William Toner points out, implies that you are in demand and ultimately creates a higher quality environment.²⁰ It also keeps community options open.

Many authors believe that basic changes are needed in the urban fiscal structure before monopolistic management techniques will improve local standards of living. The most frequently cited area in need of fiscal reform is the real property tax system. Currently, real property taxes are a major source of local government revenue. Since commercial and industrial land is taxed more heavily than residential land, local governments frequently overzone for commerce and industry in an attempt to increase public treasuries. As a result, the supply of nonresidential sites often exceeds demand, causing unit values to decline. Marginal commercial and industrial firms are then attracted to the community by low land prices. With

20. Finkler and Peterson, Nongrowth Planning Strategies, op. cit., p. xxiii.

these firms come economic instability and a reluctance to invest in architectural amenities, site beautification, employee benefits, and other programs that require the expenditure of funds. In addition, overzoning for commerce and industry often leaves an under-supply of land for housing, parks, schools, and other public amenities.

Fiscal zoning, or attempting to increase public revenues by overzoning for nonresidential uses, seldom enhances the well-being of a community when social costs are considered. There are, however, few alternatives open to local governments for expanding the tax base. Because fiscal reform is a complicated and emotive issue, experimentation with new approaches seldom occurs.

The experiences of Ramapo, Petaluma and other communities experimenting with growth controls demonstrate that urban growth management is a complex task. It requires that planners and administrators allocate scarce urban resources in a manner that enhances the general wellbeing of the community and its residents. Unfortunately, there are no easy formulas for determining what a community's needs are, how conflicts among those needs can be resolved, and what levels of resource allocation will produce the optimum community benefit.

Perhaps the most effective course of action in the difficult task of growth management is to strive for community balance. The concept of a balanced community, as Jerome Rose observes, is

evolving in the New Jersey courts as a standard against which growth management programs are being measured.²¹ To pass the judicial tests of balance, planning programs must provide for 1) socioeconomic balance (balance among housing types and income and racial groups); 2) fiscal balance (balance between revenues from ratables and the municipal costs of development); 3) ecological balance; 4) regional balance (balance regionally among housing types, income and racial groups, and land uses); and 5) temporal balance (providing for growth in increments that will not outstrip public resources).²²

In planning for balanced communities, planners and public officials should not limit themselves to existing design and management techniques. The public, state and local legislatures and the courts are realizing that traditional growth controls often fail to prevent the adverse effects of rapid development. There is consequently an increasing willingness to accept innovative and imaginative new forms of growth management in the hopes of preserving and increasing the amenities of urban living.

The words of an author of early zoning law and an innovator in his own time seem appropriate to usher in what may be a new era in land use controls. Alfred Bettman, the grand old man of

21. Rose, "The Courts and the Balanced Community, op. cit.

22. Ibid., p. 265.

planning and the law, advised in 1946:²³

"Be sure you are right, then go ahead. There is nothing in the nature of American constitutional law which should produce timidity or the palsy of effort by fear of constitutional difficulties. The American Constitution is sufficiently beneficent and wide-armed to receive within its protection whatever is morally and intellectually justifiable and really needed for the public welfare." (original emphasis).

23. Stephen Sussna, Land Use Control...More Effective Approaches (Washington, D.C.: The Urban Land Institute, 1970), p. 39.

APPENDICES

APPENDIX A

Proposed Amendments to Town of Ramapo Building Zone Amended Ordinance of 1969¹

1. Amend 46-3, Definitions, by adding after "Day Camp" and before "Dog Kennel" the following:

Development Use, Residential

The erection or construction of dwellings on any vacant plots, lots, or parcels of land. It shall not include the alteration, repair, demolition, or maintenance of existing dwellings or construction or erection of structures accessory to dwellings.

Any person acting in such manner as to come within the definition of development use, residential, shall be deemed to be engaged in residential development which shall be a separate use classification under this ordinance and subject to the requirement of obtaining a special permit from the Town Board.

Developer, Residential

Any person (a) who, having an interest in land, causes it directly or indirectly to be used for residential development, or (b) who directly or indirectly sells, leases, or develops or offers to sell, lease, or develop, or advertises for sale, lease or development any lot, plot, parcel, site, unit or interest for a residential development use, or (c) who engages directly or indirectly or through an agent in the business or occupation of selling, leasing, developing, or offering for sale, lease, or development, a residential development use or any

1. Taken from Israel Stollman, "Ramapo: An Editorial and the Ordinance as Amended", in Management and Control of Growth - Issues-Techniques-Problems-Trends, Vol. II, Randall W. Scott, ed. (Washington, D.C.: The Urban Land Institute, 1975) pp. 5-13.

lot, plot, parcel, site unit, or interest for a residential development use, and (d) who is directly or indirectly controlled by, or under direction or indirect common control with, any of the foregoing shall be deemed to be engaged in development use, residential.

Development, Agent

Any person who represents, or acts for or on behalf of a residential developer, in selling, leasing, or developing, or offering to sell, lease, or develop any interest, lot, plot, parcel, site or unit for residential development use, except an attorney at law whose representation of another person consists solely of rendering legal services.

2. Amend 46-3, Definitions, by adding after "Camp" and before "Cellar" the following:

Capital Budget

The capital improvement program adopted by the Town Board pursuant to 99-g of the General Municipal Law for a six year period of effectiveness for the development of the unincorporated area of the town in accord with the master plan and official map, establishing the order of priority for all capital projects as shown on the official map and master plan in order to provide for maximum orderly, adequate, and economical provision of transportation, water, sewerage, drainage, parks and recreation, schools, municipal facilities and structures, and other public requirements.

Capital Plan

The capital improvement program adopted by resolution of the Town Board for the seventh through eighteenth year period of effectiveness,

for the development of the unincorporated area of the Town in accord with the master plan and official map, which shall establish two general orders of priority, the seventh through twelfth year, and the thirteenth through eighteenth year, for all capital projects as shown on the official map and master plan in order to provide for maximum orderly, adequate, and economical provision of transportation, water, sewerage, drainage, parks and recreation, schools, municipal facilities and structures, and other public requirements.

3. Delete from \$46-9A, Table of General Use Regulations, PR-80 Col. 2 "Uses Permitted By Right", Nos. 1 and 12 thereof as follows:

"1. One-family detached residences with not more than one principal building on a plot", and

"12. Residences subject to \$281 Town Law pursuant to provisions of density zoning resolution adopted by Town Board."

And change Nos. 2 through 11 respectively to Nos. 1 through 10 respectively.

4. Delete from \$46-9A, Table of General Use Regulations, R-15 Col.2 "Uses Permitted by Right", No.2 thereof as follows: "2. Two-family residences."

5. Delete from \$46-9A, Table of General Use Regulations, PO Col.2 "Uses Permitted by Right", No. 1 thereof as follows: "1. Same as RR-80 Nos. 1,4,5,6,7,8,9, and 12" and Add to \$46-9A Table of General Use Regulations, PO Col.2 "Uses Permitted by Right", No.1, as follows:

"1. Same as RR-80 Nos. 3,4,5,6,7, and 8."

6. Add to \$46-9A, Table of General Use Regulations, RR-80, Col. 2A "Uses by Special Permit of the Town Board" the following:

"3. One-family detached residences with not more than one principal building on a plot. (subject to \$46-13.1)

4. Residences subject to \$281 Town Law pursuant to the provisions of the density zoning resolution adopted by the Town Board (subject to \$46-13.1)"

7. Add to \$46-9A, Table of General Use Regulations, R-15 and HO, Col. 2A "Uses by Special Permit of the Town Board the following:

The number "1" before the words "Same as RR/80"; and "2. Two-family residences. (subject to \$46-13.1)"

8. Add a new \$46-13.1 to read as follows:

\$46-13.1. Special Permit Uses-Town Board Residential Development Use.

A. General Considerations

The Town of Ramapo has been experiencing unprecedented and rapid growth with respect to population, housing, economy, land development, and utilization of resources for the past decade. Transportation, water, sewerage, schools, parks and recreation, drainage and other public facilities and requirements have been and are being constructed to meet the needs of the Town's growing population, but the Town has been unable to provide these services and facilities at a pace which will keep abreast of the ever-growing public need.

Faced with the physical, social, and fiscal problems caused by the rapid and unprecedented growth, the Town of Ramapo has adopted a comprehensive master plan to guide its future development and has

adopted an official map and a capital program so as to provide for the maximum orderly, adequate, and economical development of its future residential, commercial, industrial, and public land uses and community facilities including transportation, water, sewerage, schools, parks and recreation, drainage, and other public facilities.

In order to insure that these comprehensive and coordinated plans are not frustrated by disorganized, unplanned, and uncoordinated development which would create an undue burden and hardship on the ability of the community to translate these plans into reality, the following objectives are established as policy determinations of zoning and planning for the Town of Ramapo:

1. To economize on the costs of municipal facilities and services to carefully phase residential development with efficient provision of public improvements;
2. To establish and maintain municipal control over the eventual character of development;
3. To establish and maintain a desirable degree of balance among the various uses of the land;
4. To establish and maintain essential quality of community services and facilities.

The Town, through its master plan, official map, zoning ordinance, subdivision regulations, capital program, and complementary planning programs, ordinances, laws, and regulations has mandated a program of continuing improvements which is designed to insure complete availability of public facilities and services so that all land in the Town is capable of development in accord with proper

planning. The haphazard and uncoordinated development of land without the adequate provision of public services and facilities available will destroy the continuing implementation and successful adoption of the program. Residential development will be carefully phased so as to insure that all developable land will be accorded a present vested right to develop at such time as services and facilities are available. Residential land which has the necessary available municipal facilities and services will be granted approval. Residential land which lacks the available facilities and services will be granted approval for development at such time as the facilities and services have been made available by the ongoing public improvement program or in which the residential developer agrees to furnish such facility or improvement in advance of the scheduled program for improvement of the public sector.

These regulations are adopted pursuant to the authority of the Constitution of the State of New York, the Statute of Local Government, the Town Law, and the Municipal Home Rule Law of the State of New York by providing for comprehensive planning and zoning for the government, protection, order, conduct, safety, health, and well being of the persons and property in the Town and consistent with the purposes set forth in Article 16 of the Town Law in facilitating the adequate provision of transportation, water, sewerage, schools, parks, drainage, municipal facilities and structures, and other public requirements in order to encourage the most appropriate use of land throughout the Town as provided in the master plan, official map,

capital program, laws, ordinances and regulations, and other comprehensive planning performed by the Town.

B. Special Permit Required for Residential Development Use.

(1) Prior to the issuance of any building permit, special permit of the Board of Appeals, subdivision approval, or site plan approval of the Planning Board for residential development use, a residential developer or development agent shall be required to obtain a special permit from the Town Board.

(2) The provisions of this section shall not be applicable to subdivisions finally approved by the Planning Board and filed in the Rockland County Clerk's Office prior to the effective date of this section.

C. Procedure for Special Permit

(1) The residential developer or development agent shall be required to submit an application to the Administrative Assistant to the Boards and Commissions in such detail as shall be set forth in regulations established by the Town Board of the Town of Ramapo, including a map showing the location of all land holdings of the applicant in the same ownership in the immediate vicinity and the extent of the land proposed for development. Said Administrative Assistant shall review the application with respect to all of the standards set forth in §46-13.1D as to the availability of municipal services and facilities and projected improvements scheduled in the capital budget and capital plan of the Town. The Administrative Assistant may request reports from appropriate town, county, or municipal

agencies, boards, or officials as may be required. Within forty-five (45) days of the submission of the application, the Administrative Assistant shall report his findings in writing to the Town Board and the Town Clerk shall proceed to notice the application for public hearing at the first regular meeting of the Town Board not less than two weeks after the submission of the written report.

(2) The Town Board shall within thirty (30) days after conclusion of the public hearing render its decision. In the event of approval of the application without conditions the Town Board shall also render its determination as to the number of residential dwellings that shall be permitted to be built pursuant to the requirements of §46-13.1E.

D. Standards for Issuance of Special Permit

No special permit shall be issued by the Town Board unless the residential development has available fifteen (15) development points on the following scale of values:

(1) Sewers

- (a) Public sewers available in RR-50, R-40, R-35, R-25, R-15 and R-15S districts.....5 points
- (b) Package Sewer Plants.....3 points
- (c) County approved septic system in an RR-80 district.....3 points
- (d) All others.....0 points

(2) Drainage

Percentage of Required Drainage Capacity Available

- (a) 100% or more.....5 points
- (b) 90% to 99.9%.....4 points

- (c) 80% to 89.9%.....3 points
 - (d) 65% to 79.9%.....2 points
 - (e) 50% to 64.9%.....1 point
 - (f) Less than 50%.....0 points
- (3) Improved Public Park or Recreation Facility Including Public School Site
 - (a) Within 1/4 mile.....5 points
 - (b) Within 1/2 mile.....3 points
 - (c) Within 1 mile.....1 point
 - (d) Further than 1 mile.....0 points
- (4) State, County, or Town Major, Secondary or Collector Road(s) Improved with Curbs and Sidewalks
 - (a) Direct Access.....5 points
 - (b) Within 1/2 mile.....3 points
 - (c) Within 1 mile.....1 point
 - (d) Further than 1 mile.....0 points
- (5) Fire House
 - (a) Within 1 mile.....3 points
 - (b) Within 2 miles.....1 point
 - (c) Further than 2 miles.....0 points

All distances shall be computed from the proposed location of each separate lot or plot capable of being improved with a residential dwelling and not from the boundaries of the entire parcel. The Town Board shall issue the special permit specifying the number of dwelling units that meet the standards set forth herein.

E. Vested Approvals and Relief

(1) Vested Approval of Special Permit

(a) The Town Board shall issue an approval of the application for special permit vesting a present right for the residential developer to proceed with residential development use of the land for such year as the proposed development meets the required points as indicated in the scheduled completion dates of the capital budget and capital plan as amended or failing to meet such points then for the final year of the capital plan as amended. Any improvement

scheduled in the capital budget for completion within one year from the date of application for the special permit shall be credited as though in existence on the date of application. Any improvement scheduled in the capital budget or capital plan more than one year from date of application shall be credited as though in existence as of the date of the scheduled completion.

(b) A developer may advance the date of authorization by agreeing to provide such improvements as will bring the development within the required number of points for earlier or immediate development. Such agreement shall be secured by either a cash deposit or surety bond sufficient to cover the cost of the proposed improvement, the form, sufficiency, and amount of which bond shall be determined by the Town Board.

(c) All approved special permits vesting a present right to future development shall be fully assignable without restriction.

(d) Nothing herein contained shall prevent such land from being immediately used for all other uses other than residential development use, as is authorized by the zoning ordinance.

(2) Relief

Any residential developer or development agent who has applied for a special permit from the Town Board pursuant to §46-13.1 shall be entitled as of right, to appeal within one year from the Town Board's determination granting the vested approval to the Development Easement Acquisition Commission, pursuant to Chapter 11 of the Code of the Town of Ramapo, for a determination pursuant to

§11-4(B) of the Development Easement Acquisition Law as to the extent to which the temporary restriction on residential development use of the land shall affect the assessed valuation placed on such land for purposes of real estate taxation and such assessed valuation on such land shall be reduced as provided in the Development Easement Acquisition Law as compensation for the temporary restriction placed on the land.

F. Variances

(1) The Town Board shall have the power to vary or modify the application of any provision of §46-13.1 of this ordinance upon its determination in its legislative discretion, that such variance or modification is consistent with comprehensive planning for proper land use including the master plan, official map, capital budget, and capital plan upon which this ordinance is based and with the health, safety, and general welfare of the Town and its inhabitants.

(2) Upon receiving any application for such variance or modification, such application shall be referred to the Planning Board of the Town of Ramapo for a report and recommendation of said Planning Board with respect to the effect of the proposed variance or modification upon the comprehensive planning of the Town including the master plan, official map, capital budget and plan, existing ordinances, laws and regulations and the health, safety, and general welfare of the Town and its inhabitants.

(3) All applications for variance or modification shall be filed with the Administrative Assistant to the Boards and Commissions who shall forward same within two weeks after receipt to the

Planning Board for its report. Such report shall be made in writing and shall be returned by the Planning Board to the said Administrative Assistant within 30 days of such reference. The said Administrative Assistant shall forward said report to the Town Board and the Town Clerk shall proceed to notice the application for public hearing at the first regular meeting of the Town Board not less than two weeks after submission of the written report by the Planning Board. The Town Board shall render its determination within thirty (30) days after conclusion of the public hearing.

G. Fees

(1) The fee for each special permit application pursuant to §46-13.1(c) to the Town Board shall be Twenty-Five Dollars (\$25.00) plus Ten Dollars (\$10.00) for each proposed dwelling unit, payable at the time of said application and are not refundable.

(2) The fee for each application for a variance pursuant to §46-13.1(f) to the Town Board shall be Twenty-Five Dollars (\$25.00) plus Ten Dollars (\$10.00) for each proposed dwelling unit payable at the time of the application and are not refundable.

APPENDIX B

Criteria Used For Rating Development Applications Under the Petaluma Plan¹

1. Utilities and Public Services:

(a) The capacity of the water system to provide for the needs of the proposed development without system extensions beyond those normally installed by the developer;

(b) The capacity of the sanitary sewers to dispose of the wastes of the proposed development without system extension beyond those normally installed by the developer;

(c) The capacity of the drainage facilities to adequately dispose of the surface run-off of the proposed development without system extensions beyond those normally installed by the developer;

(d) The ability of the Fire Department of the City to provide fire protection according to the established response standards of the City without the necessity of establishing a new station or requiring addition of major equipment to an existing station;

(e) The capacity of the appropriate school to absorb the children expected to inhabit a proposed development without necessitating adding double sessions or other unusual scheduling or classroom overcrowding;

1. Taken from Frank B. Gray, "The City of Petaluma: Residential Development Control", in Management and Control of Growth - Issues-Techniques-Problems-Trends, Volume II (Washington, D.C.: The Urban Land Institute, 1975), pp. 149-159.

(f) The capacity of major street linkage to provide for the needs of the proposed development without substantially altering existing traffic patterns or overloading the existing street system, and the availability of other public facilities (such as parks and playgrounds) to meet the additional demands for vital public services without extension of services beyond those provided by the developer.

2. Quality of Design and Contribution to Public Welfare and Amenity:

(a) Site and architectural design quality which may be indicated by the harmony of the proposed buildings in terms of size, height, color, and location with respect to existing neighboring development;

(b) Site and architectural design quality which may be indicated by the amount and character of landscaping and screening;

(c) Site and architectural design quality which may be indicated by the arrangement of the site for efficiency of circulation, on- and -off-site traffic safety, privacy, etc.;

(d) The provision of public and/or private usable open space and/or pathways along the Petaluma River or any creek;

(e) Contributions to and extensions of existing systems of foot or bicycle paths, equestrian trails and the greenbelt provided for in the Environmental Design Plans;

(f) The provision of needed public facilities, such as critical linkages in the major street system, school rooms, or other vital public facilities;

(g) The extent to which the proposed development accomplished an orderly and contiguous extension of existing development as against "leapfrog" development;

(h) The provision of units to meet the City's policy goal of 8 percent to 12 percent low and moderate income dwelling units annually.

Each of the criteria in the former category is rated on a scale of 0 to 5; in the latter each of the criteria is rated on a scale of 0 to 10. No development can be approved unless it receives at least 25 points in the first category (e.g., it meets five of the six criteria) and 50 points in the second.

After evaluation, the ratings are published and an appeal hearing is provided for applicants who disagree with the rating given their proposal. Final ratings are sent to the city council, which allots permits on the basis of the quota for each sector of the city and the ratings of the proposals within each sector. If a developer fails to begin construction within six months, his allotted number of units may be withdrawn and either given to the next highest applicant, or added to the quota for the ensuing year.

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