Land Use Moratoria

JAMES A. COON LOCAL GOVERNMENT TECHNICAL SERIES

January 1999

NEW YORK STATE
George E. Pataki
Governor

DEPARTMENT OF STATE
Alexander F. Treadwell
Secretary of State

NEW YORK STATE DEPARTMENT OF STATE
DIVISION OF LOCAL GOVERNMENT SERVICES
41 STATE STREET
ALBANY, NEW YORK 12231
(518)473-3355
http://www.dos.state.ny.us

CONTENTS

INTRODUCTION

A land-use moratorium is a local enactment which temporarily suspends a landowner's right to obtain development approvals while the community considers and potentially adopts changes to its comprehensive plan and/or its land use regulations to address new circumstances not addressed by its current laws.

A moratorium on development therefore preserves the *status quo* while the municipality updates its comprehensive plan. Also known as "stopgap" or "interim" zoning, a moratorium is designed to halt development temporarily, pending the completion and possible adoption of more permanent, comprehensive regulations. A moratorium may be general, imposing a ban on all development approvals throughout the community, or specific to one use or another or to a particular zoning district.

The objective of municipal land use controls is to promote community planning values by properly regulating land development. It follows that land use controls work best when built upon a carefully-considered comprehensive plan. It takes time to put together or update a good community plan. During this time, demand for a particular use of land may arise for which there are inadequate or nonexistent controls. If the community allows development during that time, the ultimate worth of the plan could be undermined. For these reasons, moratoria and other forms of interim zoning controls are often needed to "freeze" development until satisfactory final regulations are adopted.

The Genesis of the Concept of Moratoria

The New York enabling laws do not contain any specific mention of "moratorium." Early on in the history of zoning, however, the New York Court of Appeals gave some indication that *any* zoning regulation could temporarily and lawfully limit an owner's ability to use his or her land profitably, so long as the regulation was in furtherance of long-range planning goals.[1]

"Stopgap zoning" is treated in a number of early zoning cases arising in other states. In perhaps the most widely cited of these, *Downham v. City Council of Alexandria*,[2] the court stated, "it would be a rather strict application of the law to hold that a city, pending the necessary preliminaries and hearings . . . cannot, in the interim, take reasonable measures temporarily to protect the public interest and welfare until an ordinance is finally adopted. Otherwise, any movement by the governing body of the city to zone would, no doubt, frequently precipitate a race of diligence between property owners, and the adoption later of the zoning ordinance would in many instances be without effect to protect residential communities--like locking the stable after the horse is stolen."

> ***"[I]t would be a rather strict application of the law to hold that a city . . . cannot . . . take reasonable measures temporarily to protect the public interest and welfare until an ordinance is finally adopted. Otherwise, any movement by the governing body . . . would . . . precipitate a race of diligence between property owners , and the adoption later of the zoning ordinance would in many instances be . . . like locking the stable after the horse is stolen."***
> [Downham v. Alexandria]

In *Hasco Electric Corp. v. Dassler*,[3] decided in 1955, a New York court appears to have dealt with the concept of a "moratorium" for the first time. The City of New Rochelle had adopted an interim ordinance halting the issuance of building permits in a district zoned for general manufacturing, pending the adoption of a further amendment changing the district to a residential classification. The "interim ordinance" also required the cancellation and revocation of all building permits which had already been issued in the district. Quoting the above language from the *Downham* decision, the court held that a local legislative body was within its power to enact "reasonable stopgap or interim legislation prohibiting the commencement of construction for a reasonable time during consideration of proposed zoning changes." The court also held that a building permit alone does not guarantee a right to build, unless the owner also begins good-faith construction efforts within a reasonable time.

Lo Conti v. City of Utica, Dept. of Building,[4] was a 1966 decision of the Supreme Court, Oneida County. In its holding, the court recognized the validity of a moratorium in concept, but struck down the City of Utica's moratorium on building permits due to the city's failure to comply strictly with the notice provisions of the state enabling legislation. The *Lo Conti* decision signaled the New York courts' firm policy of upholding the validity of moratoria as a general concept, while insisting on strict adherence to procedural requisites for amending zoning in their enactment. These requisites are discussed in detail later in this publication.

Legislative Action Distinguished From Administrative Delay

In contrast to the cases recognizing the validity of delay imposed by reasonable *legislative* action, the courts have historically had little patience with delay imposed through *non-legislative* action. Delay which is imposed by administrative officials alone -- with no legislative support and where there is no immediate danger to public health or safety -- has been held to be improper.[5]

Land-Use Moratoria Distinguished From Other Police-Power Moratoria

The "police power" is the general power possessed by municipal governments to take action to advance the public health, safety and welfare. While land use regulation itself is an exercise of the police power, the term is more commonly employed in reference to other forms of municipal laws or ordinances. In 1974 the Court of Appeals dealt with an issue regarding municipal response to an immediate health and safety problem. The City of New York had issued a permit for the construction of a new nursing home. Subsequently, in response to the concerns of citizens, and following an investigation showing the existing sewerage system to be antiquated and inadequate, the city revoked the permits. In upholding the city's action, the Court of Appeals held that, whereas the municipal zoning power could not be used to address an immediate health or safety problem, here the city had instead properly utilized its police power to address an immediate health and safety concern.[6]

By distinguishing the police-power issue from the zoning issue, the Court of Appeals sharpened the focus on the standards applicable to land use (including zoning) moratoria. Land use moratoria are appropriate mechanisms for addressing long-range community planning and zoning objectives. Where immediate health and safety problems are at issue, however, the general police power, not zoning, is the appropriate source of authority.

"Growth-Capping" Laws

"Growth capping" laws are designed to limit, *but not halt*, development pending the upgrading of capital improvements in the community. These laws control development by allowing a pre-determined amount of growth within a defined period. The purpose of growth capping laws is to assure that development does not outpace planned improvements. By contrast, a moratorium is designed to *halt* development for a certain period, to maintain the status quo.

The purpose of growth capping laws is to assure that development does not outpace planned improvements. By contrast, a moratorium is designed to halt development for a certain period, to maintain the status quo.

The landmark decision in *Golden v. Planning Board of the Town of Ramapo*[7] was handed down by the Court of Appeals in 1972. In its decision, the court upheld the town's 18-year phased-development plan, which placed growth restrictions of varying durations in certain areas of the town. The restrictions could be lifted prior to expiration only if a developer were to provide certain public improvements during the interim period. The majority opinion did not employ the term "moratorium." Since development was possible under certain conditions, the law should be categorized as a "growth-capping" plan rather than as a moratorium. Nonetheless, the court set forth a principle which would later be applied to moratoria as well: "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' . . . "

In 1989, the Town of Clifton Park adopted a "Phased Growth Law" that limited the number of building permits obtainable in any given year in a designated development area to 20% of the total units approved for any given project. The development area encompassed roughly 10% of the town's total land area. By its terms, the law was to remain in effect until a particular highway interchange was to have been completed, but in no case could exceed five years. Upon challenge, the Appellate Division, Third Department, held the law to be a legitimate exercise of the town's zoning power. The court said it addressed a situation where there existed "ample evidence that the designated area has a major traffic problem and the new home construction in the area is the primary contributor to this congestion."[8] "Phased growth" laws generally do not amount to a total prohibition on construction, and are mentioned here by way of contrast with true moratoria. The above decisions indicate, however, that the "capping" of development, according to a fair, reasonable and systematic method, is a valid exercise of zoning authority, even, as was the case in *Clifton Park*, for a period of time longer than that which would be upheld for a total moratorium.

Basic Requisites of Land-Use Moratoria

As stated above, the municipal statutes contain no mention of the word "moratorium." By holding moratoria to be lawful, the cases have essentially implied that the delegated power to regulate land uses includes the power to make such regulations expressly temporary.

Land use moratoria which apply to existing zoning are considered short-term zoning amendments.

The courts have held that, where land-use moratoria apply to the administration of an existing zoning ordinance or local law, they are simply short-term zoning amendments. In such cases, the local government must follow the ordinary procedural rules for enactment of *any* zoning regulations.

The *Lo Conti* decision, cited above, formed the foundation of the courts' insistence that a municipality must adhere strictly to the procedural rules of the state zoning enabling legislation when enacting a land use moratorium. These rules are found in Town Law, §§264 and 265, Village Law, §§7-706 and 7-708, and in individual city charters. Alternatively, where moratoria are adopted by local law, the procedures of Municipal Home Rule Law, §§20 through 27, may be followed.[9] In *Temkin v. Karagheuzoff*,[10] the Appellate Division, First Department, invalidated a "stopgap" zoning amendment which effectively imposed a moratorium on the issuance of building permits for new nursing homes. The amendment was struck down because the court found that the city failed to follow proper procedures in enacting the stop-gap zoning.

Where the moratorium acts as an amendment to zoning, it must be referred to the county planning agency under General Municipal Law §239-m.

In 1990, the court in *B & L Development v. Town of Greenfield*[11] found a one-year moratorium on the issuance of building permits and construction approvals to be a zoning law. As such, it was subject to all of the statutory procedural requisites of zoning laws, including county referral. In 1997,

in *Caruso v. Town of Oyster Bay*,[12] the court held that a town board had no jurisdiction to adopt a local law establishing a moratorium on the issuance of building permits for new home construction in a defined area of the town. The town had failed to properly refer the law first to the county planning commission, as required by General Municipal Law, §239-m.

In 1987, the Court of Appeals dealt with a moratorium on subdivision approvals, in the landmark case, *Turnpike Woods, Inc., v. Town of Stony Point*[13]. The Town of Stony Point had adopted a local law temporarily suspending the authority of the town planning board to approve subdivision applications. Following refusal by the town planning board to consider his application, a developer sued for a default approval. Under Town Law, §276, default approvals may be secured if the planning board fails to make a decision on a subdivision application within the time period required by the statute. In this action, the developer claimed the town had not acted properly under the Municipal Home Rule Law, to properly supersede the default-approval provision. The Court of Appeals agreed with the developer and struck down the moratorium law.

For those drafting moratorium laws, the lesson of the *Turnpike Woods* decision is: If the moratorium acts in any way to supersede a state statute (or its operation), make sure (1) that the legislative body in fact has the power under the Municipal Home Rule Law to supersede or amend the state statute in question, and (2) that the local law expressly mentions the section or sections of the statute being superseded, as well as the manner in which they are being superseded.

Moratoria are "Type II Actions" under the State Environmental Quality Review Act (SEQRA) regulations, which means that SEQRA does not apply to moratoria. The proposed adoption of a moratorium does not, therefore, require a determination of significance or the preparation of any other SEQRA documents.

The State Environmental Quality Review Act (SEQRA) does not apply to moratoria.

In addition to the procedural rules for *enacting* a moratorium, the courts have addressed the question of the procedure to be followed *during* a moratorium. In the 1975 case *Held v. Giuliano*,[14] the Appellate Division, Third Department, held that variance applications from the strict terms of an interim ordinance must meet the same standards as though the ordinance were a permanent one.[15] Since it is quite common that a variance from the strict terms of a moratorium may be granted by the *governing board* rather than by the board of appeals, it should be mentioned that use of this procedure must be accomplished by supersedure of the state enabling laws, as the enabling laws provide that only the board of appeals may grant variances.

In addition to strict procedural requirements, the courts have established a well-defined set of requirements which relate to the underlying *constitutional* issues posed by moratoria.

The moratorium must be of a certain, short duration, no longer than necessary to effect a permanent solution

The courts will look carefully to see that the terms of a moratorium express a relatively short, but specific duration, and that such a duration is closely related to the municipal actions necessary to address the underlying issues. In *Rubin v. McAlevey*[16], the Town of Ramapo's Interim Development Law was challenged. To "freeze" development pending the enactment of a new comprehensive plan and zoning ordinance, the town in June of 1966 enacted a 90-

day moratorium. The moratorium was eventually extended for an additional 30 days, and finally extended for a period which, although somewhat indefinite, was not to have lasted beyond calendar year 1966. The court held the law valid, in part because it was in effect for an expressly certain, not an indefinite, time period, and because that time period was reasonably short.

In another case, the Appellate Division, Third Department, struck down a moratorium adopted by the Town of Gardiner in its 1974 decision, *Lake Illyria Corporation v. Town of Gardiner*[17]. In order to halt development pending the adoption of a new comprehensive zoning ordinance, the town had, since 1968, annually enacted moratoria prohibiting any use of property except for residential purposes, unless a variance was obtained. The plaintiff brought suit, challenging the validity of the fourth successive renewal of the moratorium. The Court's opinion stated:

> *"The purpose of 'stop-gap' zoning is to allow a local legislative body, pending decision upon the adoption of a comprehensive zoning ordinance, to take reasonable measures temporarily to protect the public interest and welfare until an ordinance is finally adopted.* Otherwise, the eventual comprehensive zoning ordinance might be of little avail."
>
> "While it might be deemed a proper exercise of power for the town to freeze building uses when the town is *actively* engaged in the enactment of a comprehensive zoning law, the present case demonstrates the potential abuse of such a process by long delay...., and throughout this period of time the only *meaningful* progress toward the preparation of a comprehensive plan has taken place relatively recently...."
>
> "A course of conduct such as that followed by the Town herein is plainly contrary to the purpose of interim or 'stopgap' zoning. Under the present circumstances, the absence of justification for such an exercise of power renders this four-year delay unreasonable."[18]

Until the *Lake Illyria* decision, the courts had recognized the validity of moratoria *for the purpose* of a community's development of permanent new zoning regulations. *Lake Illyria*, however, made it a distinct requirement that, during the moratorium, the community must be *actively engaged* in the development of a comprehensive plan or new regulations.

In 1985, the Appellate Division dealt further with the issue of the reasonable duration of a moratorium. In a memorandum decision, the Appellate Division, Second Department, struck down a moratorium because it exceeded a reasonable time period, even though the town showed that it had adopted a master plan in 1980 and had completed the preliminary draft of a zoning ordinance in 1983.[19] Clearly, the town's moratorium--five years and counting--had exceeded a reasonable duration. What was significant about the decision, however, was that the length of time was held to be unreasonable *even though* the town had made documented progress toward a permanent set of regulations.

In the 1991 decision, *Duke v. Town of Huntington*[20], the Town of Huntington had been in the process of developing a Local Waterfront Revitalization Plan (LWRP) for five years, when it enacted a temporary restriction on the construction of docks. Although originally to have expired within ten months, the moratorium was extended twice, to cover a total period of almost three years. While recognizing the validity of the landmark moratorium cases, the court nonetheless invalidated the town's temporary restriction. The court took such action because of the town's extensive delay in developing a

permanent LWRP, combined with a lack of any showing of "dire necessity, . . . crisis condition, nor an emergency situation."

In another 1991 decision, *Mitchell v. Kemp,*[21] the Appellate Division, Second Department, upheld the finding of the Supreme Court, Dutchess County, that the Town of Pine Plains' five-year moratorium exceeded a reasonable period of time for enacting a comprehensive, new, permanent zoning ordinance.

What constitutes a reasonable duration for a moratorium, even where the municipality is fulfilling its duty to be working on a new plan or permanent legislation to address the issue at hand? Moratoria of six months as well as one year have been upheld by the courts. It is unclear whether a moratorium lasting longer than a year would be considered reasonable, but that may depend, to an extent, on the subject matter addressed by the moratorium.

The moratorium must be enacted for a permissible purpose: to study and/or adopt a new plan or new regulations.

The decisions in *Hasco Electric Corp. v. Dassler* and in *Rubin v. McAlevey* have generally been cited for authority that a community must be actively engaged in the revision of its comprehensive plan during a moratorium. A comprehensive plan addresses issues of growth and development on a community-wide basis. In a 1969 case, the City of New Rochelle had enacted an ordinance prohibiting the issuance of all building permits and all construction work for a period of six months on an island within the city limits. The stated purpose of the ordinance was that the city wished to halt all further development on the island pending further decisions by the City Council on acquisition of the island for park purposes. The opinion striking down the ordinance cited the *Hasco*, *Lo Conti* and *Rubin* cases for authority that a municipality may lawfully enact "stopgap" legislation *pending a revised comprehensive plan*. The opinion went on to say that there was no case or statutory authority upholding the enactment of such legislation where the municipality is, instead, merely considering appropriating property.[22]

The advantages to the municipality must outweigh the potential hardships to landowners.

The municipality should be prepared to show that the burden of being regulated by a moratorium is being shared substantially by the public at large, as opposed to being visited upon a minority of landowners. The principle was stated by the Court of Appeals in *Charles v. Diamond,*[23] a case which dealt with restrictions on residential sewer connections. The court stated: "we have sustained development restrictions, pursuant to a general community plan, for periods as long as 18 years....the crucial factor, perhaps even the decisive one, is whether the ultimate economic cost of the benefit is being shared by the members of the community at large, or, rather, is being hidden from the public by the placement of the entire burden upon particular property owners."

The "Takings" Issue

As we have seen, the courts have established strict rules, both as to the procedural, as well as the substantive, requisites of moratoria. The substantive rules, outlined above, might be said to embody a particular adaptation of the general principle that any enactment affecting private property rights must "bear a substantial relation to the public health, safety, morals, or general welfare."[24] If, however, a land-use regulation operates in such a way as to deprive the owner of all beneficial economic use of the property, may they be entitled to monetary compensation under the

Fifth and Fourteenth Amendments to the U.S. Constitution?

Early cases had recognized the principle of *inverse condemnation* (i.e., a regulatory taking).[25] Until 1987, however, the courts had not considered *temporary* land-use controls (such as moratoria) to amount to a deprivation of all beneficial use in the property. In cases where a regulation went "too far," and impacted an owner unfairly, the remedy was to strike down the local enactment and allow the owner to build.[26] In 1987, the U. S. Supreme Court changed that rule with its decision in *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*.[27] *First English* involved a challenge, brought by a church, against a county's moratorium on the construction or reconstruction of buildings within an "interim flood protection area." The moratorium effectively made it impossible for the church to rebuild a campground which had been previously destroyed by a flood.

The Supreme Court held, for the first time, that temporary takings that deny a landowner all use of their property are not different in kind from permanent takings. Once a court determines that a taking has occurred, it must award damages for the period of time the ordinance was in effect.

Whether a moratorium is a compensable taking, as it relates to specific property, depends on the facts of each case.

Could land-use moratoria be characterized as compensable takings of property according to the rule established in *First English*? Theoretically, yes, but, in practice, such determinations will rest on the facts of each case. The language used by the Court of Appeals in *Golden* therefore takes on even greater significance: "The fact that the ordinance limits the use of, and may depreciate the value of the property will not render it unconstitutional . . . unless it can be shown that the measure is either unreasonable in terms of necessity or the diminution in value is such as to be tantamount to a confiscation . . . "

Since the *First English* case was decided, at least one community's moratorium has been upheld against a takings claim. Quoting language from earlier cases, the Appellate Division, Second Department, stated that a moratorium adopted by the Village of Irvington constituted " 'a reasonable measure designed to temporarily halt development while the [Village] considered comprehensive zoning changes and was therefore a valid stopgap or interim measure.' "[28] The moratorium therefore was held not to constitute an unconstitutional taking of private property. In 1989, however, in *Seawall Associates v. City of New York*,[29] the Court of Appeals did hold a moratorium to be an unjust taking. The City of New York had adopted a local law placing a five-year moratorium on conversion, alteration or demolition of single-room occupancy units in multiple dwellings. The law also required the owners to restore such units to habitable conditions, and to lease them at controlled rents for an indefinite period. The law was held by the Court of Appeals to be an unconstitutional taking under the Fifth and Fourteenth Amendments. The court found that the law essentially locked the owners of "SRO's" into maintenance of a use which did not allow them any ability to realize an economic return on their investment.

If a landowner feels that a moratorium law constitutes a taking, he or she must nonetheless exhaust all available administrative procedures before bringing a lawsuit. In the 1991 case, *Hawes v. State*,[30] the State Legislature had enacted a moratorium on development along Beaverdam Creek in the Town of Brookhaven, to allow the Department of Environmental Conservation time to study the creek for possible inclusion in the State's Wild, Scenic and Recreational Rivers System. A landowner filed an action claiming the moratorium

effectuated an unjust taking. The Appellate Division, Second Department, dismissed the case, stating that it was possible for the owner to have applied to DEC for a permit first, before going to court. The permit, if granted, could have exempted the parcel from the moratorium on the basis that the proposed development would not be contrary to the policy of the Wild, Scenic and Recreational Rivers Act. Since the owner had not so applied, the claim could not be heard.

Vested Rights

Landowners who are aware that a moratorium is under consideration may act promptly to acquire "vested rights" in a use before the moratorium takes effect. Under what circumstances, then, might an owner be able to claim that they have acquired a right to build or to use the property according to the law as it existed prior to the effective date of a moratorium? The Court of Appeals has established a rule regarding the obtaining of vested rights which applies to land-use regulations in general. The rule was first articulated in *People v. Miller*,[31] and has most recently been restated by the Court in *Ellington Construction Corp. v. Zoning Board of Appeals of the Incorporated Village of New Hempstead*,[32] to wit: "where a more restrictive zoning ordinance is enacted, an owner will be permitted to complete a structure or a development which an amendment has rendered nonconforming only where the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of the amendment."

> ***"[W]here a more restrictive zoning ordinance is enacted, an owner will be permitted to complete a structure or a development which an amendment has rendered nonconforming only where the owner has undertaken substantial construction and made substantial expenditures prior to the effective date of the amendment."***
> [Ellington v. ZBA]

The application of the above two-pronged test will, of course yield results particular to each set of facts. In two recent moratorium cases, the lower courts declined to find vested rights. In *Pete Drown, Inc. v. Town Board of the Town of Ellenburg*,[33] a town which did not have any zoning regulations passed a local law establishing a moratorium on the construction of commercial buildings. About a year later the moratorium was replaced by a comprehensive zoning law which prohibited the incineration of commercial or hazardous waste. During this time, an owner had spent more than $850,000 on a project to site a commercial waste incinerator, which amount included purchase and storage of the incinerator itself, pending approval of the project. In a lawsuit, the owner claimed to have acquired vested rights to operate the incinerator. On appeal, the Third Department, held, first, that there had been no construction or change to the land itself, and, second, that there was no showing that the owner could not recoup its expenditures in the marketplace--presumably by selling the stored incinerator. While the absence of any construction, in and of itself, would have been sufficient to defeat the owner's claim, the court held also that the owner's expenditures, recoverable as they were, did not constitute the "serious loss" required by the courts in prior cases.

In *Steam Heat, Inc. v. Silva*,[34] the Appellate Division, Second Department upheld the New York City Board of Standards and Appeals' determination that the owner had not accomplished "substantial completion" of his building before a moratorium went into effect, even though there was evidence that he had made some expenditures.

In order to make a successful vested-rights claim, even where a moratorium has been adopted, an owner must still show that he or she has suffered substantial damage by having taken lawful action in

reliance on a prior law.[35]

Drafting a Moratorium Law

By now, there is sufficient case law on the subject of moratoria to furnish guidance to those community officials desiring to draft one. The following precepts should be followed:

(a) Adopt the moratorium in the form of a *local law*, the strongest form of municipal enactment, even if the existing zoning regulations are in the form of an ordinance. Although it is possible to amend an existing ordinance via a new ordinance in cities and towns, the use of a local law will avoid any uncertainty surrounding basic legal authority.

(b) In a municipality with an existing zoning ordinance or law, the moratorium should be treated as an amendment to that ordinance or law. The applicable procedural requirements--e.g., notice, hearing and possible county referral--must be strictly followed.

(c) The moratorium should clearly define the activity affected, and the manner in which it is affected. Does the moratorium affect construction itself? Does it affect the issuance of permits? (The permitting official will want to know this.) Does it affect actions by boards or commissions within the municipality? May project review continue, or must it, too, be stopped?

(d) If the moratorium supersedes any provision of either the Town Law or the Village Law, then the moratorium must be adopted by local law, using Municipal Home Rule Law procedures, and must state, with specificity, the section of the Town or Village Law being superseded. In particular, where the moratorium suspends subdivision approvals, it must be made clear in the moratorium law that the default-approval provisions of the subdivision statutes of the Town or Village Law (as the case may be) are superseded.

(e) Create a good written record. Establish a valid basis for the moratorium with a preamble which recites the nature of the particular land use issue, as well as the need for further development of the issue in the community's comprehensive plan and/or in its current land use regulations. Refer to the fact that time is needed for community officials to comprehensively address the issue, without having to allow further development during that time. Such a statement will help make it clear that the benefits to the community outweigh the potential burden to the landowners.

DRAFTING A MORATORIUM LAW

- Adopt the moratorium in the form of a local law.
- Where zoning already exists, treat the moratorium as an amendment to zoning, following the applicable procedures.
- Clearly define the activity affected and the manner in which it is affected.
- Where a moratorium supersedes provisions of the Town Law or Village Law, adopt it by local law, using Municipal Home Rule Law procedures.
- A valid basis for the moratorium should be set forth in a good written record.
- Specify the time period that the moratorium will be in effect.
- Provide a mechanism that allows affected landowners to apply for relief from the moratorium.

(f) Be sure the moratorium states that it is to be in effect for a definite period of time. The moratorium should be for a time no longer than absolutely necessary for the municipality to place permanent regulations in effect. Municipal officials should use the cases cited in Section 5(c)(1) above as guidance on this point.

(g) The moratorium should include a mechanism allowing affected landowners to apply to a board for relief from the moratorium, or it should contain a clear reference to the fact that an owner may make use of the existing variance procedures under the current zoning regulations.

Conclusion

As communities continue to grow, the pressures for further development may well increase. Ideally, a community's comprehensive plan and its land use regulations will be adequate to deal with those pressures. But the ideal is rarely the fact. Such pressures may lead to calls for a halt to particular types of development, or to development in particular areas, until municipal leaders have had a reasonable opportunity to formulate a comprehensive regulatory approach. Moratoria will, therefore, continue to be adopted. It is hoped that this publication, along with others in such areas as comprehensive planning, zoning and subdivision control, will serve as a useful guide to those community officials involved in the process.

JAMES A. COON

The James A. Coon Local Government Technical Series is dedicated to the memory of the deputy counsel at the NYS Department of State. Jim Coon devoted his career to assisting localities in their planning and zoning, and helping shape state municipal law statutes.

His outstanding dedication to public service was demonstrated by his work and his writings, including a book entitled *All You Ever Wanted to Know About Zoning*. He also taught land use law at Albany Law School. His contributions in the area of municipal law were invaluable and as a result improved the quality of life of New Yorkers and their communities.

ENDNOTES

1.See *People ex rel. St. Albans-Springfield Corp. v. Connell*, 257 NY 73, 177 NE 313 (1931); *Arverne Bay Construction Co. v. Thatcher*, 278 NY 222, 15 NE 2d 587 (1938).

2.58 F. 2d 784 (D. Va., 1932).

3.143 NYS 2d 240 (Sup. Ct., West. Co., 1955).

4.52 Misc. 2d 815, 276 NYS 2d 720 (Sup. Ct., Oneida Co., 1966).

5. See *Amsterdam-Manhattan Associates v. Joy*, 42 NY 2d 941, 397 NYS 2d 1000, 366 NE 2d 1354 (1977)

6. See *Belle Harbor Realty Corp. v. Kerr*, 35 NY 2d 507, 364 NYS 2d 160 (1974).

7.30 NY 2d 359, 334 NYS 2d 138 (1972).

8. See *Albany Area Builders Association v. Town of Clifton Park*, 172 AD 2d 54, 576 NYS 2d 932 (3d Dept., 1991).

9. See *Pete Drown, Inc. v. Tn. Bd. of the Tn. of Ellenburg*, 229 AD 2d 877, 646 NYS 2d 205 (3d Dept., 1996).

10. 43 AD 2d 820, 351 NYS 2d 141 (1st Dept., 1974), aff'd 34 NY 2d 324, 357 NYS 2d 470 (1974).

11. 146 Misc. 2d 638, 551 NYS 2d 734 (Sup. Ct., Saratoga Co., 1990).

12. 172 Misc. 2d 93, 656 NYS 2d 809 (Sup. Ct., Nassau Co., 1997).

13. 70 NY 2d 735, 519 NYS 2d 960, 514 NE 2d 380 (1987).

14. 46 AD 2d 558, 364 NYS 2d 50 (3d Dept., 1975).

15.Those standards are now set forth in the state enabling statutes, Gen. City L., §81-b, Town L., §267-b, Vil. L., §7-712-b.

16. 54 Misc.2d 338, 282 NYS 2d 564 (Sup. Ct. Rockland Co., 1967), aff'd on oth. grds., 29 AD 2d 874, 288 NYS 2d 519 (2d Dept., 1968).

17. 43 AD 2d 386, 352 NYS 2d 54 (3d Dept., 1974).

18. 43 AD 2d at p. 388, 352 NYS 2d at p. 57.

19. See *Lakeview Apartments of Hunns Lake, Inc. v. Stanford*, 108 AD 2d 914, 485 NYS 2d 801 (2d Dept., 1985).

20. 153 Misc. 2d 521, 581 NYS 2d 978 (Sup. Ct., Suffolk Co., 1991).

21. 176 AD 2d 859, 575 NYS 2d 337 (2d Dept., 1991).

22.See *Oakwood Island Yacht Club, Inc. v. City of New Rochelle,* 59 Misc. 2d 355, 298 NYS 2d 807 (Sup. Ct., West. Co., 1969).

23.41 NY 2d 318, 392 NYS 2d 594, 360 NE 2d 1295 (1977)

24. See *Nectow v. City of Cambridge,* 277 US 183, 48 S Ct. 447, 72 L Ed 842 (1928).

25.See *Pennsylvania Coal Co. v. Mahon,* 260 US 393, 67 L Ed 322, 43 S Ct 158 (1922).

26.See *Agins v. Tiburon,* 24 Cal. 3d 266, 598 P. 2d 25 (Sup. Ct. of Calif., 1979), aff'd on oth. grds., 447 US 255, 65 L Ed. 2d 106, 100 S Ct. 2138 (1980).

27. 482 US 304, 96 L Ed 2d 250, 107 S Ct 2378 (1987).

28. See *119 Development Associates v. Village of Irvington,* 171 AD 2d 656, 566 NYS 2d 954 (2d Dept., 1991).

29. 74 NY 2d 92, 544 NYS 2d 542, 542 NE 2d 1059 (1989), *cert. den.*, 493 US 976, 110 S Ct. 500, 107 L Ed 2d 503 (1989).

30. 161 AD 2d 745, 556 NYS 2d 101 (2d Dept., 1990); see also, *Timber Ridge Homes at Brookhaven, Inc., v. State,* 223 AD 2d 635, 637 NYS 2d 179 (2d Dept., 1996).

31. 304 NY 105, 106 NE 2d 34 (1952).

32.77 NY 2d 114, 564 NYS 2d 1001, 566 NE 2d 128 (1990).

33.*supra,* note 8.

34. 230 AD 2d 800, 646 NYS 2d 537 (2d Dept., 1996).

35. See *Alscot Investing Corp. v. Vil. of Rockville Centre,* 64 NY 2d 921, 488 NYS 2d 629, 477 NE 2d 1083 (1985).