



*New York State Assembly, Sheldon Silver, Speaker
Legislative Commission on State-Local Relations
Assemblymember Tim Gordon, Chair*

Planning and Zoning

See generally, Municipal Home Rule Law, § 10(1)(ii)(a)(12); Statute of Local Governments, § 10(6)

Planning

Statutory Authority

Counties, Cities, Towns and Villages – Authorized to collaborate with contiguous municipalities to create a regional planning council. [General Municipal Law § 239-h]

Counties – Authorized to establish a county planning board to study the needs of the area and adopt by resolution a county comprehensive plan. [General Municipal Law article 12-B, §§ 239-c, 239-d]

Cities, Towns and Villages – The legislative body, planning board or a special board may prepare a comprehensive plan and amendments for the protection, enhancement, growth and development of the municipality. [General City Law § 28-a; Town Law § 272-a; Village Law § 7-722]

In any county or counties, the municipalities may form an association to promote community or intercommunity planning. [General Municipal Law § 239-g]

Authorized to enter into agreements to undertake comprehensive planning and land use regulations with each other or by contracting with a county. [General Municipal Law article 5-J]

Authorized to enter into cooperative agreements to undertake comprehensive planning and land-use regulations. [General Municipal Law article 5-J; General City Law § 20-g; Town Law § 284; Village Law § 7-741]

Cities and Villages - Authorized to create a planning commission. [General Municipal Law article 12-A]

Zoning

Statutory Authority

Counties – Counties have no zoning power; however, planning and zoning acts by city, town and village officials that have inter-community concerns including acts that affect land within 500 feet of a city, village or town boundary, or an existing or proposed State or county road, must be referred to the county planning board. A majority plus one vote of the local board is necessary to act contrary to the recommendation of the county board. [General Municipal Law §§ 239-l, 239-m, 239-n]

Cities, towns in area of the town outside of villages, and villages - May regulate the location and use of land for business, industry, residences or other purposes. Such regulation may include height, size, percentage of lot occupied, and the size of yards and other open spaces. Such regulation must be for the purpose of promoting the health, safety, morals and general welfare of the community, and must be in accordance with a comprehensive plan. [General City Law §§ 20(24) and (25); Town Law §261; Village Law §7-700] Local governments are authorized to divide the community into zoning districts and to regulate the use, construction, and alteration of buildings and land within those districts. [General City Law, § 20(25); Town Law § 262; Village Law § 7-702]

Cities, except NYC, towns and villages – Must notify an adjacent municipality of a hearing on certain zoning matters concerning property within 500 feet of the adjacent municipality. [General Municipal Law § 239-nn]

Subdivision Control

Statutory Authority

Cities, Towns and Villages - Must refer subdivision plats that have frontage on an existing or proposed right of way shown on county official map to the county planning board. Disapproval by the county board may be overridden by a 2/3 majority of the local board. [General Municipal Law § 239-f (2)]

Must refer certain plats of land including those that are within 500 feet of the boundary of any city, village or town or of an existing or proposed State or county road to the county planning board. A majority plus one vote of the local board is necessary to override the county decision. [General Municipal Law § 239-n]

May approve, modify or disapprove plats for the subdivision of land. [General City Law § 32; Town Law §§ 276, 277, 278; Village Law §§ 7-728, 7-730]

Planning boards may prepare subdivision regulations, subject to revision and approval by the legislature. [General City Law § 27; Town Law § 271; Village Law § 7-718]

Official Maps

Statutory Authority

Counties – County board may establish and amend an official map showing existing and proposed rights of way for county roads, parks, drainage systems and public buildings. No permit may be issued for a building in a right of way shown on the official map unless a 2/3 vote by the board determines that the land is not yielding a fair return. [General Municipal Law §§ 239-c, 239-e, 239-f]

Cities, Towns and Villages – Same as counties, except that only a majority vote of the board of appeals is needed for a building permit in the bed of a mapped street. [General City Law §§ 26, 29, 35; Town Law §§ 270, 273, 280; Village Law §§ 7-724, 7-732, 7-734]

Agricultural Districts

Statutory Authority

Counties – A county legislative body may create an agricultural district upon submission of a proposal by landowners, provided qualifications are met and required State approvals are obtained. Assessment of land in agricultural districts is governed by the agricultural value per acre as determined by the State Board of Real Property Services. [Agriculture and Markets Law article 25-AA] The creation of an agricultural district prevents any unit of local government from exercising any of its powers to enact local laws or ordinances in a manner that would unreasonably restrict or regulate farm operations within agricultural districts unless the public health or safety is threatened. [Agriculture and Markets Law § 305-a]

Selected Court Cases

Bergstol v. Town of Monroe, 2005, 15 A.D.3d 324, 790 N.Y.S.2d 460, leave to appeal denied 5 N.Y.3d 701, 799 N.Y.S.2d 772, 832 N.E.2d 1188. One who challenges zoning classification bears heavy burden; if validity of classification is fairly debatable, legislative judgment must be allowed to control.

Inter-Lakes Health, Inc. v. Town of Ticonderoga Town Bd., 2004, 13 A.D.3d 846, 786 N.Y.S.2d 643. Agriculture and Markets law preempted local zoning ordinance that prohibited farming and farming-related activities on property located in agriculture district, although the ordinance predated the creation of the district.

Eastport Alliance v. Lofaro, 2004, 13 A.D.3d 527, 787 N.Y.S.2d 346. Town planning board lacked jurisdiction to approve builders' site plan and grant special wetland permit to builders, where board failed to refer such matters to the county planning commission, and county administrative code required such referral.

Smith v. Town of Plattekill, 2004, 13 A.D.3d 695, 787 N.Y.S.2d 406. Zoning board of appeals has no power to determine validity of ordinance it is called upon to interpret.

Cavallarro v. County Bd. Of Elections, 2003, 2 Misc.3d 880, 774 N.Y.S.2d 617, affirmed as modified 307 A.D.2d 1003, 763 N.Y.S.2d 512. After town residents had approved establishment of ward system, town and its board had power, pursuant to its local law superseding the town law, to draw ward boundaries.

Independent Wireless One Corporation, et al. v. Town of Maryland Planning Board, 2002, 191 Misc.2d 168, 738 N.Y.S.2d 829. Local law of Town of Maryland declared invalid application for site plan approval to construct a telecommunications facility is declared complete. Matter of review for said application is remanded to Town of Maryland Planning Board for consideration.

Huntington Yacht Club v. Incorporated Village of Huntington Bay, 2000, 272 A.D.2d 327, 708 N.Y.S.2d 120. Village and its zoning board of appeals lacked jurisdiction over the applicants proposed dock expansion involving tidewaters and underwater lands, and thus, the positive declaration of environmental significance issued by the board was null and void.

Matter of Village of Poland, 1996, 224 A.D.2d 933, 637 N.Y.S.2d 575. Although village's general eminent domain powers did not include extra-territorial condemnation, village had express statutory authority to condemn parcel required for village's water supply even though parcel was located mostly outside village's boundaries.

Allen v. Town of North Hempstead, 1984, 2 Dept., 478 N.Y.S.2d 919, 103 A.D.2d 144. Zoning ordinances may regulate and restrict the uses of property but, with limited exceptions, may not place restraints on the users or owners of that property. In order to satisfy requirement that zoning ordinance give proper consideration to regional needs, there must be a balancing of local desire to maintain the status quo within the community and the greater public interest that regional needs be met.

Bekermus v. Nardy, 1984, N.Y. Sup., 472 N.Y.S.2d 570, 123 Misc.2d 378. Zoning is aspect of police power of municipality which can be used for protection of general welfare of its people, so long as zoning bears substantial relation to public safety, morals and general welfare.

Kamhi v. Planning Bd. of Town of Yorktown, 1983, 465 N.Y.S.2d 865, 59 N.Y.S.2d 385, 452 N.E.2d 1193. Source and scope of power. Towns and other municipal authorities have no inherent power to enact or enforce zoning or land use regulations, and they exercise such authority solely by legislative grant and in the absence of legislative delegation of power their actions are ultra vires and void. [Town Law, §§ 261-284, 277, 278, subdivisions 1 and 3, 281]

New York Telephone Co. v. City of New York, 1983, 2 Dept., 466 N.Y.S.2d 56, 95 A.D.2d 282. Utility company must remove its facilities from a public street and relocate them at its own expense whenever the public health, safety or convenience requires the change to be made; in contrast, where removal is requested, for example, merely to provide an amenity for beautification of a single-family residential area of a community, utility is entitled to compensation.

[Administrative Code, § 683a4-17.0, subdivision b] When a municipality directs a utility to relocate its facilities, it does so in exercise of its governmental function and general police power. Id.

City of Mount Vernon v. State of N.Y. Bd. of Equalization and Assessment, 1983, 3 Dept., 461 N.Y.S.2d 493, 92 A.D.2d 985. Absent express statutory provision allowing payment of back pay to wrongfully discharged employee, political subdivision cannot be compelled to make such payments because it would constitute unconstitutional gift of public funds.

City of Rochester v. Chiarella, 1983, 4 Dept., 470 N.Y.S.2d 181, 98 A.D.2d 8, affirmed 482 N.Y.S.2d 270, 63 N.Y.S.2d 857, 472 N.E.2d 46. Enactment of ordinance which did nothing more than recognize claims of nonprotesting taxpayers as equitable claims and provide that any compromise with nonprotesting taxpayers be limited to amount available in city special fund for tax refunds was proper exercise of legislative function by city without violating Constitutional article which prohibits city from giving or loaning any money or property to aid any individual, private corporation or association or private undertaking. [General City Law, § 20, subdivision 5; Constitution, Article 8, § 1]

Village of Tarrytown v. Woodland Lake Estates, Inc., 1983, 2 Dept., 468 N.Y.S.2d 513, 97 A.D.2d 338. Village acquired easement by prescription in roads never conveyed to it and completed prior to 1955 through its maintenance, repair, and control of roads, plus their continuous and uninterrupted use by public, notwithstanding fact that agreement by which they were to be dedicated to village was declared invalid. Village acquired no prescriptive easements over streets conveyed to village by deed, since maintenance of those streets and underlying utilities by village was not hostile to grantor but was, pursuant to agreement, which had not yet, been invalidated.

Riegert Apartments Corp. v. Planning Bd. of Town of Clarkstown, 1982, 455 N.Y.S.2d 558, 57 N.Y.2d 206, 441 N.E.2d 1076. A town and other municipalities derive no power to regulate land use other than through legislative grant.

Italian Sons and Daughters of America, Inc. v. Common Council of Buffalo, City of Buffalo, 1982, 453 N.Y.S.2d 962, 89 A.D.2d 822. Decision whether to grant permit to close public street is ordinarily left to untrammelled discretion of legislative body, but not if that discretion is exercised arbitrarily or capriciously, since legislative body must act reasonably.

Rochester Tel. Corp. v. Village of Fairport, 1982, 446 N.Y.S.2d 823, 84 A.D.2d 455. Village was liable to pay costs incurred by utility in placing its transmission facilities underground in street under reconstruction where village was acting in its enterprise capacity in reconstructing street and undergrounding of facilities was not required for public safety but was ordered by village without any reciprocal benefit to utility not as matter of regulation but to provide amenity for beautification of single-family residential area. [Transportation Corporations Law, § 27; Village Law, § 4-412, subdivision 3(6)]

Summit School v. Neugent, 1981, 442 N.Y.S.2d 73, 82 A.D.2d 463. Although educational use of property is, by its very nature, in furtherance of public morals and general welfare, municipalities may place reasonable zoning restrictions upon such use carried on by private educational institutions.

Robert E. Kurzius, Inc. v. Incorporated Village of Upper Brookville, 1980, 434 N.Y.S.2d 180, 51 N.Y.2d 338, 414 N.E.2d 680, certiorari denied 101 S.Ct. 1761, 450 U.S. 1042, 68 L.Ed2d 240. A zoning ordinance will be invalidated on both Constitutional and State statutory grounds if it was enacted with an exclusionary purpose or it ignores regional needs and has an unjustifiably exclusionary effect.

Schaus v. Town Bd. of Town of Clifton Park, Saratoga County, 1975, 83 Misc.2d 726, 372 N.Y.S.2d 952. Legislative mandate imposed on municipal bodies that they, before taking final action on zoning regulations, refer same to county planning agency, is a condition precedent to "final action" by municipalities on zoning proposal following which municipality may, if planning agency fails to act within applicable time period or approves proposal, adopt proposal by bare majority vote, or if planning agency disapproves proposal, adopt proposal by vote of majority plus one.

Incorporated Village of Nissequoque v. Meixsell, 1968, N.Y. Sup. 287 N.Y.S.2d 555, 55 Misc.2d 1069. While "planning" and "zoning" are sometimes considered so closely akin as to constitute a single concept they do not cover identical fields of municipal endeavor and the terms are not interchangeable, as "planning" is a term of broader significance than "zoning," and is designed to promote public health and welfare and to preserve, through a governmental agency, a uniform and harmonious development of the growth of a municipality.

Bohan v. Town of Southampton, 1962, N.Y. Sup., 227 N.Y.S.2d 712. Zoning is legislative power residing in State which may be delegated to town board and when that delegated power is exercised effect is derogatory to common law rights of property owners, and procedure prescribed by Legislature and enabling act is strictly construed and must be strictly followed.

Opinions of the Comptroller and Attorney General

Attorney General Opinion [2007 - 1](#): N.Y. Constitution IX §§ 2 (c) (i) and 2(c)(ii)(1); Municipal Home Rule Law §§ 10, 10(a)(i), 10(1)(ii)(a)(1), 10(1)(ii)(e)(3) and 22; Village Law §§ 7-712 and 7-718. A village may limit the number of terms the members of the planning board and the zoning board of appeals may serve.

Attorney General Opinion [2005 - 11](#). Where the Town of Huntington owns underwater lands based upon colonial patents, it may require its consent to the use of these underwater lands for dock construction and the anchoring and mooring of vessels, even where such activities are subject to a village's regulatory control.

Attorney General Opinion [2005 - 18](#): Criminal Procedure Law §§ 1.20, 10.20, 10.30, 340.40; Municipal Home Rule Law §§ 10(1)(ii)(d)(3), 11; Penal Law §§ 10.00, 55.10, 70.15, 80.05; Town Law §§ 135, 268; L. 1958, ch. 606, §§ 1,2. A town may supersede Town Law § 268 to adopt a local law eliminating the possibility of incarceration upon conviction of a local zoning code violation.

Comptroller Opinion [2003-7](#): Town Law §277(4). Moneys, in lieu of land for park, playground and other recreational purposes, may be expended to pay reasonable and necessary preliminary costs, such as engineering and legal expenses, directly related to, and necessary to proceed with, an improvement to parkland. Such moneys may also be expended to undertake a study of the feasibility of particular capital improvements to park land.

Attorney General Opinion [2003-10](#): N.Y. Const. Art. IX, § 2(c); General Municipal Law §§ 856, 890-h; Municipal Home Rule Law §§ 2(5), 10; Racing, Pari-Mutuel Wagering and Breeding Law §§ 501, 502, 503, 505, 518, 520, 532, 1000, 1001, 1003, 1007, 1008, 1009; L. 2003, Ch. 62, § 27; L. 1984, Ch. 363, § 14. A village may not prohibit OTB simulcast or non-simulcast branch offices in all zoning districts, nor may it prospectively prohibit simulcast theaters in all districts. It may withhold its consent to establish a particular simulcast theater. The applicability of valid village land use regulations, other than those specifically provided for by statute, to a proposed OTB facility would be governed by the balancing test set forth in Matter of County of Monroe, 72 N.Y.2d 338 (1988).

Attorney General Opinion [2002-1](#). N.Y. Const., Art. XIV, § 3(1); County Law § 219(1); Environmental Conservation Law § 9-0501(1); Vehicle and Traffic Law § 2405. A county may authorize the use of all-terrain vehicles on county-owned reforested lands held for public use and may authorize construction of a trail system on such lands, provided that such use is consistent with forest and wildlife conservation and watershed protection, but may not grant a private organization of all-terrain vehicle owners exclusive use of the trail system.

Attorney General Opinion [2000-15](#): N.Y. Constitution, Article III, § 26(2), Article IX, §§ 1(h)(1), 2(d), 3(b); Municipal Home Rule Law, Article 4, §§ 32, 33; L. 1936, Chapter 879, §§ 2601, 2602; Nassau County Charter, §§ 101-103, 154(8), 1607. Nassau County may enact a local law amending its County Charter to grant zoning powers to the Village of Atlantic Beach. The local law would be a transfer of functions and therefore subject to the referendum requirements of the Constitution.

Attorney General Opinion [99-17](#): NY Const, Art VIII, § 1; Municipal Home Rule Law § 10(1)(ii)(a)(12) Village Law §§ 6-610, 6-612, 7-730(2)(a), 7-732. A village may not maintain private streets. The village may acquire the streets through dedication or eminent domain and, once acquired, expend public resources to maintain the streets. A village may require that privately owned streets be maintained by their owners in accordance with established standards.

Attorney General Opinion [99-43](#): NY Const, Art XVI, § 1; Municipal Home Rule Law § 10(1)(ii)(a)(9-a) and (12).A town may regulate the excavation and reclamation of land and establish fees that are reasonably related to the cost of a regulatory program.

Attorney General Opinion 98-15: Town Law §274-a; Brookhaven Code §§85-94, 85-106. The Town of Brookhaven may not amend its zoning law to require transportation of residents of Planned Retirement Communities to off-site shopping and/or medical facilities and may not condition site plan approval upon the provision of such transportation.

Attorney General Opinion 98-54: General Municipal Law, Articles 5-G, 12-B, §§ 119-n(c), 119-o(l) and (2)(b), 239-c, 239-h, 239-m; Municipal Home Rule Law, §§ 2(5), 10; Village Law, § 7-741. A joint village and town planning board, formed to consider land use applications relating to property on the border between municipalities, may employ weighted voting designed to give a majority of votes to the municipality in which the property lies.

Attorney General Opinion 97-10: General City Law § 20(2), (7). Land acquired for park purposes and improved and utilized for park purposes, is impressed with a public trust and may not be used for other than park purposes without the express approval of the State Legislature.

Attorney General Opinion 95-4: Public Officers Law, § 3. The members of the Town of Mendon's conservation board need not reside within the town since the board is strictly advisory in nature.

Comptroller Opinion 84-50: General Municipal Law §§ 99-c, 119-o; Town Law §§ 138, 268; Village Law § 7-714. A town and village may jointly engage a building inspector to enforce the zoning ordinances of both municipalities and to issue building permits. *General Municipal Law §§ 119-n(c), 119-o; Municipal Home Rule Law § 11(3); Town Law §§ 132, 261; Village Law § 7-700.* A town and a village within the town may not, pursuant to an Article 5-G cooperation agreement, extend the territorial application and effect of a town zoning ordinance or local law into the village. The town and village, however, may separately enact the same substantive zoning regulations.

Attorney General Opinion 83-33. Government activity is not subject to zoning regulations.

Attorney General Opinion 82-37. U.S. Constitution, 14th Amendment; N.Y. Constitution, Article I, §§ 6, 11, Article IX, § 2(c)(ii)(10); General City Law, § 20(13) and (22); Municipal Home Rule Law, § 10(l)(ii)(a)(12); Vehicle and Traffic Law, §§ 1640(a)(6) and (16), 1640-a, 1641, 1642. A city may enact a local law or ordinance regulating parking on private property in residential districts where warranted under the police power.

Attorney General Opinion 81-5. Town Law, §§ 261, 262, 263, 265. A town zoning law may prohibit the location of a mobile-home park within a reasonable distance of an existing mobile-home park, whether the latter is in the town, a village, a city or an adjoining town.

Attorney General Opinion 81-72. General Business Law, § 249; Village Law, Article 7, § 7-700. General Business Law, § 249 regulates the establishment and improvement of private airports and landing areas to promote harmony of land use and airport safety. The question of whether or where to locate airports is a zoning matter.

Attorney General Opinion 81-100. U.S. Constitution, Article I, § 8, CL 3; N.Y. Constitution, Article XVI, § 1; Environmental Conservation Law, § 27-0711; Municipal Home Rule Law, § 10(l)(ii)(a)(12), § 10(5), Article 4. A county by local law may exercise its police power to prohibit the importation of out-of-county solid waste or to regulate private landfills. Such a local law may not impair the powers of other local governments. A ban on importation of solid waste may not discriminate against interstate commerce in violation of the commerce clause of the United States Constitution. Municipalities may not impose a tax unless expressly authorized by act of the State Legislature.

Attorney General Opinion 80-142. N.Y. Constitution, Article VIII, § 1; General City Law, §§ 20(2, 7, 8, 10), 23(2[b]); Municipal Home Rule Law, § 10(1[i]). City waterfront property may not be sold without a special act of the Legislature, but it may be leased without such an act. If city waterfront property is leased, the consideration must be adequate. A city may amend General City Law, § 23, subdivision 2, paragraph b as to the manner of selling or leasing city property.

Attorney General Opinion 200, 1977. When city, town and village planning boards are empowered to review site plans, such site plans are not reviewable by county planning agencies under this section, even though such site plans are located within the distance provided by such section.

Attorney General Opinion, July 23, 1973, p. 164. Local amendments. This section is a general law, which may not be amended by a county legislative body, and especially not by a county planning board, which has no legislative powers.

Comptroller Opinion 67-621, 1967. A county planning board is required to review zoning regulations that affect land within 500 feet of State-owned land within the Catskill Park.