

Reconstructing *Golden v. Ramapo*

The Real Story Behind the First Major Growth Management Plan in the U.S.

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Enlightening Lunch, March 2, 2007
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Outline

- Early growth management systems
- Regional setting
- The Ramapo growth management program
- The litigation
- Aftermath
- Assessment

Early Growth Management Systems

- Henry Fagin advocates development timing in Law & Contemp. Problems (1955)

REGULATING THE TIMING OF URBAN DEVELOPMENT

HENRY FAGIN*

Coordination, a major aspect of planning, involves *space* and *time*. Effective urban planning demands a simultaneous attention to both.

In the past half-century a static attempt at space coordination has become widespread. Its essence is expressed in certain dictionary definitions of the noun *plan*: "a representation drawn on a plane" or "a scheme of arrangement." The master plan, the comprehensive plan, the zoning plan frequently are interpreted as embodying an ideal and ultimate balance among districts of land classified as residential, commercial, and industrial. Since this conception deals with the *what* irrespective of the *when* it represents what I term static space coordination.

A dynamic approach to space coordination is suggested by other dictionary definitions of *plan*: "a schematic program indicating parts in their arrangement," "a method of action." Here we shift from dealing mainly with ultimate categories and patterns of land use to considering the activities involved in urban development. This latter approach stresses the coordination of programs of action. It relates industrial, business, service and residential construction activities; it coordinates the variety of activities that extend the urban transportation system; and it relates all these to the activities that utilize parcels of land.

The evolving demands on urban planning already have forced a shift in focus

Early Growth Management Systems

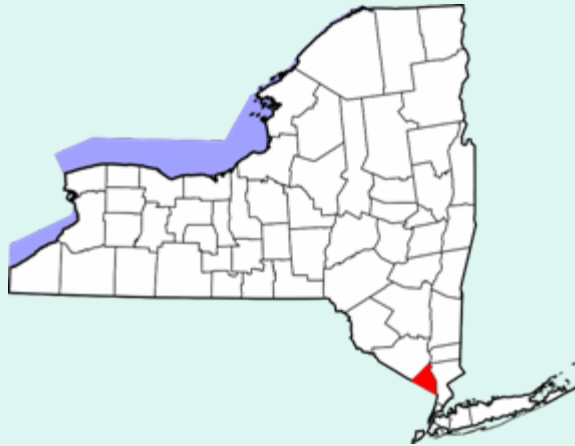
- Milford, Connecticut (1955): Priority areas for development
- Clarkstown, New York (1955): More intensive development by special permit only, upheld in N.Y. courts

Regional Setting

New York State
in the U.S.



Rockland County in
New York State



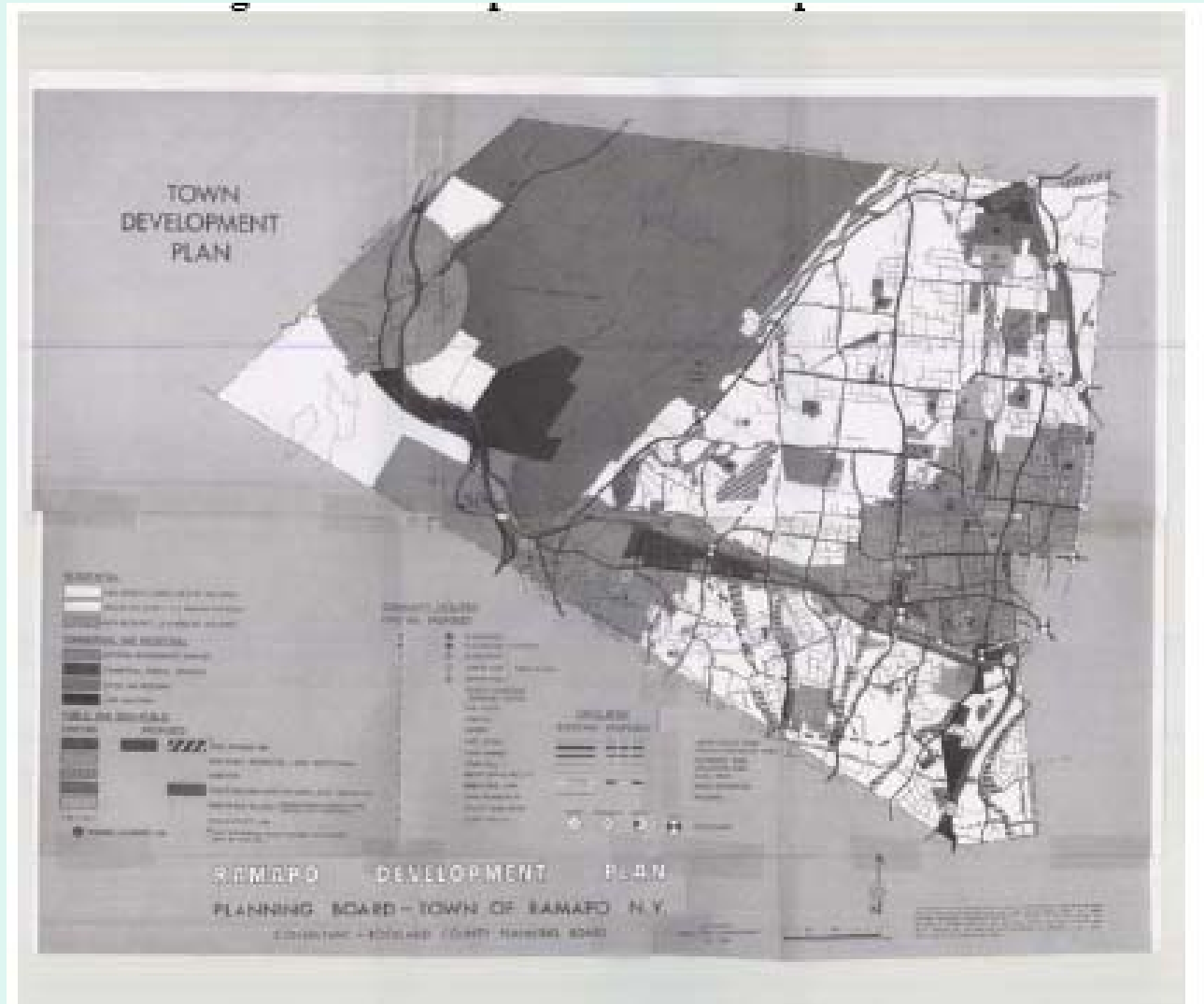
Impetus Behind Growth Management Program in Ramapo

- Change in electorate and political leadership--
Republicans v. Democrats
- New bridges and roads
- Increase in population
- Increase in residential construction
- Rapid tax growth
- Perceived lack of public facilities to support new development

The Ramapo Growth Management System

- Selected timeline:
 - Elimination of apartment zoning (Feb. 1966)
 - Interim development ordinance (June 1966)
 - Master plan (July 1966)
 - Zoning ordinance (Dec. 1966)
 - Development easement acquisition (June 1967)
 - Official map (Aug. 1967)
 - Subdivision regulations (July 1968)
 - Capital improvements program (Nov. 1968)
 - **Development timing ordinance (October 1969)**

Ramapo Master Plan



Development Timing Ordinance

- By-right residential development eliminated, only by special permit
- Point system for presence of or proximity to:
 - (1) Sewers
 - (2) Drainage
 - (3) Park, recreation facility, public school site
 - (4) Roads
 - (5) Fire stations
- Development must attain at least 15 points for special permit approval
- Linkage to 18-year capital improvement program
- Developer could install improvements

The Litigation

- Golden brings suit after preliminary subdivision is denied by planning board
- The questions:
 - Did New York State enabling legislation authorize development timing?
 - Did limitations on residential development (up to 18 years) rise to level of confiscation under the U.S. Constitution?

The Litigation

- Trial court 
- Intermediate appellate court 
- New York Court of Appeals 



Robert Freilich
Ramapo Attorney

The Decision—NY Ct. of Appeals (1972)

- Majority (Judge Schleppey): “Phased growth is well within the ambit of the existing enabling legislation. . . Yet, in passing of the validity of the ordinance on its face, we must assume not only the Town's good faith, but its assiduous adherence to the program's scheduled implementation”
- Ct. will not countenance “. . . under any guise . . . community efforts at immunization or exclusion”

The Decision—NY Ct. of Appeals (1972)

- Minority (Judge Breitel): “Existing enabling legislation does not grant the power upon which the Ramapo ordinance rests”
- Concerned about “calamitous effects of ill-advised parochial devices” absent a regional approach under state authorization
- “Legally, politically, economically, and sociologically, the base for determination [of growth] must be larger than that provided by the town fathers”

The Litigation

Unsuccessful appeal by Golden to U.S. Supreme Court

IN THE Supreme Court of the United States OCTOBER TERM, 1972 No. 72- 369 1	Supreme Court, U. S. FILED 1 1972 MICHAEL ROOK, JR., CLERK
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RUTH GOLDEN and RAMAPO IMPROVEMENT CORP.,
Petitioners-Appellants,

vs.

THE PLANNING BOARD OF THE TOWN OF RAMAPO and THE
TOWN BOARD OF THE TOWN OF RAMAPO, ROCKLAND
COUNTY, NEW YORK,
Respondents.

~~ROCKLAND COUNTY BUILDERS ASSOCIATION, INC., MILDRED
RHODES, ELDORADO DEVELOPMENT CORP.,
Plaintiffs-Petitioners-Appellants,~~

~~*vs.*~~

~~JOHN McALEVEY, Supervisor, NED SNER, BERNARD CHARLES,
NORMAN SLOVIT, FRANK STRAUSS, Councilmen and constituting
the Town Board of the Town of Ramapo, and the TOWN OF RAMAPO,
Defendants-Respondents.~~

**Appeal from Order of the New York Court of Appeals,
or, in the Alternative, Petition for Writ of Certiorari to
the New York Court of Appeals**

**JURISDICTIONAL STATEMENT AND PETITION OF
PETITIONERS-APPELLANTS, RUTH GOLDEN AND
RAMAPO IMPROVEMENT CORP.**

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Innovator in Suburbs Under Fire

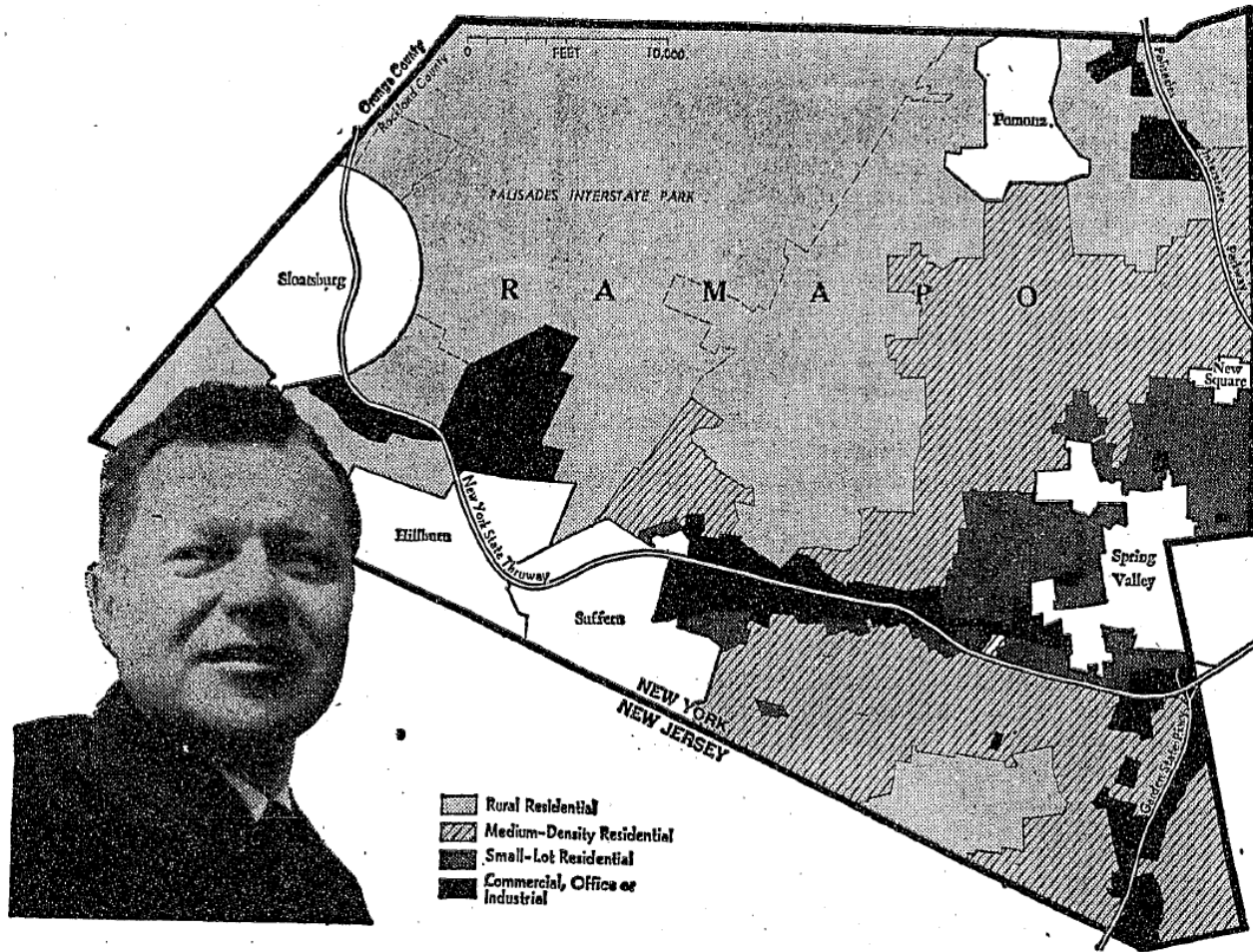
By ALAN S. OSER

New York Times (1857-Current file); Mar 28, 1971; ProQuest Historical Newspapers The New York Times (1851 - 2003)

pg. R1

Innovator in Suburbs Under Fire

By ALAN S. OSER



SUFFERN, N. Y.—Out of Brooklyn by way of Columbia Law School has come an innovating town supervisor in the quintessential suburban town of Ramapo, and he is in trouble.

His insistence on building public housing has brought him 14 law suits and a strong dose of local wrath. He concedes that his chances for political survival in November are uncertain.

But public housing is not all that John F. McAlevey has done in the Rockland County town, one of the state's fastest growing until he pulled in a novel way on the zoning reins (with an unexpected and undesired assist from the recession).

He has introduced a concept of zoning that controls not merely the type of development that can be built in various zones, but also the timing of construction. This too has been challenged, but in the first round in court the town's position has been sustained.

Beyond this, he has introduced a so-called development easement system, whereby owners ready to forgo their rights to develop their land for specific time periods may receive tax abatements. It is administered by a Development Easement Acquisition Commission.

The system came into effect on the heels of a revaluation of vacant property that added \$12-million to the assessment rolls. That timing opened Mr. McAlevey to charges—which he denies—that the purpose of the reassessment was to force property owners into the development easement program.

"This is not the place to come to buy

The New York Times
Town Supervisor John F. McAlevey of Ramapo has injected timing concept into zoning so residential growth will not outpace schools, parks, roads and other capital improvements. His backing of public housing has drawn fire.

Continued on Page 6, Col. 1

The System is Discarded

- Elimination of point system: March 1983
- Slow growth
- Delays in capital improvements
- Change in municipal leadership
- Village incorporation law overturned

The Legal/Planning Response

- Mixed response—more aimed at soundness of approach rather than legality
- Robert Freilich: “The most important zoning decision since 1926” (*Euclid v. Ambler*)
- Herbert Franklin: Doesn’t counter sprawl, rather “programs” it
- Fred Bosselman and Norman Williams, Jr.:
What happens if all communities on the urban fringe adopt such programs?

CAN THE TOWN OF RAMAPO PASS A LAW TO BIND THE RIGHTS OF THE WHOLE WORLD?

FRED P. BOSSELMAN*

I. INTRODUCTION

In the famous case of *Buchanan v. Rucker*¹ the plaintiff sought to collect in the English courts on a default judgment issued by the Island Court of Tobago against the defendant. The defendant claimed that he had never been to Tobago and was not subject to the jurisdiction of the Tobago court. Lord Ellenborough refused to recognize the Tobago court's judgment:

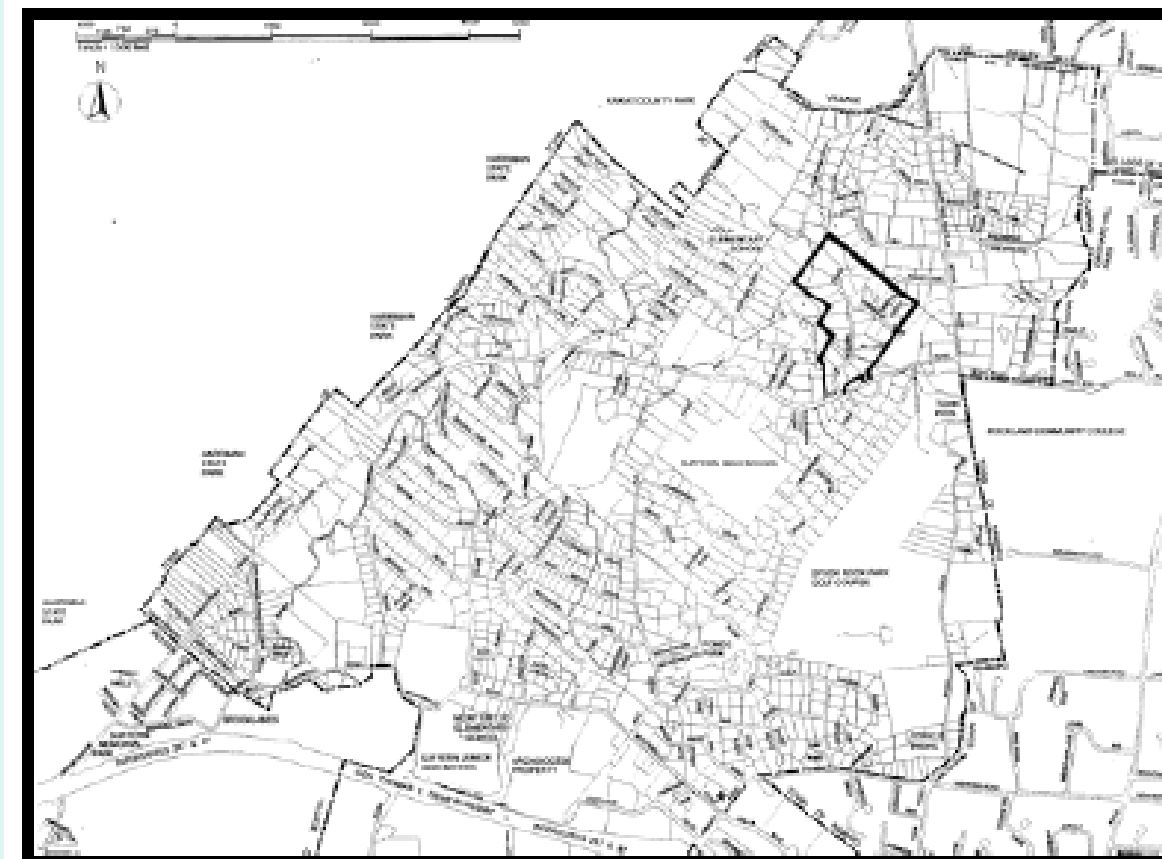
Supposing however that the Act had said in terms, that though a person sued in the island had never been present within the jurisdiction, yet that it should bind him upon proof of nailing up the summons at the Court door; how could that be obligatory upon the subjects of other countries? *Can the island of Tobago pass a law to bind the rights of the whole world?* Would the world submit to such an assumed jurisdiction?²

One of the most important issues in the United States today is the question of who gets to live where. Our present system of laws lets each individual local government determine who may live within its borders through the use of a wide variety of indirect but very effective regulatory techniques. Like the Island of Tobago these local governments pass laws that affect the "whole world" by limiting the right of outsiders to live in the community.

In 1969 the town of Ramapo, New York, adopted a relatively new legal technique that allows local governments to limit severely the amount of new residential development. This technique, known generally as "development timing," gives local government an even more powerful tool for determining who will live within its borders than had heretofore been available.

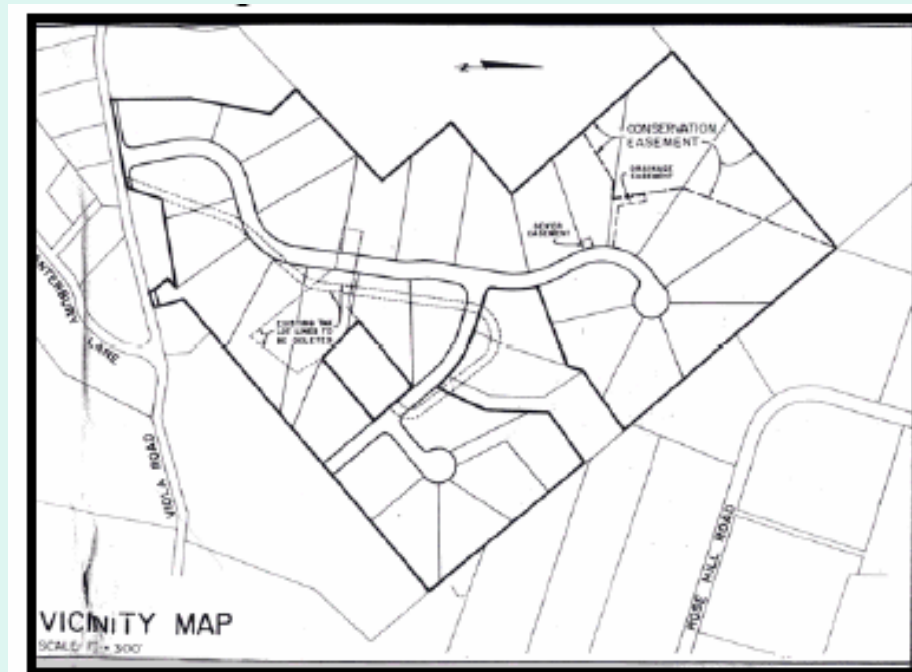
This article expresses the opinion that, based on past experience, each town can be expected to exercise this and similar techniques as if it were an island independent of other towns; that the resulting

Golden Estates in Village of Montebello



**Montebello incorporated in
1986**

Golden Estates Subdivision



Source: Village of Montebello, New York

Approved 1987

The Site Today: Devoid of Sprawl



Modest Homes



Modest Homes



Assessment

- Employed, to great effect, Freilich's Brandeis brief approach in litigation
- Revived and clarified the role of the comprehensive plan as supporting land use regulation
- Built on existing planning practice and enabling statutes
- Introduced the concept of adequate public facilities

Assessment

- Had significant flaws as an instrument of modern planning policy
 - Low-density sprawl
 - Lack of regional approach—pushed problems onto villages
 - No consideration of alternatives
 - No housing diversity/no m.f. in town
 - Lack of attention to l/m housing in plan, public housing an afterthought