Golden v Ramapo
Lessons in Growth Management

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The 1972 case Golden v. Ramapo\textsuperscript{n1} “catalyzed national debate about growth management”\textsuperscript{n2}, a debate which continues unabated today. In this paper, I outline key aspects of this decision and assess its strengths, weaknesses and implications. I focus on four areas: 1) the role of state planning and regionalism vs. localism, 2) concerns about exclusion, 3) takings questions and 4) the role of Ramapo in the larger growth management debate. I begin with a description of background conditions.

**Underlying Conditions:**

Ramapo is a suburban Town in Rockland County outside New York City. In the late 1960’s, the Town Planning Board worked to identify opportunities to control the Town’s growth. They were concerned about extremely rapid population growth and sprawl - with good reason. Between 1950 and 1968 the Town experienced a 300% growth in population.\textsuperscript{n2} It was projected to double again by 1985. This was partially driven by the opening of the Tappan Zee Bridge which made it an “easy 25 minute commute to New York City”.\textsuperscript{n6} A detailed comprehensive planning process was paid for by HUD\textsuperscript{n2}, and between 1966 and 1969 the Town developed a plan which undertook a number of important changes to its land use laws, including a set of 1969 amendments linking new subdivision development to the provision of “adequate public facilities”\textsuperscript{n1}. This was a new, innovative concept in local land use control and one that had not yet been dealt with by the courts.\textsuperscript{n2}

These innovative local laws were put forth in a context in which growth control was “primarily of concern to local rather than (the) state or federal government”.\textsuperscript{n6} As a response to the limits of local control, a so-called “Quiet Revolution” (the name of a 1971 report by the Council on Environmental Quality) was calling for states and regional governments to reclaim some of the power on land use decisions granted to local governments. It blamed sprawl on the parochialism of local land use control.\textsuperscript{n2-p2}

Initiatives in New York State around that time had tried to achieve similar aims with different levels of success. In the early 1970’s, the New York State legislature passed the Adirondack Park Agency Act giving broad powers to control land use on a regional basis. According to one observer, the APA decision would have given the Ramapo court “reason to believe that the state legislature was listening” to urges to devise a state or regional strategy to address the issues of rapid growth and sprawl”.\textsuperscript{n1} On the flip-side however, a proposal in the New York State legislature in 1970 to develop a system of statewide land use controls was met with hostility and was wholly unsuccessful.\textsuperscript{n2}
The Ramapo Plan:

The goal of the Ramapo plan was to preserve the area’s rural, semi-rural and suburban character and to direct further residential development to existing residential areas. Large amounts of data (four volumes) were created showing the growth patterns and inability of town to provide needed infrastructure to accommodate growth at the projected rates. The result was a careful, logical plan for development and infrastructure.\(^n_1\)

A requirement for the provision of “adequate public facilities” was challenged by developers and property owners. Under this innovative law, development in certain zones had to be tied to available infrastructure. A points system was created. Residential subdivision became a new class of use requiring a special permit which could be granted only after fifteen development points were accrued. The points could be obtained by showing that the subdivision would be served by the five types of service that the system outlined: water, drainage, schools, roads and firehouses. Otherwise, the permit would not be granted until the town had reached the level of infrastructure development that would allow development to go forward under the plan.\(^n_1\)

The Town’s capital improvement plan called for all areas in the town to be developed within eighteen years. The law did not place an outright restriction on development. Developers could pay for the needed capital improvements (roads, sewers, parks, etc) independently if they were not yet provided by the Town, and also development of single family dwellings on existing lots was allowed. Only residential subdivisions required the special permit. Also, significantly, the plan included hardship variances which would reduce property owners’ tax assessments if their property values were adversely affected by the new requirements. Finally, the overall plan included provisions for low and moderate income housing.

The Court’s Decision

The court decided in favor of the Town of Ramapo (the defendant) on three major issues, and reversed the lower court’s decision. A brief description of the court’s reasoning follows a statement of the issues. More extensive discussion may be found in the section dealing with strengths, weaknesses and implications.

1) Is the Town of Ramapo’s local law denying the right to subdivide property by linking subdivision approval to the provision of adequate public facilities an appropriate use of the delegated police power? **Yes**
2) Is the law “exclusionary” and therefore unconstitutional? **No**
3) Does the law constitute an unconstitutional “taking” under the 5th and 14th amendments?

   No

On the first issue the court finds that although the state enabling legislation does not explicitly authorize local governments in New York to enact controls on the timing of development, it does implicitly allow this type of control because it advances “legitimate zoning purposes”\(^\text{n1}\). Although the court raises concerns about local control and admonishes the state legislature (using strong language) to change the law to favor of more state and regional control, in general the existing statutory and judicial precedents require deference to local decisions on land use when they are made to “advance the public welfare of the community” through “well-laid plans”\(^\text{n1}\).

On the second issue, the court does not treat the question of exclusion lightly, but does find that “far from being exclusionary, the present amendments merely seek, by the implementation of sequential development and timed growth, to provide a balanced cohesive community dedicated to the efficient use of land”\(^\text{n1}\). The decision is influenced significantly by the fact that the Town had laid out specific plans for “large amounts of low and moderate income development”\(^\text{n1}\).

The court also finds in favor of Ramapo on the takings issue. Judge Scileppi, the author of the court’s opinion, makes clear that while the removal of all economic use of property would clearly constitute a taking, a plan which limits building for eighteen years (while substantial in nature and length) is not an absolute prohibition of development\(^\text{n1}\). Therefore, this is not a case where all economic use of the property is removed. The temporary nature of the restriction is the primary consideration. What’s more, property owners can still develop on un-subdivided land and are not prohibited from building the necessary infrastructure which would make subdivision allowable under the points system on their own; so they still have some economic use of their property\(^\text{n2-p3}\).

A minor issue is worth mentioning for the sake of completeness. The court determines that the fact that one of the plaintiffs has not applied administrative relief does not preclude them from bringing the case against the Town because their attack on the ordinance is an attack on its validity “in its entirety”.

**Strengths, Weaknesses, Implications**

Ramapo is still valid law today. It has been sustained by “thirty years of extensive land use and regulatory takings litigation, including several recent decisions of the US Supreme Court”, and over 100 additional major decisions\(^\text{n2}\). It has also served as a model for similar local
and state “concurrency” ordinances and other growth management tools. The former Ramapo Town Attorney and author of the Ramapo Plan, Robert Freilich, went on to consult with a number of other cities on the development of similar plans\(^3\), and the State of Florida enacted a statewide requirement for municipalities to develop adequate public facilities laws shortly after the Ramapo decision.\(^3\) But the case has still been controversial in practice and in the legal literature. Notably, one hundred and fifty law review and journal articles have been written about Ramapo.\(^2\) It is also important to mention that the Ramapo Plan in Ramapo was never fully implemented because the Town Planning Board was subsequently voted out of office in the 1980s.

A strong dissent by judge Breitel raises concerns about “local parochialism in growth management”.\(^1\) The dissent is based on two overriding concerns: a distortion of regional growth patterns and an excuse for what he calls “snob zoning” which would have a tendency to exclude low-income people from suburban communities. The concerns that he raises are still valid, and are being actively debated today.

I will touch on some of the areas of debate in this section, focusing on the three main issues upon which the court decided, along with the broader impacts of Ramapo on growth management policy and practice in the United States.

**Statewide Planning and Regionalism**

The Ramapo decision contains a significant internal conflict. It makes a strong statement about the dangers of local control, while simultaneously empowering local governments to adopt significantly stronger land use controls by taking a very broad interpretation of local power under state enabling legislation. The court says that the judiciary is “burdened by the largely antiquated notion which deigns that the regulation of land use and development is uniquely a function of local government”\(^1\), and calls it an antiquated notion that the power to control land use should be a local rather than a regional issue. But they admit, as they must, that courts are restrained and must give deference to the local authorities. Unfortunately, their call for regional planning to avoid ‘serious defects of local control’ and ‘pronounced insularity’\(^2\) has gone unheeded by the New York State government (and most other state governments) in the 37 years since the decision, despite ongoing, even intensifying issues of sprawl.

The Ramapo court clearly tries to compel the legislature to adopt more aggressive state and regional land use control. The problem is that they simultaneously give additional weight to the strong home rule conditions which make more coordinated planning difficult. This could be partially to blame for states maintaining their delegation of police power to control land uses in service of the public health, safety, morals and general welfare to local governments (first
codified in Euclid). In many states, where specific powers have not been spelled out in detail, states have granted a broad interpretation of local authority.\textsuperscript{n3 – p15}

The results are mixed. On the one hand, a number of additional innovative local land use strategies have grown out of the Ramapo Plan (see below under Growth Control); on the other hand, parochialism still dominates in many states. There are several notable exceptions, and in some cases Ramapo may have indeed inspired state and regional governments. Nolan mentions several promising cases of regional governance in New York State.\textsuperscript{n2} Also, Florida adopted strong statewide timing controls similar to those developed by Ramapo. Florida concurrency laws have even recently been expanded to include a requirement for concurrency in the development of schools and new residential developments. \textsuperscript{n12}

Judge Breitel’s dissent raises a valid concern about the provision for regional needs, but what was the majority in Ramapo to do in the presence of strong home rule and clear local enabling legislation? There is a true conundrum at play. One observer, Bosselman, suggests that an implicit recommendation of the dissent – to place home rule powers regionally rather than at the local municipal level, what he calls “home rule plus” – deserves further exploration.\textsuperscript{n5} This idea seems as valid today as it was when written in 1973. He also provides a colorful critique which embodies the nature of the conflict: “Authorizing local governments to exercise development timing power might be analogized to giving dynamite to a baby. It is a risky business, but at least it induces the parents to watch the baby more closely.”\textsuperscript{n6- p265}

**Exclusion**

Ramapo’s comprehensive plan that was the basis for the timed growth strategy did on the surface appear to provide for affordable housing needs. But there is some debate whether the Ramapo Plan would actually have been able to provide for affordable housing.\textsuperscript{n6} This is important because the court gave weight to the fact that the town had included these provisions in its plan. Judge Breidel in the dissent was less willing to give the benefit of the doubt to local authorities. He felt that an increase in property prices would necessarily result from the timing limits placed on growth in Ramapo when taken in the context of overall regional growth. Higher prices are of course, inherently exclusionary.

The Town of Ramapo had to win several lawsuits to include the detailed low-income housing provisions in its plan. While the court does state clearly that they “will not countenance community efforts at immunization or exclusion”,\textsuperscript{n1} they do not scrutinize the details of the town’s efforts to provide low income housing. They are satisfied that the intent appears to be non-exclusionary and that the Town has made a modicum of effort. For the dissent, this is inadequate. Bosselman also questions the validity of the project by which the court was the most
impressed, suggesting that the project in question consisted of just one apartment building of 200 units, the majority of which were provided to elderly residents. Just a handful of people who eventually were housed there were low-income Black families.\textsuperscript{n6-250} The court admits that its decision must be based on an evaluation of the extent of inclusion, but it may have gotten the extent wrong in this case. It is perhaps a significant weakness of their decision that “if Ramapo can obtain immunity from judicial inspection of the exclusionary effects of its regulation by providing homes for five or ten black families in a town that projects its ultimate population as 72,000, there are few other communities that would be unwilling to make the same ‘sacrifice’.”\textsuperscript{n6, p250}

A need for more regionalism is inherent in the debate about exclusion. Nolan calls exclusion a “negative legacy of localism”.\textsuperscript{n2} Bosselman issues a stronger condemnation, tying the exclusionary impacts to the broader movement for limiting growth and stating that “the wolf of exclusionary zoning hides under the environmental sheepskin worn by the stop-growth movement”.\textsuperscript{n6, p249} New Jersey offers an interesting counterpoint on the issue of regionalism and inclusion; as demonstrated through the Mt. Laurel cases, the state has an aggressive requirement for local governments to provide their “fair share” of local housing needs.\textsuperscript{n5} New York has no such requirement. What’s the solution to this dilemma? Bosselman suggests that the proper solutions to limit exclusionary practices and sprawl are land-banking, additional litigation and enhanced judicial scrutiny of the effects of development timing mechanisms, and increased regional land use authority.

**Takings**

Ramapo is an important case in takings jurisprudence, mainly for the introduction of considerations of the timing of development into our understanding of “reasonable use”, a principle spelled out by the earliest zoning cases (\textit{Euclid} and \textit{Nectow}) and now expanded to include \textit{reasonable use over a reasonable period of time as measured by a comprehensive plan}.\textsuperscript{n13, p694} Some of the “softening provisions”\textsuperscript{n2} of Ramapo were also a precursor to the factors considered later in Lucas v. South Carolina Coastal Council. In the 1992 Lucas case, the Supreme Court held that a taking has occurred when all reasonable economic use of a property has been removed. The absence of any hardship extensions was an important factor in showing that all reasonable economic use had been removed. In Ramapo, it was the presence of hardship extensions that allowed the court to uphold the constitutionality of the Town law. In Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency, the Supreme Court used a similar line of reasoning in upholding the validity of moratoria.\textsuperscript{n2} Finally, it is important to note that part of the logic which is implicit in the Ramapo decision – that the law must advance a legitimate public purpose – was removed as a test to establish a taking by the Lingle decision in 2005.
The Ramapo court suggests that there are some limits to how long a community may delay development and still avoid a takings charge, but how much time would be too much? Is eighteen years the upper limit? Unfortunately, the court does not give guidance beyond the fact that eighteen years will likely be upheld as valid as long as it is accompanied by a plan of similar thoroughness. Also, the mechanisms for determining the thoroughness of a plan are not clear. What if a community has a plan to provide infrastructure to an area, but does cannot do so according to the timeline originally set out due to a decrease in tax revenues or some other factor? Does the town then become liable for a taking? If so, is the taking retroactive as in First English? Or what if a community wishes to delay development so that it can eventually preserve an area through an additional mechanism, such as the purchase of development rights? These areas of confusion, while important, do not reflect as poorly on the quality of the Ramapo decision as may seem. They are endemic to takings law.

Growth Management

Since Ramapo, a number of innovative local land use strategies have been developed in addition to adequate public facilities laws. For brevity, it is not possible to go into detail, but it is important to mention them as the law literature largely credits Ramapo with providing a legal basis for stronger growth management powers.\textsuperscript{2, 6, 10, 11}

But first, how do adequate public facilities ordinances stack up as a tool today? Certainly, many local communities now have development timing laws. Notably, the designer of the Ramapo policy, Robert Freilich has since consulted on the development of a number of similar policies, and as I have mentioned, the State of Florida enacted a statewide law requiring all municipalities to enact Ramapo-style development timing laws. The idea of concurrency laws are still highly relevant today, including in Western States which are experiencing rapid growth but have limited water resources.\textsuperscript{9}

State Zoning Enabling legislation today may or may not deal – depending on the state – explicitly with the local authority to enact adequate public facilities ordinances, but in most states this authority is thought to be implied through the general delegation of police power to municipalities. This notion is a direct echo of the generous interpretation of local authority in the Ramapo decision.\textsuperscript{10, 11}

The significance of Ramapo to the growth management movement goes beyond timing/concurrency laws to include the more general notion that “when a community has a sound plan for the development of its entire jurisdiction it can preclude development inconsistent with that plan in outlying areas.”\textsuperscript{6} Indeed, the most significant outcome of the Ramapo decision may
be that it has confirmed local governments’ authority to control growth. Since the 1972 decision, local governments have created a number of inventive land use control measures. These include various environmental laws, transfer of development rights (TDR) and purchase of development rights (PDR) schemes, zoning incentives, rescue of contaminated property laws, aquifer protection, overlay zones, and performance-based zoning.\textsuperscript{2} A number of communities have also created “inter-municipal land use councils to achieve sub-regional coherence”\textsuperscript{2, p19}, which by themselves may be seen as an important growth management tools by many.

**Conclusion**

Golden v Ramapo is seen by some as a model for the prevention of urban sprawl.\textsuperscript{2, 3} Others lament that “by preventing urban sprawl within its own borders, Ramapo contributes to the far more serious problem of megalopolitan sprawl.”\textsuperscript{6, p248} Both the majority and the dissent in the Ramapo court similarly decried the negative impacts of sprawl, but they did not agree on the best way forward judicially.\textsuperscript{1} The same difference of opinion is evident in the legal literature. Unfortunately, most communities in the United States still find themselves in the same predicament today as thirty-eight years ago with weak state and regional planning and inadequate local power to address the most pressing land use issues of the day, including sprawl and a lack of quality affordable housing.

We don’t know whether the Ramapo decision correctly predicted that land use powers would continue to stay in the hands of local communities and presciently provided the legal backing for much needed local authority to control growth or whether the decision actually delayed a transfer of land use control to states and regions. Regardless, Ramapo continues to provide a model and legal basis for much needed local and regional growth management efforts.\textsuperscript{14}
Notes

1) Golden v. Ramapo, 334 N.Y.S. 2d 138


3) Robert Freilich is also the editor of The Urban Lawyer, a law review published by the American Bar Association focusing on Local Government law, and active writer today on land use controls promoting smart growth. For example, see: 43 Nat. Resources J. 687, Smart Growth in Western Metro Areas (2003).

4) This is the primary subject of NOLON'S article – 35 Urb. Law. 15 (2003)


7) Indeed the Ramapo Plan does call for development of the entire area – what's in question is sampling the effective timing of the expansion.

8) “Ramapo style ordinances “will encourage the clustering of new development around the fringes of existing settlements and the excluding of new development from large areas where it now typically takes place. Thee impact of such ordinances would be to create a series of communities made increasingly exclusive by raised housing costs and to exaggerate the trend toward megapolitan sprawl”


14) Nolan also provides a series of recommendations to states that he relates to the “Ramapo eminations” and national experience with successful smart growth strategies. They are: allow annexation, discourage municipal secession, empower local governments to invent, encourage localities to cooperate, provide data and information, provide training and technical assistance, provide start-up grants, target funds for smart growth districts, encourage mediation, and work toward and integrated and intentional policy.
Sources:
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Thomas G. Pelham. Adequate Public Facilities Requirements: Reflections on Florida's Concurrency System for Managing Growth, 37 A.D.2d 236


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