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The social problems created by rapid population growth are well known to many western boom towns. In such cases, the question is often, "how can the inevitable increase in population be controlled so as to maintain a community's quality of life?" This article suggests that one solution may be the use of a local governments' inherent power to zone. Specifically, a municipality's zoning ordinance could prohibit future residential development unless adequate municipal facilities were available to serve the development, or the developer, himself, was willing to provide such facilities. As the author notes, this type of zoning scheme has been used in at least one other community. The experience of this community provides some valuable insight into the workings and failings of such an ordinance.

WYOMING'S LOCAL GOVERNMENTS AND THE QUALITY OF GROWTH— A PRELIMINARY DISCUSSION

*John D. Wiener**

"There can be no doubt that rapid population growth has in the past created social problems which have made the lives of thousands of Americans less enjoyable than they should have been. As Kohrs has noted, 'The history of power production—synonymous with 'boom development'—in Wyoming is a dismal record of human ecosystem wastage. Frontier expansion without adequate planning has left cities crippled by shameful environments which cause human casualties.'"¹

"The energy boom town in the western United States is apt to be a bad place to live. It's apt to be a bad place to do business."² Local facilities and services cannot keep pace

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The author wishes to express his gratitude to Professor Robert Freilich, and Professor Eric Kelly both of whom made many helpful suggestions.

1. Little, *Some Social Consequences of Boom Towns*, 53 N.D.L. REV. 401, at 423 (1976).
2. Gilmore, *Boom Towns May Hinder Energy Resource Development*, 191 SCIENCE 535 (1976).

with boom rates of growth in isolated small communities, and the quality of life is degraded severely. As living conditions deteriorate, the labor force becomes unstable and dissatisfied. Workers and their families do not want to stay in the boom town; they are attracted by wages and consider themselves transients, maintaining the intention to eventually depart. Industrial employee absenteeism and turnover rates rise rapidly, and productivity declines.³ The children show poor adjustment to school, low achievement, truancy, high rates of delinquency, venereal disease, and assaults. Adults suffer from greatly increased frequencies of depression, divorce, alcoholism, and attempted suicide.⁴

There has been a great awakening on the part of legislators and the public as to the effect man has on the environment. But recognition of the effect of the environment on human life has been less spectacular. For the vast majority of people, zoning is the most important environmental law. It is here argued that the zoning power in Wyoming is greater than may have been previously assumed. Significant increases in municipal control of developments are possible, within existing law.

To establish what may be the outer limit of the zoning power, attention will be directed first to the landmark case in the area of growth-control zoning, *Golden v. Planning Board of the Town of Ramapo*,⁵ decided by the New York Court of

3. *Id.* at 535-537.

4. Little, *supra* note 1, at 407-409. See also: Blevins, Thompson and Ellis, *Social Impact Analysis of Campbell County, Wyoming*, Wyoming Environmental Institute, U. of Wyoming, 1974.

5. 30 N.Y. 2d 359, 334 N.Y.S. 2d 138, 285 N.E. 2d 291, 409 U.S. 1003 (1972). The appeal was dismissed for want of a substantial federal question.

Another case that has received a great deal of attention is *Construction Industry Ass'n. of Sonoma County v. City of Petaluma*, 375 F. Supp. 574 (N.D. Cal. 1974), *rev'd*, 522 F. 2d 897 (9th Cir. 1975), *cert. den.*, 424 U.S. 934 (1976). The Ninth Circuit upheld the limitation by the City of Petaluma (north of San Francisco) on the issuance of building permits to builders of projects consisting of more than four dwellings. Only 500 such permits would be issued per year. The limitation was part of an overall plan designed to provide a balanced mix of housing types. There has been great commentary on this case. It is well discussed in ROHAN, 1 ZONING AND LAND USE CONTROLS 4-48 (1978).

This significant case is not as useful for Wyoming as *Ramapo*, for several reasons. It may be acceptable to limit growth in this fashion if there are alternative opportunities for newcomer housing. But in the usual boom development there are no practical alternatives. If a city were to limit growth in this way, the result would be the creation of new housing centers, which would not only defeat the interests of planning, but would be too wasteful and expensive. It is far more desirable to avoid the creation of what would eventually become ghost towns. The author believes that timing and sequential controls are far superior to quantity limit controls for Wyoming applications. It should be noted that counties are forbidden to interfere with mineral-related activities, (WYO. STAT. § 18-5-201), so flat-limit controls enacted by a municipality would result in merely shifting the location of new housing.

Appeals in 1972. That decision upheld a rational response to uncontrolled growth. Municipal authority was found in the relatively general language⁶ of the state's delegation of police power.⁷ In essence, the court held that residential development may legitimately be delayed until the municipality can provide the services and facilities that are required, unless the developer himself wishes to provide the services and avoid the delay. Because of the extensive scholarship concerning the controversial ordinance, and the case challenging it,⁸ *Ramapo* is here described without attempting an exhaustive treatment.

Second, some of the problems ascribed to growth-control are examined, with the intent of determining their relevance to Wyoming. Next, Wyoming's delegation of zoning power to local governments is viewed in the light of *Ramapo* and the leading case of *Schoeller v. Board of County Commissioners*.⁹ The usefulness of the Joint Powers Act¹⁰ is described, and finally, an analysis of the scope of Wyoming's delegated zoning power is presented.

As a preliminary, it should be noted that Wyoming's original zoning enabling statute was enacted in 1923,¹¹ which was one year after the promulgation of the U. S. Department of Commerce's first version of the Standard State Zoning Enabling Act.¹² After the 1923 act, which allowed cities and towns to zone, the major legislative additions of general in-

6. N.Y. TOWN LAW (McKinney, 1965), §§ 261, 263. See Part III.

7. Generally, municipalities have no power to zone. This power must be delegated by the state. See part III.

8. An excellent discussion of *Ramapo* and control of growth is found in ROHAN, 1 ZONING AND LAND USE CONTROLS, § 4-2 (1978). An excellent Note is: "A Zoning Program for Phased Growth: *Ramapo* Township's Time Controls on Residential Development," 47 N.Y.U. L. REV. 723 (1972). A useful reference is: Landman, No, Mr. Bosselman, the Town of *Ramapo* Cannot Pass a Law to Bind the Rights of the Whole World: A Reply (Part I), 10 TULSA L.J. 169 (1974). Professor Landman discusses *Ramapo* and *Petaluma*, surveys various proposed and enacted land use controls of the growth restriction type, and reprints the *Ramapo* and *Petaluma* ordinances in full. Unfortunately, that article was written before the Ninth Circuit's reversal of the lower court's holding in *Petaluma*. Also strongly recommended are: Freilich, *Development Timing, Moratoria, and Controlling Growth*, 1974 INST. ON PLANNING, ZONING, AND EMINENT DOMAIN 147 (1974); Zumbrun and Hookano, *No-Growth and Related Land-Use Legal Problems: An Overview*, 9 URBAN LAWYER 122 (1977); Freilich and Greis, *Timing and Sequencing Development: Controlling Growth*, in FUTURE LAND USE — ENERGY, ENVIRONMENTAL AND LEGAL CONSTRAINTS, Burchell and Listokin, Eds., at 59 (1975); Note, *Controlled Growth Zoning: Confronting the Inevitable*, 66 KY. L. J. 99 (1977); Wright, *Constitutional Rights and Land Use Planning: The New and the Old Reality*, 1977 DUKE L.J. 841 (1977).

9. 568 P.2d 869 (Wyo. 1977).

10. WYO. STAT. §§ 9-1-129 to 9-1-136 (1977).

11. See WYO. STAT. §§ 15-1-701 through 15-1-709 (1977).

12. See note 53, *infra*.

terest¹³ were: authorization of county planning commissions in 1955;¹⁴ authorization of county planning and zoning commissions in 1959;¹⁵ authorization of city planning in 1961;¹⁶ the Joint Powers act, authorizing cooperation between cities, counties, and educational and other special districts, in 1974;¹⁷ and authorization of county regulation of real estate subdivision in 1975.¹⁸ Thus, even with relatively recent additions of zoning and planning power delegations to counties, the basic Wyoming law of zoning has remained the same since 1923.

It must be emphasized that control of growth in the sense of regulating the timing of development is very similar to control of growth in the sense of sequencing development. The timing of growth may be more directed toward an overall slowdown of growth, whereas sequencing may be distinguished by its primary purpose of requiring coordination of growth, regardless of the rate of development. The timing aspect has usually been given a higher priority than the sequencing aspect, as was the case in *Ramapo*. That town wanted to slow development. But an energy boom town will probably be concerned with sequencing development, and timing it only to the extent necessary to insure that quality and cost-control goals are met. In the former case, slowing development is a goal in itself; in the latter, slowing development would be undesirable. Because both types of growth control are novel expansions of the police power, the slow-growth experiences provide valuable legal principles for use in Wyoming.

I. THE RAMAPO ORDINANCE

Wyoming is not the only place suffering from the impact of sudden growth. Many cities and towns have long tried to cope with expansion, due to the growth of large metropolitan areas. In 1955, Henry Fagin suggested "well-considered motivations for regulating the timing of urban development":

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13. Omitted from discussion are specialized enabling acts; e.g. the Industrial Development Projects Act, Wyo. STAT. §§ 15-1-801 - 15-1-810 (1977).
 14. Wyo. STAT. §§ 18-5-101 - 18-5-107 (1977).
 15. Wyo. STAT. §§ 18-5-201 - 18-5-207 (1977).
 16. Wyo. STAT. §§ 15-1-601 - 15-1-612 (1977).
 17. Wyo. STAT. §§ 9-1-129 - 9-1-136 (1977).
 18. Wyo. STAT. §§ 18-5-301 - 18-5-315 (1977).

1. The sequence of building operations determines whether linear facilities . . . will be extended gradually to serve areas built in careful phase with efficient utility growth .
2. The need to retain municipal control over the eventual character of development .
3. The need to maintain a desirable degree of balance among various uses of land .
4. The need to achieve greater detail and specificity in development regulation .
5. The need to maintain a high quality of community services and facilities.¹⁹

A municipality exercising growth controls, in Fagin's view, should be obligated to proceed with development of services and facilities as they are required, so as to promote orderly growth, rather than preventing the utilization of land.²⁰ A builder held up by the municipal schedule should be allowed to provide the services himself, and proceed. Land values would be affected immediately on passage of the ordinance, but would eventually settle into a higher overall pattern, as the value of the whole town is increased by beneficial development, and land values reflect real utility.²¹ Fagin's genius was to anticipate the future course of the law, and also some of the problems which still remain unsolved. But it was almost fifteen years after that seminal work was presented before Fagin's ideas were put into practice.

Ramapo was a small town twenty-five miles from New York City. It was faced with the prospect of imminent and extensive suburbanization, in the 1960's, and was unable to provide adequate facilities for its increasing population. "In the period between 1948-1960 population increased 285.9%. Projected figures, assuming current land use and zoning trends, approximate a total town [incorporated and unincorporated areas of the township²²] population of 120,000 by 1985."²³ The response culminated in the *Ramapo* ordinance.

19. Fagin, *Regulating the Timing of Urban Development*, 20 L. AND CONTEMP. PROBS. 298, 300-304 (1955).

20. *Id.*

21. *Id.*

22. The township here is a political area, not a northwest ordinance land survey township of 36 square miles. Ramapo township consists of 89 square miles.

23. *Ramapo*, *supra* note 5.

In 1966 a comprehensive master plan was formulated. To implement the plan, the town enacted a six-year capital budget providing for certain facilities, and a further provision for the subsequent twelve years, which also scheduled the provision of municipal facilities. Taxes had already been increased substantially, and the eighteen-year schedule was the result of the conflict between lack of revenues and the desire to provide full facilities for all present and future residents. By 1969, however, it was plain that the influx of population would not wait for the town's construction program. Either services would be lacking, or a further response was required. Therefore, the original ordinance was amended, and timing controls were enacted. These timing controls were the heart of the ordinance, as amended. Land could not be used for residences until the capital improvement schedule had supplied necessary services at a pace of growth that the town could afford, unless an impatient developer wanted to supply the services himself, and thus make his profit with no delay.

There are some qualifications, such as "savings and remedial provisions designed to relieve potentially unreasonable restrictions."²⁴ Thus, the [town] board may issue special permits vesting a present right to proceed with residential development in such year as the development meets the required [level of services]²⁵ . . . but in no event later than the final year of the 18-year capital plan. The approved special use permit is fully assignable, and improvements scheduled for completion within one year from the date of an application are to be credited as though existing on the date of the application."²⁶

"The amended ordinance . . . did not rezone or reclassify any land in different residential or use districts. Rather, it established an additional class of special permit use, designated as a 'residential development use,' which required a

24. Freilich and Greis, *supra* note 8, at 68, stated: "Within one year from the grant of the vested approval the developer may appeal to the Development Easement Acquisition Commission of the Town for a reduction of the assessment valuation of the land if such valuation is affected by the temporary restriction on use of the land."

25. The "vested approval of special permit" is an ingenious device. It provides the assurance of the town that the holder will be allowed to proceed no later than the time when the development shall acquire the necessary services according to the schedule of improvements. Therefore, the holder has a valuable and transferable right, reflecting at least to some extent, the eventual value of the land.

26. 285 N.E. 2d 296 (1972).

residential developer to obtain a special permit for such use from the Town Board prior to the issuance of any building permit, special permit from the Board of Appeals, subdivision approval, or site plan approval of the Planning Board."²⁷

The plan is operated by requiring a fifteen point minimum for development. Points are credited to the development on the basis of access to, or existence of required facilities. The five types of facilities for which points were awarded included sewers, drainage, parks or school sites, roads improved with curbs and sidewalks, and fire houses.²⁸

In the 1969 amendments, there was also included a statement of purposes. After reciting that the town was unable to keep pace with the demands of "unprecedented and rapid growth," it was stated that the town had adopted a comprehensive master plan, official map, and capital program. To avoid frustration of the plan by "disorganized, unplanned, and uncoordinated development," policy determinations were enacted. They were "[t]o economize on the costs of municipal facilities and services, to carefully phase residential development and efficient provision of public improvements," and to establish and maintain control over the character of development, a desirable balance of land uses, and essential quality of services.²⁹

These are certainly admirable goals. But, unfortunately, Ramapo Township has failed to keep up with its schedule of capital improvements. Reviewing the effects of the ordinance, in 1974, Professor Landman wrote that the "program is indeed meeting its primary objective—limiting

27. Freilich and Greis, *supra* note 8, at 67, and Landman, *supra* note 8, at n. 19.

28. The point system included point rankings for access to facilities in the categories of sewers; drainage; improved public park or recreation facility including school site; state, county, or town major, secondary, or collector road(s) improved with curbs and sidewalks; and firehouse. For example, 3 points were granted for a firehouse within one mile, 1 point for a firehouse within two miles, and no points for firehouses further than two miles. For an improved public park or recreation facility (including school sites) within $\frac{1}{4}$ mile, 5 points were granted; within $\frac{1}{2}$ mile, 3 points; within one mile, 1 point; and further than one mile, no points.

In 1975, both Fairfax County, Va., and Minneapolis-St. Paul, Minn., were reported by Freilich and Greis, *supra* note 8, at 95, to have included in Ramapo-like plans an additional point-scale for the purpose of encouraging low and moderate income housing construction. Based on the percentage of such units in the planned development, the developer could receive bonus points.

29. Landman, *supra* note 8, at 175, n. 19. The ordinance is also reprinted at ROHAN, 1 ZONING AND LAND USE CONTROLS, 4-23 (1978).

growth. The Ramapo program has lowered the number of residential units built per year from 943 in 1965 to an average of between 200 and 250 in each of the past four years.³⁰ Since then, however, it is reported that Ramapo has failed to live up to its part of the bargain. The town has had to consistently revise its capital budget plan downwards, and has failed to build many of the projects in its revised plans.³¹

Whether or not Ramapo's failure was due to unexpected or unforeseeable financial events, as well as a significant lessening of the population influx, it is clear that fairness demands that any city imposing controls as drastic as Ramapo's, which could last up to 18 years, should be on very sure ground. The legality of the scheme was upheld, but there has apparently been a serious breakdown on the practical level. This may result in a severe imposition on some landowners without the acquisition of public benefits, or the prevention of public harms. Despite this, however, the plan was legally valid. Whatever the reasons for the shortfall in public construction, the least that can be said is that the plan was a courageous attempt to solve serious problems, and that it has established a landmark in the field of zoning law.

Professor Freilich, the chief legal engineer for Ramapo, has written with a colleague that the following are essential elements for the effective use of timing and sequential controls:

1. A comprehensive master plan for the community;
2. Interim development controls to prevent growth inconsistent with the plan;³²
3. A housing authority to provide homes for low and moderate income families;
4. An official map identifying all roads, parks, and drainage systems to be preserved;

30. Landman, *supra* note 8, at 192.

31. Personal communication from Professor Eric Kelly, Esq., and Hammer, Siler, George Associates, *Impact on Ramapo Fiscal and Economic Conditions of the Town's Growth Control Ordinance*, (Washington, D.C., Draft, May 1977).

32. See Part III.

5. Subdivision regulations designed to protect the housing consumer and provide parks, boulevards, and open space;
6. Use of average, cluster zoning, and development easements to preserve open space and provide community amenities;
7. A capital budget and capital plan for a reasonable period of time, with the period to be based on the results of extensive studies of community assets and needs;
8. Amendment to the zoning ordinance to provide that no further residential development may take place except with a special permit. The permit is to be granted only if the developer can achieve a specified minimum number of "points" related to the availability of municipal facilities.³³[footnotes omitted.]

Whether all of these would actually be essential for Wyoming is open to question.

II. CRITICISMS OF TIMING AND SEQUENTIAL CONTROLS

It is useful to separate criticisms based on the internal effects of timing and sequential controls from criticisms based on the external effects of such actions. The dividing line is that created by the jurisdictional boundaries of the municipalities involved. Internal effects are those perceptible within the political subdivision which has enacted controls, and external effects are those perceptible outside of the political subdivision. "Municipality" or "town" is here used for simplicity's sake, in designation of political subdivisions, but zoning power may be exercised in many states, including Wyoming, by counties as well. Because zoning is a function of the police power of the state, the power of its exercise may be delegated, at the will of the state, to any convenient body.³⁴

33. Freilich and Greis, *supra* note 8, at 68.

34. See ROHAN, 1 ZONING AND LAND USE CONTROLS, 1-21 (1978), for a typical explanation of this generally accepted statement. A recent Wyoming case supporting this rule, *Schoeller v. Board of County Commissioners*, 586 P.2d 869 (Wyo. 1977) is discussed in Part III, and is here cited for its *re*gency.

A digest of the criticisms of the Ramapo plan, and timing and sequential control of growth in general, might be as follows:

1. By allowing an excess of local control, the approval of timing and sequencing controls creates a situation where towns may, through unilateral action, trap the poor and others inside urban cores where the job market is vanishing.

2. Just as subdividers may now directly control the future path of development for towns, the use of growth controls may permit towns to exert a similar randomizing and scattering effect on metropolitan regions, thus defeating effective planning and increasing waste and overall costs for everyone.

3. Growth controls prevent persons from moving into communities where they might otherwise have chosen to live.

4. Growth controls destroy valuable property rights, by preventing profitable uses of land, or delaying them for long periods of time.

5. Growth controls unfairly penalize some owners while favoring others.

6. Growth controls are beyond the power of towns, because they are not contemplated by statutes which authorize political subdivisions to zone.

7. The "point system" in Ramapo's ordinance, or a functionally similar device, is a sham, because it is not economically feasible for a developer to pay the costs of municipal services.

8. Newcomers are forced to pay the costs of all new municipal services, rather than merely a fair share of the costs, as would normally be the case.

In light of the vast literature on the subjects of *Ramapo*, and growth control in general,³⁵ that is a synthesis of the main stream of criticisms. The points have been made by an

35. See the authorities cited in *supra* note 8.

array of legal and social commentators of great persuasiveness; it is hoped that this digest will be a useful basis for discussion, without slighting the importance of more detailed presentations available elsewhere.

Criticisms one, two and three represent external effects. "It is estimated that by the year 2000, present trends will concentrate 83 percent of the population into the ten largest urban regions, occupying one-sixth of the national land area."³⁶ Obviously, criticisms one and two, are very important, and are based on terribly serious failures related to the monstrous urban regions. But planners concerned with Western rural boomtown developments, in Wyoming and elsewhere, may dispense with these criticisms. Although the solution desperately needed for these metropolitan areas is apparently to be found in regional administration, many of the heavily-impacted Western areas constitute, for practical planning purposes, regions unto themselves.

Boom town growth rates (10% to 15% annually) result from one or more related industries entering an under-populated area at the same time . . . Because the breakdown of local community services and structures can be attributed to unusually high population growth rates, it follows that boom conditions will seldom be found in large metropolitan areas . . . Small rural communities, however, lack the capability to absorb relatively large demands upon their municipal services. It can, therefore, be expected that the boom phenomenon all too frequently will be observed in communities that are the least well-equipped to cope with it. Furthermore, rural communities typically have antiquated or seriously strained public facilities even prior to the additional stress created by the location of new industries in the town. Energy developments in Hanna and Gillette, Wyoming, provide vivid examples of the stress faced by rural areas experiencing rapid population growth. In fact, available evidence leads to the conclusion that rural western communities will definitely experience the boom phenomenon in the next decade unless comprehensive planning is carried out and implemented.³⁷

36. THE COMMISSION ON POPULATION GROWTH AND THE AMERICAN FUTURE, POPULATION GROWTH AND THE AMERICAN FUTURE, 16 (1972).

37. Little, *supra* note 1, at 402-403.

It seems probable that what is more likely to occur, rather than impact-shifting to distant existing towns, is the creation of new towns which would be closer to the places of employment. However, Wyoming has already at least a partial solution for that problem. As described below in Part IV, there is a ready mechanism in the statutes for preventing random or undesirable creation of new towns, defensive incorporations, offensive annexations, and the various bizarre results of lack of regional planning and implementation. Thus, we may fairly dismiss further consideration, for Wyoming, of some of the most serious and expensively wasteful problems that other states must deal with, or suffer from.

Criticism three, that persons may be prevented from moving into communities where they might have chosen to live, deserves separate comment. It relies on the fundamental right to travel, when presented as a legal argument.³⁸ Ramapo and other towns have successfully defended themselves against this attack, but the social question remains. However, it is submitted that, again, Wyoming's different situation renders this criticism irrelevant. Basically, this problem arises when persons who wish to move into a town are prevented from doing so because some legal action (*e.g.* a zoning plan which has the effect of allowing only wealthy people to afford the cost of housing) precludes the would-be immigrant from settling in his desired domicile. There is little in the way of a successful legal attack from this quarter that must be feared, given a sound plan to start with. And more important than the judicial acceptability of the plan, the social problems that give rise to these attacks are simply not present in Wyoming at this time. Certainly Wyoming has poor people who cannot afford expensive houses, and certainly Wyoming has areas of "blight" in its cities,³⁹ but Wyoming's energy-impacted towns do not have to resolve problems which stem from the urban-area population shifts which have caused the "right to travel" problem to appear in the zoning field.

38. Freilich and Greis, *supra* note 8, present a compact analysis at 82-84. See also: Comment, *The Right to Travel: Another Constitutional Standard of Local Land Use Regulations*, 39 U. CHI. L. REV. 612 (1972), and Zumbrun and Hookano, *supra* note 8, at 145.

39. Wyoming Urban Renewal Act, WYO. STAT. §§ 15-10-101 - 15-10-138 (1977).

Stated simplistically, the paradigm of this problem is the situation of Mr. X, who lives in very low cost and very low quality housing in an urban core, and who cannot find suitable employment in any accessible place. The jobs for Mr. X lie far out beyond his transportation range, and there is no low cost housing near the jobs. Therefore, Mr. X does not have a job, and is unlikely to get one. But in Wyoming, at the present time, our concern is with Mr. Y, who has recently arrived to take advantage of relatively excellent job opportunities, and who needs decent housing. Mr. Y may be excluded in some cases, but this is not the result of a century of urban development and decay. It is the result of local inflation, boom town conditions, and the lag time between demand and supply. Mr. X and his governments are faced with old and bitter problems. Mr. Y and his governments are faced with the challenge of preventing new problems. A boom town, and a boom state, regardless of one's emotional reactions to the description, present a fast-dirtied clean slate. The problems faced by people in Wyoming are not, in a sense, those left to them by previous generations of market forces, but rather those threatened by the current generation of those forces.

The challenge in boom towns is to provide decent living environments for large numbers of immigrants within a short time. So far, it may be argued, what has been provided is inadequate.

Criticism four states that growth controls destroy valuable property rights by preventing profitable uses of land, or delaying them for long periods of time. This is indeed a serious criticism. It should be immediately noted that the delay factor is of course variable, depending on the needs of the community, the market demand for housing, and the particulars of the plan produced in response.

Police power exercises have the effect of costing someone something. Euclidean zoning, exactly as contemplated by Wyoming's 1923 city zoning statute, is subject to the same criticism.⁴⁰ All zoning affects potentially profitable uses of land, and this issue was dealt with in 1926, in *Village*

40. WYO. STAT. §§ 15-1-701 - 15-1-709 (1977)

of *Euclid v. Ambler Realty Co.*,⁴¹ by the United States Supreme Court. What is novel in the controlled growth ordinance is the prohibition of the use of land for residential purposes until certain services are provided, as in *Ramapo*, or until the city has the capacity to accommodate that growth.⁴²

The power of towns to enforce these ordinances was vindicated; the reader is urged to consider these costs from a larger point of view. Certain property owners will be delayed, under a controlled growth ordinance, from realizing profits immediately by subdividing their land. The police power action of the zoning authority has imposed on these owners the cost of delay. But if these costs are not imposed, other and greater costs will result. To wit, the costs of uncontrolled growth, randomized and overlong extension of municipal services, a severe reduction in the quality of services available, and an increasing lack of capacity in the local government to provide services which will be increasingly needed. Not only do the costs of providing prior levels of services increase, but the level of services needed tends to dramatically increase, especially in the areas of social and psychological assistance.⁴³ In a nutshell, there is cost of delay imposed by the controlled growth ordinance, and its implementation, and there is cost imposed on the city by the lack of control, and the increased permanent cost of services resulting from randomized growth. These two costs are commonly weighed, discussed, and evaluated as if they were the only costs.

But most important of all is the cost to the people. Regardless of costs to developers, and costs to governments, costs imposed upon people are the heart of the issue. Economists and legal theorists who deal only with property rights may both be taken to task for failing to specify that it is really cost to people that we must try to minimize.

Zoning is part of the police power that is held by the state, or those to whom the state delegates its authority, and

41. 272 U.S. 365 (1926).

42. See *supra* note 5.

43. Blevins, Thompson and Ellis, *supra* note 4; author's interview with Dr. Keith Miller, former Director, Wyoming Human Services Project, University of Wyoming; Little, *supra* note 1.

it is exercised for the "general welfare".⁴⁴ Any defensible concept of the general welfare must include the benefits and harms to the people—the overall welfare of those affected by the ordinance and the town that results from it. In the heavily urbanized areas, the harm to people has been found to be too high to allow exclusionary zoning. The Pennsylvania and New Jersey courts, among others, have had to reject ordinances which inflicted, in light of the general welfare of the region's people, too high a social cost.⁴⁵ Wyoming need not be overly concerned with the "regional welfare" concept. But what, then, must be included in the general welfare, in terms of the boom town, is every human and monetary cost which may be increased or diminished by the shape and character of the cities we create, for as long as people live in them.

Consider the cost of transportation; people need to get from homes to jobs, to shopping, to schools, and to wherever else they choose to go. The question is how far they will have to go. Whether comprehensive planning can minimize the cost of transportation depends on whether it can help to minimize distance and obstacles. Pleasant, cheap, and efficient mass transportation is beneficial to the general welfare. The shorter the drive to work, and the less hunting for parking space, the less the reduction of the general welfare. We cannot omit the cost of the difficulty faced by the infirm and the elderly in securing necessary services, for instance, simply because these costs are not easily quantified.

The general welfare includes a great deal beyond the sewer assessment, or the amount being carried on the mortgage. Is the imposition of the cost of delay upon developers warranted by the diminution of the cost to the city, and the diminution of the reduction of the general welfare? Incidentally, it is hoped that in many cases, if not all, the delay cost will be outweighed by the value added to land which is part of an orderly, healthy, and economically efficient pattern of

44. See e.g., WYO. STAT. §§ 15-1-701, and 18-5-105 (1977).

45. E.g., *Southern Burlington County NAACP v. Township of Mount Laurel*, 67 N.J. 151, 336 A.2d 713, cert. den., 423 U.S. 808 (1975), (town may not avoid "fair share" of regional housing needs); *Appeal of Kit-Mar Builders*, 439 Pa. 466, 268 A.2d 765 (1970), (two and three acre minimum lot sizes invalidated). On the subject of exclusionary zoning, ROHAN, 1 ZONING AND LAND USE CONTROLS, 2-4 through 2-5 (1978) cites thirty-four articles.

growth.⁴⁶ If development is uncontrolled, sprawling, and wasteful of energy, personal time, and land, then we must all live with a permanently decreased quality of life, and a permanently increased burden on municipal services.

Criticism number five states that growth controls unfairly penalize some owners while favoring others. This is applicable to all zoning. What is directly in issue, however, is the case where X and Y own land equidistant from the downtown area, or wherever the focus of activity happens to be. Why should X be required to wait, when Y is not? X is being penalized and Y is being favored, all other factors being roughly equal. Unfortunately, there is not a satisfactory answer to X's question, "Why me?" Certainly, a partial answer is provided by whatever motives the planners responded to when they designated Y's land as having a higher priority for development than that belonging to X. And certainly, the legal power of the zoning authority is established. But beyond the fact that this can be done, there remains only the simple assertion that it must be done. There is in this situation, by definition, a lack of capacity to allow, within the government's budget for services, both X and Y to proceed at once. A decision must be made.

Professor Freilich and his colleagues have ably defended their creation (the *Ramapo* ordinance) in the legal arena. Suffice it to say, for present purposes, that timing and sequential controls have withstood attacks based on the due process and equal protection clauses.⁴⁷

Criticism number six states that growth controls are beyond the power of towns, because they are not contemplated by statutes which authorize political subdivisions to zone. Because this is the subject of Part III, below, discussion is here deferred.

Criticism number seven states that the "point system" in *Ramapo's* ordinance, or a functionally similar device, is a sham, because it is not economically feasible for a developer to pay the cost of municipal services. Professor Landman's article stated that the system had been found to be un-

46. See Fagin, *supra* note 19.

47. Freilich and Greis, *supra* note 8, have provided a succinct and comprehensive treatment of these issues, at 71-74 and 78-82.

workable, although three or four major developers had tried to use it.⁴⁸ But this does not reflect a flaw in the legal principles upon which the Ramapo plan was based. Rather, the "point system" represents legislative choices which are fully adjustable to meet the practicalities of any area. In Wyoming, for example, drainage might be less of a problem than it was in New York. Therefore, the point values required and awarded might be fewer, and they might be awarded on the basis of storm drains only. These are questions for the engineers and designers of any particular subdivision, and the planners for the larger area. With their advice, the zoning body can create a "point system" specifically designed for the needs of its constituency. For example, perhaps it would be useful to encourage, by awarding points, the provision of playground and day-care facilities in developments of high density, such as trailer parks. Such amenities can add greatly to the quality of life; in this example, by helping to free mothers from the burdens of constant child-watching when there is no place for children to play safely without constant supervision.

The important point to recall is that, given a specific quantum of required facilities and services, someone will have to pay for them. The questions are who, and when? The answer provided by a Ramapo-like plan is that the city will pay, when it can, or the developer may pay, when he wishes. The discussion of criticism eight is also relevant here.

Criticism eight states that newcomers are forced to pay for all new municipal services, rather than merely a fair share of the costs, as would normally be the case. But if the developer waits for the municipality to extend out to his land, the only increased cost that the newcomer will face will be the cost of delay. Note that on the one hand, developers are apt to be resentful of delay imposed upon them, but on the other hand, they are equally apt to pass on their cost to purchasers. The novelty here is that the cost of delay is introduced; other costs are not affected. Delay costs which are passed on should be offset, at least to some extent, by the decreased cost of living in the development characterized by orderly and efficient growth. If there are tax relief measures, such as

48. Landman, *supra* note 8, at 192.

Ramapo's "development easements", then the developer's cost of delay is reduced.⁴⁹ Such a tax measure might easily be a legislative decision to assess the delayed development at a lower rate during the period of delay on the basis that the property is restrained from being used at its "highest and best use", and therefore is temporarily reduced in value. This, as a type of compensable regulation, would reduce the cost which is passed on to the ultimate purchaser. However, it would also increase the cost to the city. At any rate, in the case of the developer who waits, criticism eight does not apply.

The difficult issue seems to be the case where the developer elects to proceed ahead of the municipal schedule, by providing services on his own, and therefore, at the ultimate expense of the purchaser. But let us examine what ideally should occur, with the example of water and sewage expenses. Normally, a new development of the residential subdivision type will be specifically assessed for the cost of municipal services extended, either by requiring the developer to provide the services, as "builder exactions",⁵⁰ or in the form of tax-like special assessments,⁵¹ for the special benefits received by the new residents, or in the form of "user fees", or "hook-up charges", if the city has a municipal utility. So far, then, what is changed from the norm is merely the time at which the cost of these facilities is recovered from the purchasers.

Observe that the cost differential we are dealing with is the cost of the extension of water and sewer mains to the subdivision, since it is probable that house-to-street and street-to-main connections will be "exacted" from the builder in any case before residence is approved. What is varied is

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49. Development easements, and other tax relief measures, are discussed in other contexts in several articles. In regard to Ramapo's usage, see *supra* note 24. A useful article with wide citations is Lapping, Bevins, and Herbers, *Differential Assessments and Other Techniques to Preserve Missouri's Farmlands*, 42 Mo. L. REV. 369 (1977).
50. See ROHAN, 2 ZONING AND LAND USE CONTROLS, Chap. 9 (1978), generally, on the subject of builder exactions. Rohan also states that, "In order to avoid placing an inequitable share of the increased financial burden on established residents to provide . . . facilities [for newcomers], statutes empower local communities to exact dedications of land from subdividers, or fees in lieu of dedication." [footnotes omitted]. ROHAN, 1 ZONING AND LAND USE CONTROLS, 1-56. In Wyoming, no specific authorization for this power may be observed. But, exactions are commonly required, see, e.g., CODE OF THE CITY OF LARAMIE, § 35-4. Such exactions appear to be authorized by the doctrine of implied powers, WYO. STAT. § 15-1-607, and WYO. STAT. § 18-5-306 and § 18-5-315.
51. See HAGMAN, URBAN PLANNING AND LAND DEVELOPMENT CONTROL LAW, §§ 198-200 (1971).

the payment for subdivision-to-main, and main-to-processing connections. If all of the connections are provided by the city, then purchasers pay the city; if they are provided by the developer, then purchasers pay the developer, or it might be divided. Because of modern subdivision regulation and the exactions required of builders, the net result is only a shifting of the time when some of these costs are paid by the purchasers, and even that is variable. If purchasers pay developers, the cost may then be included in the balance due on the mortgage. If purchasers pay the city, then the assessments or hook-up charges may be paid in installments. Either way, the costs of "general", as opposed to "special" benefits, e.g. municipal water supplies, will be paid for annually by all recipients, old and new.⁵²

Newcomers will have to pay many of the direct costs on their arrival, regardless of the presence or absence of an intermediary. The most tangible substance of criticism 8 really reflects a much larger social problem—inflation. It costs more now to establish a home than it did fifty, or even five years ago. The number of dollars that must be spent by a newcomer now is far greater than the number of dollars that must have been spent by a newcomer in the past. Whether the relative value of those numbers of dollars has changed is another question.

III. WYOMING'S STATUTES ENABLE THE USE OF SEQUENTIAL GROWTH CONTROLS

A large part of the importance of *Ramapo* is that the Court of Appeals of New York held that the phased-growth ordinance there in question was a valid exercise of the power delegated to the municipality. The enabling authority was found in the New York Town Law, Sections 261 and 263, which are almost verbatim adoptions of Sections 1 and 3 of the Standard State Zoning Enabling Act, promulgated in 1926 by the U. S. Department of Commerce. Compare the

52. It is important to distinguish between "special" benefits and services, such as the house and subdivision-specific plumbing, and "general" benefits, such as the municipal sewage treatment facility. The New York court held that a village could not control growth because the village had failed to maintain adequate sewage treatment, and sought to use its failure as a basis for exclusion. *Westwood Forest Estates v. Village of South Nyack*, 23 N.Y. 2d 424, 244 N.E. 2d 700 (1969).

first phrases of the Standard, New York,⁵³ and Wyoming acts:

STANDARD ACT: “For the *purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of cities and incorporated villages is hereby empowered to regulate and restrict the height . . .*”

N. Y. TOWN L.: “For the *purpose of promoting the health, safety, morals, or the general welfare of the community, the town board is hereby empowered by ordinance to regulate and restrict the height . . .*”⁵⁴

WYO. STAT. § 15-1-701: “For the *promotion of health, safety, morals, and the general welfare of the community, the governing body of any city or town may regulate and restrict, by ordinance, the height . . .*”

[Differing portions in italics.]

These differences, while significant for procedural purposes, have no significant effect on the purposes and objects of the zoning; the acts are identical in those areas. Section 263 of the N.Y. Town Law is almost identical to Section 3 of the Standard Act, and Wyo. Stat. § 15-1-703, with insignificant differences.

In effect, the Court of Appeals of New York held that the Standard Act enabled Ramapo to enact timing and sequential controls. The rationale for this holding is based on the act itself, Dillon’s Rule, and the U. S. Supreme Court’s holding in *Village of Euclid v. Ambler Realty Co.*⁵⁵

Dillon’s Rule was formulated as follows:

It is a general and undisputed proposition of law that a municipal corporation possesses and can exercise the following powers, and no others: First, those granted in words; second, those necessarily or

53. The New York Town Law, Sections 261 and 263 is reprinted in ROHAN, 1 ZONING AND LAND USE CONTROLS, 4-33, n. 16, as well as in the McKinney’s compilation. The history of the 1922 and 1926 versions is mentioned by Pelham, *Regulating Developments of Regional Impact: Florida and the Model Code*, 29 U. FLA. L. REV. 789, 789-91 (1977).

54. There is further language added to N.Y. Town Law Section 261 which describes the jurisdiction of the town board, and the financing relevant to its zoning. This language was not relevant to the holding in *Ramapo*.

55. This analysis is presented more fully by Freilich and Greis, *supra* note 8, at 69-70. *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926).

fairly implied in or incident to the powers expressly granted; third, those essential to the accomplishment of the declared objects and purposes of the corporation—not simply convenient, but indispensable.⁵⁶

The second and third sources of power are generally known as, and accepted under, the rubric of the doctrine of implied powers.⁵⁷ In *Euclid*, the Court carefully noted that the scope of the application of constitutional guaranties “must expand or contract to meet the new and different conditions which are constantly coming within the field of their operation.”⁵⁸ The zoning controls which were upheld in *Euclid* were far less stringent than those in *Ramapo*, but the times have changed. Because the modern municipality may be subjected to stresses quite different from those of 1926, the measures needed to achieve the goals of the zoning power must change. The Court of Appeals squarely followed Dillon’s Rule, and held that the power to regulate and restrict growth necessarily included the power to divert growth from its natural course, and that the means used to achieve the authorized goals were valid.⁵⁹

There is no doubt that specific enabling legislation for the use of timing and sequential controls is desirable, if for no other reason than as a statement of policy, but these devices are legally acceptable under present legislation.

In the Wyoming cases, no reason appears to suspect that the court would not follow a similar analysis. The doctrine of implied powers was applied in the 1977 case of *Schoeller v. Board of County Commissioners*.⁶⁰ The commissioners had filed a complaint asking for an injunction against the operation of a store which was not permitted under an emergency resolution which froze all existing land uses in Park County, and which had been enacted before the store began operation. The defense raised was that the freeze was invalid, as being beyond the power of the county commissioners and in violation of statutorily-mandated procedures. The court said that determination of the validity of

56. DILLON, 1 MUNICIPAL CORPORATIONS, 448 (5th Ed., 1911).

57. McQUILLIN, 2 MUNICIPAL CORPORATIONS, § 10.12 (3d Ed., 1966).

58. *Euclid*, *supra* note 55, at 387.

59. *Ramapo*, *supra* note 5, at 297.

60. 568 P.2d 869 (Wyo. 1977).

the resolution required investigation of all of the circumstances surrounding its passage.⁶¹ The County Zoning Act of 1959⁶² empowered the board of county commissioners to appoint a planning and zoning commission, which was authorized to formulate and recommend a comprehensive plan. But there were no provisions specifically contemplating the adoption of an interim or emergency plan for unincorporated areas of the county.⁶³

The procedure employed in enacting the freeze, as an emergency resolution on the recommendation of the planning and zoning commission, was reviewed. The intent was to maintain the status quo "in any unzoned area within the county until a comprehensive county-wide zoning plan could be formulated and recommended."⁶⁴ "The resolution contemplated that a public hearing would be held within five weeks. Notice of the resolution was published but no hearing was ever held."⁶⁵ The board continued to extend the resolution, without holding a public hearing, so that the "ultimate result of the Board actions was to impose a freeze upon all the land in the unincorporated areas of Park County for five years."⁶⁶

There were two basic issues presented. First, whether the board had the power to impose the freeze, even though there is no specific grant of that power. And second, whether the freeze was invalid for reasons other than a lack of authority to properly impose it. The issues were approached in the interrelated fashion in which they were presented; however, the holding clearly separates them, and, perhaps adds a third. The first paragraph of the holding is as follows:

The County Commissioners' "emergency" resolution of August 24, 1971, freezing existing land use in Park County, without previously publishing a notice and holding a public meeting was initially a valid exercise of its implied power to do those things which would make its express power to regulate and restrict the use of buildings and land in unincorporated areas of the county meaningful. This tem-

61. *Id.*, at 872.

62. WYO. STAT. §§ 18-5-201 - 18-5-207 (1977).

63. Schoeller, *supra* note 34, at 872.

64. *Id.*

65. *Id.* at 873.

66. *Id.* at 874.

porary land-freeze, however, became a permanent land-plan, which under the statutes of this state, cannot be implemented without complying with the provisions with respect to public notice and hearing. As a result, the various subsequent resolutions, passed without compliance with the statutes, and which extended for some five years the original land-freeze, were invalid.⁶⁷

The only authorization for the freeze was the County Zoning Act; this was held sufficient, but "there are certain limitations on the exercise of this power."⁶⁸ The specific holding—that the Schoellers could not be enjoined, because the resolution was invalid at the time of the violation—was predicated on the principle that the "[a]gencies of state and county government will be charged with acting within reasonable time frames. They may not, in the name of exercising their delegated police power, act so lethargically as to effectively confiscate private property, nor may their action or inaction so severely hamper its use as to bring about its confiscation."⁶⁹ This is language redolent of due process, although the court specifically declined to decide constitutional issues.⁷⁰ The illegality was in the procedural aspects of the resolution; specifically in the undue extension and re-extension of the freeze. But the freeze was "initially a valid exercise of [the board's] implied power to do those things which would make its express power to regulate and restrict . . . meaningful."⁷¹

In a thorough discussion captioned "delegation of power",⁷² the court traced the relevant doctrines of statutory construction and their previous applications in Wyoming cases. The court found, "that the freeze resolution became void on or about October 1, 1971, by virtue of Section 18.289.4 [W.S. § 18-5-202(c)]⁷³ . . . and its own language. Even if the required public hearing had been held . . . we are not

67. *Id.* at 874.

68. *Id.* at 875.

69. *Id.* at 875.

70. *Id.* at 879.

71. *Id.* at 874.

72. *Id.* at 875-79.

73. This section specifies the recommendation and certification procedures to be used by the planning and zoning commission, and adoption procedure to be used by the county commissioners.

convinced that the freeze-resolution could have been annually extended for an indefinite time thereafter.⁷⁴

Justice Raper dissented, and said:

The plaintiff county, in my opinion, had authority under its general powers⁷⁵ to pass a resolution holding development in status quo as nearly as practicable while the formal comprehensive plan . . . was being formulated and it was not necessary to conform to the notice requirements. . . . Since the county was operating within an authorized power, it had implied and inherent power to do those things both necessary and proper to directly effect the functions by the legislature created. . . . I conclude that the resolution exercised a power incident to the granted power to zone. [footnote renumbered, citations omitted.]⁷⁶

He next discussed interim zoning ordinances, and disagreed with the majority's conclusion that the freeze became a de facto comprehensive plan. The dissent then presented an alternative construction of the statutes, and a recent, well-supported judicial consideration of the nature of a comprehensive plan,⁷⁷ and stated:

The freeze was no plan at all, but only an effort to hold back uncontrolled development. The agency charged with the responsibility of preparing a well-thought-out plan fitting the particular community concerned must be given some rein and not be forced to come up with some half-baked plan just to meet some mythical deadline reached arbitrarily by this court on the basis of its own ideas and not the evidence and not the judgment of the agency having the responsibility and not the determination of a trial judge a lot closer to the situation than we are. I wonder since when we have become experts on how long it takes to prepare a comprehensive zoning plan and resolution for Park County?⁷⁸

74. Schoeller, *supra* note 34, at 879.

75. Justice Raper here footnoted Section 18-48(4), of WYO. STAT. 1957 compilation, now codified at WYO. STAT. § 18-2-101(a)(iv), (1977), which provides that a county is empowered to "make all contracts and do all other acts in relation to the property and concerns of the county necessary to the exercise of its corporate and administrative powers."

76. Schoeller, *supra* note 34, at 879-880.

77. Justice Raper quoted from *Nottingham Village, Inc. v. Baltimore County*, 266 Md. 339, 292 A.2d 680 (1972).

78. Schoeller, *supra* note 34, at 881.

The importance of both opinions is clear. First, they reaffirm the doctrine of implied powers, in the large sense which has been accorded to it in previous Wyoming cases. Second, they both had no difficulty in reaching the conclusion that interim zoning, even of this drastic type, was within the power of the county. The third issue previously mentioned is the question of how long such an ordinance may remain in effect. The majority opinion may be read as holding that the freeze, imposed to protect the embryonic comprehensive plan, was legally undermined by the lack of progress made on the plan while the freeze was in effect.

The extent of the valid duration of such a freeze remains undefined, for two reasons. First, the procedural defects in the actions of the board were cited as the basis for the majority's expiration date, along with the language of the resolution itself. Second, the dissent states a compelling case for broad discretion on the part of the board, unhindered by judicial oversight. There are indications of bad faith on the part of the Schoellers and on the part of the board (in terms of lack of diligence). The reader of both opinions is easily persuaded that the court was forced to rule on profound issues presented in a relatively complex fact situation, such that a clear separation of the issues was very difficult. It is plausible that a degree of vagueness was deliberately retained, on the principle that hard cases make bad law. Regardless of these doubts, the result is clearly that counties may act to preserve the integrity of an "in-process" comprehensive plan. This power is probably necessary for any effective and "well-thought-out" plan, and is certainly necessary for effective use of timing and sequential controls of growth.

In summation, there is a strong case for the proposition that timing and sequential controls of growth may be legally used in Wyoming, and may be preceded by an effective form of interim zoning while the plans are being formulated.

IV. THE JOINT POWERS ACT ENABLES REGIONAL PLANNING

The Joint Powers Act specifically authorizes counties and municipal corporations, among others, to exercise joint-

ly any powers, privileges or authorities which the agencies party to an agreement may share. Ideally, a joint powers board⁷⁹ would be formed by all of the counties and cities that geographically relate to a large energy or mineral development project, and it would operate to minimize the adverse effects of the development. The board would also be able to implement a comprehensive regional plan. Also, any special districts extant within the affected area would be participants, to achieve a truly effective coordination of efforts. This would mitigate or nullify most of the soluble problems that have been identified in the use of timing and sequential controls in other places.

In fact, there may be more benefit in the accomplishment of a united council of governments—cities, towns, school boards, water-management bodies, for planning purposes than in any other single step that impacted areas can take.

For effective implementation of sequential growth controls, a voluntary commitment on the part of the cooperating bodies of a significant transfer of authority is required. While this does not appear to present any legal difficulties, because the character of the transfer is entirely within the control of the transferors, the local political situation may require a two-step process. First, it may be advisable to establish an advisory board to determine what the desirable course of action would be, and to make clear the extent to which joint actions could be undermined by shifts in position by any party. Secondly, the actual decisions would have to be made in light of the desired scope of authority and the degree of commitment which is finally proposed. Clearly, extended cooperation is necessary for effective implementation of long-range plans. Renunciation of the joint plan subsequent to its adoption might result in precisely the evils sought to be avoided.

V. A DEEPER ANALYSIS: GROWTH CONTROLS AS A SUB-SET OF PERFORMANCE STANDARD ZONING

Performance standards have been widely enacted as part of municipal zoning schemes for over twenty years.⁸⁰

79. Such a board is authorized but not required by WYO. STAT. § 9-1-133 (1977).

80. Gillespie, *Industrial Zoning and Beyond: Compatibility Through Performance Stan-*

The law of nuisance has in some cases been superseded by the use of performance standards as part of zoning. A well-drawn standard provides a legislative finding of the permissible extent to which an external effect may be imposed upon neighboring land-owners, and a relatively efficient mechanism for enforcement.⁸¹ The most frequent application of performance standards is in the area of pollution controls, where emissions are limited, and in zoning, where noise is especially well suited to this type of regulation.

The logic of performance standards for the regulation of external effects is quite simple. Rather than limiting the types of activities that may occur within a specified area—the typical use district—it is a more direct route to the goal of preventing undesirable externalities to directly limit the effects themselves, rather than attempting to foresee and define all possible sources.

Originally, performance standards were adopted to avoid over-specification of architectural and engineering details in building codes. There is no inherent value in a wall one foot thick. What is required is a wall that will meet certain tests. If it will withstand appropriate levels of physical stresses, how it does so is irrelevant. And so with an externality, such as noise. If the output is below the limit, then the goal is reached, without needless specification of precise types of equipment, certification of types of equipment, or other bureaucracy.

Development sequencing may be considered a type of performance standard. It is specified, as in *Ramapo*, that residential developments shall be able to meet specific requirements. How the requirements are met depends on the particular case; they may be supplied by the developer, or they may be supplied by the city. This is not very different from traditional subdivision regulation; the difference is that the municipality has simultaneously asserted the requirements and also asserted that it will not be subject to the mercy of whatever market pressures may arise.

dards, 46 J. URBAN L. 723, 739 (1969); ANDERSON, 2 AMERICAN LAW OF ZONING 2D, § 9.41 (1976); Note, *A Model Ordinance to Control Urban Noise Through Zoning Performance Standards*, 8 HARV. L. J. 608 (1971).

81. Note, *A Model Ordinance to Control Urban Noise Through Zoning Performance Standards*, *supra* note 80.

Let us take this analysis one step further. If it is within the power of a town to impose performance standards as drastic as those imposed by *Ramapo*, can it be denied that the town has also the power to impose less costly and rigorous standards?

Taking *Ramapo*, for purposes of argument, as the outer limit of municipal control of residential development, there is a vast range of legally available controls that lie somewhere between the current timid zoning practice and that limit. We have *Schoeller*, and its strong affirmation of the implied powers doctrine, and the specific affirmation of the authority to freeze land use while comprehensive plans are being prepared. And we have the outer limit of *Ramapo*, as a sophisticated and legally defensible system of growth controls with very powerful effects. Between the two, the scope of the zoning power is tremendous.

To what extent should that power be used? This is a question for each constituency, and each advisory group. There are compelling arguments on both sides of the question of whether planning is or can be effective. But, we may observe that the mere existence of plans which have never been implemented, due to their unpopularity, or their evasion by variance-granting, or other means, gives us no information on the worth of those plans. And as demonstrated at the beginning of this paper, it is possible to argue that what we have, whatever it actually is, is not very satisfying. The first question is, "Can we do better?" Perhaps the second question is, "Are we willing to do better?"

VI. CONCLUSION

Sequential controls have the potential to transform zoning into a more efficient device for the implementation of comprehensive plans for municipal, county, or regional areas. They present some of the same problems presented by traditional zoning. Wyoming, and other states with zoning enabling acts similar to the Standard Act, may allow their use without additional legislation, although that would be desirable, if only as a declaration of policy. Wyoming's Joint Powers Act presents an enviable opportunity for regional

1979

ZONING

519

planning and its implementation. Failure to use this power may result in unnecessary expense and waste of both public and private resources.