

Land Use Laws

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Weighing Local Control

- Risks

- Unsettled Area of Law
- Possible Costs of Litigation

- Benefits

- Leverage
- Deterrent
- Customization
- Cost Savings

Statutes

- ECL §23-0303(2):
(Title 3)

Shall supersede all local laws or ordinances relating to the regulation of the oil, gas and solution mining industries

- ECL §23-2703(2):
(Title 27)

Shall supersede all other state and local laws relating to the extractive mining industry

Frew Run Gravel v. Town of Carroll (1987)

AR-2

- Agricultural and Residential
- Sand and Gravel Operations Not Permitted
- DEC Permit

AR-3

- Sand and Gravel by Special Permit
- Site Plan Review:
 - Surrounding Uses
 - Intensity
 - Environmentally Sensitive Sites
 - Roads

Amendments

ECL §23-2703(2)

- Amended in 1991 to clarify that statute shall not preclude local zoning ordinances or laws which determine permissible uses in zoning districts.

ECL §23-0303(2)

- Proposal to clarify that statute shall not preclude laws of general applicability . . . or local zoning laws which determine permissible uses in zoning districts.

Gernatt Asphalt v. Town of Sardinia (1996)

R-A

- Agricultural and Farming
- One-Family Dwelling
- Seasonal Cottages
- Keeping of . . . Boarders
- ~~Quarries, clay, sand and gravel pits~~
- Veterinary hospital or clinic
- Road Side Stands
- Home Occupations

All Other Districts

- Any use permitted in R-A district

Seaboard Contracting v. Smithtown (1989, 2d Dept.)

- Amended zoning ordinance to situate mining in heavy industry districts
- Location, NOT Operation, therefore NOT preempted
- Tree Preservation and Land Clearing Law
 - Within police powers
 - Only incidental impact

Patterson Materials v. Pawling (1999, 2d Dept.)

- Local Laws:
 - harvesting of timber
 - restricted construction on steep slopes, wetlands, and other environmentally sensitive areas
 - Court held – laws of general applicability, incidental impact on mining

Envirogas v. Kiantone (1982, Sup. Ct. Erie)

- Erie County Supreme Court Decision
- Town cannot require commercial drillers to post bonds
 - Bonding requirements included in State's Regulatory Scheme
 - Not a Law of General Applicability

Model 1

- District 1

Special Permitted

Uses:

- Mineral

Extraction

- Mineral Extraction:

Operations extracting:

- gravel,
- rock,
- stone,
- sand,
- topsoil

Planned Unit Development District

- NY CLS Town § 261-c
- § 261-c. Planned unit development zoning districts
 - Residential,
 - Commercial,
 - Industrial,
 - Other land uses, or
 - A mix thereof,
 - in furtherance of comprehensive plan

Model 2

- Prohibited Uses: Heavy industry and all oil, gas or solution mining and drilling are prohibited uses.
- Uses not specifically permitted are prohibited.
- Examples of heavy industry:
 - chemical manufacturing,
 - drilling of oil and gas wells,
 - oil refineries,
 - natural gas processing plants,
 - compressor stations,
 - petroleum and coal processing,
 - coal mining,
 - steel manufacturing

Model 3

- Local Law
 - Subject to Police Powers
 - Subject to Amendment
 - In Furtherance of a Comprehensive Plan

Model 4

- Heavy Industry District
- Revisit Site Plan Review, PDD, Special Use Permit Criteria
- Certain Environmental Protections
 - Agricultural Districts
 - Wetlands
 - Steep Slopes
 - Cross-Cutting of Trees

Moratorium

- If elected, should be short-term and broad-based, i.e.
 - Building permits
 - Site plan review
 - Planned unit development district applications

Amendment v. Enforcement

- At time of enforcement, then ripe for litigation
- Types of Enforcement Actions
 - Request for Injunctive Order
 - Request for Declaratory Judgment
 - Potential for Appeal

Timing Matters

- Existing operations become non-conforming uses
- Vested Rights are established
- Damages for Interruptions
- Becomes more difficult to argue incompatibility
- May Consider a No Conversion Clause and/or Sunset Provision

Drafting and Procedure

- Town Counsel, Special Counsel, Planners
 - Municipal Home Rule Law
 - Statute of Local Governments
 - General Municipal Law
 - Town Law
 - Village Law
 - Environmental Conservation Law (SEQRA+)
 - Case Law
 - State Regulations

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