MORATORIA ON DEVELOPMENT

IN MASSACHUSETTS

by

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Municipalities have been controlling their growth in a variety of ways since the turn of the century. The most recent twist in the regulations business has been time controlled, sequential zoning, to allow communities control over the rate of growth as well as the nature of growth.

Building moratoriums in Massachusetts are examined and discussed in the context of long term and recent trends in growth management. A survey was conducted of towns with moratoriums to ascertain the motivations behind their implementation and the effects of a suspension in building.

In the cases focused upon moratoriums were found to be a positive and useful tool in dealing with short-range, emergency growth problems.

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TABLE OF CONTENTS

I Historical Context .............................................. 1
II Recent Changes in Regulatory Powers ...................... 9
III The Moratorium in Massachusetts .......................... 14
IV Effects in Specific Cases .................................... 19
V Conclusions ..................................................... 24
Appendix ............................................................ 29
Footnotes ........................................................... 31
American municipalities have been trying to control their patterns of growth since the turn of the century. Regulations accomplishing this were extensions of the police power, the need to protect public health and safety. As early as 1907, however, the justification for such ordinances was broadened by the Supreme Court. "The police power embraces regulations designed to promote the public convenience or the general prosperity, as well as regulations designed to promote the public health, the public morals, or the public safety."\(^1\)

The basic tool developed to influence city form was zoning. It was used to implement some sort of plan, and was done in a comprehensive (city-wide) manner. The landmark case establishing the constitutionality of zoning occurred in 1926, The Village of Euclid v. Ambler Realty Company.\(^2\)

The town established three kinds of zones within its borders, residential, commercial, and industrial. A residential zone could be used only for that purpose, a commercial zone could have either commercial or residential developments, while an industrial zone could be used for any of the three purposes. This very simple classification scheme was attacked by landowners as depriving them of the value of their property without due process of law, and depriving them of equal protection under the law. Evidence was entered showing a decline in some property values, and obviously not all land was zoned the same.
The actions of the town were held to be valid and within its police powers by the U.S. Supreme Court. The key factor was the reasonableness of the regulations. "If the validity of the legislative classification for zoning be fairly debateable, the legislative judgement must be allowed to control."³ (emphasis added) The phrase "fairly debateable" has been the key to subsequent court evaluations of zoning ordinances. "Local governments intent on preserving a semblance of control over the land use in their areas have for the past 75 years enacted zoning programs and plans, while the courts have considered objections to those plans on a case by case basis."⁴ The failure of the Supreme Court to give specific guidelines has resulted in a major role for the lower courts in land use regulation since that time.

While the variety of land use controls that have been created since that time have been couched in terms of "public health and safety" and "orderly growth", many observers find other principal motivations for their enactment.⁵

The most commonly identified objective is control of property taxes. Large, expensive homes on large lots generally provided much more tax revenue than they consumed in municipal services. Some kinds of light industry also had this effect. Some towns have used controls successfully in keeping property taxes from climbing too quickly.

Residents of small and medium size towns often tried to preserve the "rural atmosphere of their communities with zoning ordinances. Aesthetics in a physical sense was generally accepted as a legitimate goal of the planning behind the rules.
In many cases smaller communities were simply unable to assume the administrative burdens of supervising rapid growth. Controls were instituted trying to slow the growth rate down, to give town officials a chance to review the projects and make the necessary plans for providing the additional municipal services required.

Finally, many communities were trying to maintain their existing political or social characteristics. This kind of objective was never articulated, but its existence was demonstrated by the nature of some of the controls imposed. There was an assumption that a particular kind of housing attracted a particular kind of person.

Since the Euclid v. Ambler zoning plan, a wide variety of types of controls have been tried, with and without the notion of zones. Many of these have run into legal difficulties, especially when they can be shown to be exclusionary in effect.

One approach has been to exercise control over building permits. This approach hasn't fared too well; an attempt to put a maximum quota on the number of building permits to be issued in a year was struck down in New York in 1957. The court was disturbed by the lack of a clear plan and the arbitrariness of the number chosen as the upper limit. The ordinance was also found to be beyond what the state enabling legislation allowed.

Similarly, attempts to attach high fees for building permits ($500) have been ruled unlawful, principally because they are an inappropriate way for the town to raise revenue. The only regulations of
building permits that have been allowed by the courts are moratoriums on issuance. These have been allowed when imposed while the community is preparing a major study for zoning revision or a Master Plan, and have always been temporary and short term.

Another approach has been to purchase the land which the town wants left undeveloped. This gets rather expensive, and care has to be taken that any purchase is for a "public purpose". When a program of town acquisition has been linked to a comprehensive plan of some sort, it has been accepted by the courts in most cases.

Purchasing development rights is a cheaper way to accomplish the same ends. This has been done extensively by states, in preserving scenic areas along waterways in particular. The town of Rockport, Massachusetts is presently working on such a program in connection with its high school science curriculum, and Massachusetts is considering purchasing easements along the shore to give the public more access to the coast.

Some communities have tried to assess farms and vacant land at lower than market values, to ease pressures from developers who want to buy the land. Farmers will generally resist selling until the taxes get too high. This device is completely illegal but has seldom been challenged, due to the difficulty of getting positive evidence.

Tax abatements for vacant or farm land are legal, however. They can only be used if the appropriate state legislation has been enacted, and result in the open land being assessed according to its use, rather than its market value.
Tactics such as these have been attempts to slow or stop new development, rather than to control or direct it. The many variations of zoning have been more effective at influencing the nature of urban growth.

Zoning with compensation has not been used very much in recent times. It is similar to the purchase of development rights in effect; after a zoning change, the town compensates any landowners whose property has diminished in value as a result of the change.

Conditional zoning sets various specific conditions on the rezoning of an area of land, such as the provision of sewer of water mains. Contract zoning occurs when the city or town in effect enters negotiations with landowners, and agrees to rezone after the landowners fulfill some sort of contract. The legal distinctions are very fine; one court said that conditional zoning results when "1) the rezoning becomes effective immediately with an automatic repealer if specific conditions are not met within a set time limit or 2) the zoning becomes effective only upon the conditions being met within the time limit." Contract zoning is always illegal, as it is a "bargaining away of the police power". Conditional zoning has met with mixed success, depending on the state enabling legislation. It has an unfortunate potential to become spot zoning, which is clearly illegal.

Spot zoning is "defined at the process of singling out a small parcel of land for the use classification totally different from that of the surrounding area, for the benefit of the owner of such property and to the detriment of others...'spot zoning' is the very
Floating zones have also met with mixed success. In a floating zone, a use is defined as acceptable in part of a region, but the specific location in that region is not specified. When a developer submits and gains approval for a project which includes this use, the new zone is added to the appropriate place on the map. One court said that "A zoning plan does not cease to be a comprehensive plan because it looks to reasonably foreseeable potential uses of land which cannot be precisely determined when the zoning is passed." The floating zone gives the community a bit more flexibility, but zones with too much flexibility have been struck down as arbitrary.

Minimum lot sizes, minimum home sizes, strict building codes, garage requirements, and other devices which serve to drive the cost of homes up had some initial success, but now are viewed as exclusionary and often unreasonable. "Regulations...must not be unreasonable, arbitrary, or confiscatory" was the comment by the Pennsylvania court in striking down a four acre minimum lot size.

One of the more successful innovations was the Planned Unit Development, also known as cluster housing. In a region zoned for low density residences, the houses are clustered together but larger areas are left as open space, leaving the overall density unchanged. This eliminates the need for chopping a parcel of land into uniform small lots, allows the developer to lower costs by having to install much less sewer and water lines to connect all the units, and gives the residents a playground-size open space antithesis of planned zoning."
instead of a small backyard.

Several forms of zoning attempt to add a time-control element, to give the town the ability to control the rate as well as the nature of growth. Zoning in stages according to a pre-determined plan was ruled acceptable in New York in 1960.\textsuperscript{18} Most of the land was zoned for minimum lot sizes of 40,000 square feet, which discouraged developers from building. Areas were rezoned to minimum lots of 22,500 square feet periodically, at which time development became sufficiently profitable.

A less explicit form of timed zoning occurs when a municipality insincerely zones all undeveloped land agricultural. Rezoning can then be done whenever the Planning Board deems it appropriate. This approach can easily lead to spot zoning, and is often ruled illegal. "However, this type of indirect freeze on development can be defended where it is based on a comprehensive plan, on the ground that the comprehensive plan must consider the impact of the tax rate occasioned by excessively rapid development."\textsuperscript{19}

This is similar in concept to the "holding zone", in which nothing may be built without the complete approval of the local planning commission, including the details of site selection, density, and recreation facilities to be provided. This idea was never used much, despite its potential for maximum control of development. The American Society of Planning Officials felt it was an inappropriate option, noting that "We think the likelihood of unfairness or abuse of power outweighs whatever slight public benefit is in practice likely to be obtained from a holding zone...We wonder whether the development of the city would really be any better because of this more specific
planning power."20

Despite the diversity of the natures of zoning ordinances, none of them have been fully successful. "If anything, local governments have tended to fall behind in their need for new expressways and sewer systems and water systems, because they could not be built or financed fast enough to keep up with rapid moves in population."21 The controls have also not given communities any control over their rate of growth to any significant degree.
CHAPTER TWO - RECENT CHANGES IN REGULATORY POWERS

The town of Ramapo is approximately 30 miles from New York City. While there is much undeveloped land in the town, it is in the path of New York City's growth, and was rapidly becoming another bedroom community in the early 60's. In attempt to control both the rate and the nature of the inevitable development, Ramapo adopted a unique zoning and sub-division by-law.

The town recognized "1) the need to economize on the cost of municipal facilities and services, 2) the need to retain municipal control over the character of the 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 regulations, and 5) the need to maintain a high quality of community services and facilities." 22

To meet these needs, the town attorney devised a system of regulations which would slow the rate of growth. "Time control, sequential zoning places a moratorium on development, and controls the pace and sequence of development in relation to the city's capacity to furnish adequate public facilities and services. Capital expenditures and taxing structures can be stabilized and kept within reasonable limits." 23

The town established a housing authority, adopted an official map, drafted model subdivision regulations which required dedication of land for parks and boulevards, and made provisions for cluster zoning. An 18 year capital budget was established.
The key innovation was the condition needed for subdivision approval. Before a project could get approval, it needed to have 15 "development points". Points were gained depending on the projects nearness to existing public sewers or other drainage facilities, public schools, and firehouses, and the condition of roads and recreation facilities near the area. The system of accruing points was well defined and unambiguous.

The 18 year capital budget was a plan for providing necessary municipal services throughout the town. Eventually, every parcel would have fifteen development points.

If a developer didn't want to wait up to 18 years, he could acquire the necessary development points by installing necessary improvements himself.²⁴

Rezoning was not involved, and the new regulations did not apply to the construction of individual homes. Since land which was not scheduled to be improved by the town for 18 years would decline markedly in value, provision was made for reducing the assessed valuations of such areas. The pattern of land use was not altered by the new plan, and there was little that was unusual about that aspect of the by-law.

The regulations were challenged in court. The town won the case in the trial court, the landowners won a reversal on appeal, and the Supreme Court of New York found in favor of the town in 1972. The U.S. Supreme Court declined to hear the case.

The key factor in the case was the issue of exclusion. Although in the trial court the ordinance was not found to be exclusionary, the appeals court felt that it was. The Supreme Court had
this comment. "What we will not countenance, then, under any
guise, is community efforts at immunization or exclusion. But,
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
utilization of land."25 One important factor which persuaded the
court to take this view was the existence of a low income housing
project in Ramapo, established despite heavy opposition from res-
idents.

While the town does not have the right to deny the right to
subdivide, it does have the right to require improvements, whether
they are provided by the town or the developer. 18 years was deemed
"temporary" by the court, and the detail of the capital plan was
also an important consideration. A diminution in land value was
conceded and held to be reasonable.

The court concluded that the Ramapo ordinance was the "first
practical step toward a controlled growth achieved without fors-
saking broader social purposes."26

There is some disagreement over whether Ramapo has forsaken
"broader social purposes" of course. In the first place, the low
income housing effort was somewhat overrated. It consisted of 200
units, 150 of which were elderly housing. Of the 50 units for low
income families, 10%-20% were minority families. There are no plans
presently for future low income housing developments; thus Ramapo
may be expecting to keep the number of black families between five
and ten.27
The ordinance may have the effect of driving up prices for new homes. "The impact on land development will be considerable. Competition among developers for the potential sites will be more intense, as their number is more limited. More competition for fewer sites will inflate prices, increase densities, or both."\(^{28}\) This, combined with the fact that no area in the town is zoned for multi-unit housing, could lead one to conclude that there will be an exclusionary effect, if not intent, in Ramapo. In 1973, four years after the implementation of the new by-law, the average new house in the town cost $40,000 -$45,000.\(^{29}\)

"The real question presented, and the one to which the minority never addresses itself, is: what were the purposes and effects of the zoning amendment passed by Ramapo?"\(^{30}\) Since the plaintiffs never challenged the intent of the ordinances in a social context, the courts did not base their rulings on them.

Others have challenged the meaningfulness and workability of an 18 year plan, including two dissenting Supreme Court Justices. "Judge Breitel felt that Ramapo's plan to have services installed in advance of development was unrealistic, that history suggests that the development of our communities was from the movement of people who first moved and then created the industry and employment and thereby provided the need and the means for public services and facilities that followed."\(^{31}\)

Aside from these serious questions, there are several legal irregularities with the Ramapo subdivision regulations. The state enabling legislation does not explicitly allow for time-controlled methods. The court overlooked the fact that the town board was given veto powers that can only be held by the Planning Board,\(^{32}\)
and the equal protection aspects of the case were not explored. If other towns are to build on Ramapo's example, state legislation will be required to clarify some of these legal issues.

It is too early to judge the effect of the new type of growth control in Ramapo. Certainly there is the danger that "by preventing urban sprawl within its own borders, Ramapo is contributing to the far more serious problem of megalopolitan sprawl." But against this must be a sort of right of "self-determination" for towns. Robert Freilich, the principal author of the Ramapo subdivision regulation commented that "What we fought for and won was the right of a community to chart its own destiny within a framework of reasonable planning."
CHAPTER THREE - THE MORATORIUM IN MASSACHUSETTS

The concept of a two year halt in all building construction is difficult at first glance to digest, it seems such a radical and major step. The previous sections demonstrate, however, that the idea is by no means new. The first major court test of a moratorium was Miller v. Board of Public Works in Los Angeles in 1925. In this case the city declared a suspension of issuing of building permits while its first comprehensive plan and zoning ordinance were being developed. There are many similar cases from the same period. More recently, the town of Ramapo incorporated a moratorium in the beginning stage of its phased growth regulations.

While moratoria are without clear precedent in Massachusetts, case law from other states implies their legitimacy.

The current wave of building moratoria began in June of 1972, when the town of Greenfield established the first such zoning by-law in the state. The moratorium was passed in response to a very sudden and marked increase in new apartment developments; the townspeople wanted time to evaluate the municipal needs of the new projects, evaluate other impacts of the developments on the town, and prepare a new zoning ordinance to more effectively control the location and rate of growth of such projects.

After the attorney general approved the Greenfield zoning amendment, other towns began using this tool. By the summer of 1974 forty four cities and towns in Massachusetts had passed interim zoning by-laws of one form or another. Most of the mor-
atorias involved multi-unit housing, and the length of the suspension varied from six months to two years. Some did not specify a time limit, implying a permanent ban on some uses. In most towns, the suggestion of the moratorium originated with the Planning Board; actions by citizens organizations to stop all developments generally failed.40

Three reasons emerged as the primary motivations in most towns for implementing a moratorium. All three are very similar to objectives noted in chapter one regarding the implementation of normal zoning by-laws years earlier.

As in Los Angeles in 1925, many of the small towns needed time to draw up zoning ordinances or Master Plans. Most of the smaller communities in the state have not felt a need for such things; a sudden increase in the amount of development makes them aware of the undesirable potentials of unmanaged growth. It is necessary to impose a freeze on development while the plans are being drawn up because in a small town one major development can completely change the land use picture; it is impossible to develop meaningful regulations if that which is being regulated is constantly changing.

Many communities were reaching the limits of their water and sewer systems by the late sixties. They had no way to plan for sudden increases in the growth rate of the town, and no way to accommodate large numbers of new housing units without making significant and time consuming capital additions to their systems. In some cases the board if health was forced to declare a moratorium on new sewer connections,41 effectively bringing
development to a halt

Finally, many towns wanted to preserve their "community character" or "rural atmosphere". When an individual chooses a place to live, the environment or neighborhood usually is a key consideration. It is not surprising that he should be concerned or upset when the area begins to undergo a radical transformation.

Nearly all of the moratoriums included bans on multi-unit housing. Trailer parks, subdivisions, hotels and motels, and commercial development have also been included in some by-laws. The reasons for the emphasis on multi-unit housing should be obvious; in most cases the towns had had very little experience with this kind of development before the '70's. They simply didn't have any zoning regulations to deal with them.

In addition, multi-unit developments are most feared by residents as being likely to disrupt or change the town. With a large influx of people, a major increase in city services is required. Townspeople fear that property taxes will have to be raised to provide these services. In addition, apartment dwellers are perceived as being "different", transients without a sense of commitment or responsibility to the town. Finally, apartment buildings are often ugly, and detract from the appearance of the town.

A variation on a moratorium has been tried in two towns, and approved by the attorney general in one of them. This is a phased growth by-law, somewhat similar in intent to the Ramapo sub-division regulations. These will be discussed in detail later.

Although most constitutional questions regarding moratoria have been settled previously in other states, there are some de-
finite conflicts with other Massachusetts laws.

Chapter 40A, which grants to cities and towns the power to establish zoning regulations, does not specifically allow for "moratoriums", or any kind of temporary regulation. It seems likely, however, that towns would be allowed to do temporarily what they are explicitly allowed to do permanently.\(^{45}\)

The language of some of the moratoria presents a probable legal conflict with the zoning enabling act. By-laws which instruct the building inspector to stop issuing permits are unrelated to the zoning powers of the town, and are an illegal attempt to control a public officer in the exercise of his official duties.

Attempts by some communities to prohibit new subdivisions are clearly illegal in this state. The state Subdivision Control Law provides that "any subdivision plan filed with the planning board shall receive the approval of such board if said plan conforms to the recommendations of the board of health and to reasonable rules and regulations of the planning board".\(^{46}\) This implies that a planning board may not deny all subdivision plans during some period of time. It also strongly suggests that the decision must be yes or no, not some this year and some next, as in a phased growth plan. Municipalities have very little flexibility with regard to subdivision regulations.

The Home Rule Amendment tends to support the power of towns to declare moratoriums. In a key case, Board of Appeals of Hanover v. Housing Appeals Committee,\(^{47}\) the court held that "the
zoning power is one of a city's or town's independent municipal powers included in art. 89 § 6's broad grant of powers to adopt ordinances or by-laws for the protection of the public health, safety, and general welfare." (emphasis added) It could be argued that a moratorium is a similar form of independent municipal power under the Home Rule Amendment.

As in the Ramapo case, a key issue will be exclusionary intent or effect of the moratorium. The test was articulated in Simon v. Needham in 1942.48 The Supreme Judicial Court said that "a zoning by-law cannot be adopted for the purpose of setting up a barrier against the influx of thrifty and respectable citizens who desire to live there and who are able and willing to erect homes upon lots upon which fair and reasonable restrictions have been imposed."49 This issue might invalidate some moratoriums, though it doesn't indict every one.

It would be appropriate for the General Court to clarify some of the ambiguities surrounding building moratoria. There is presently a bill before the legislature which will do this, giving the towns the power to impose a suspension on developments in emergency situations.
Greenfield, a town with a population of 18,000, grew at a moderate but steady rate of roughly 55 dwelling units per year through the 1960's. Then in 1971 there was a boom in apartment developments; building permits were issued for buildings totaling nearly 1000 new units of housing, which would result in an almost 20% increase in the town's population.

Residents not only were upset by the sudden changes in the town environment, but questioned the wisdom of such sudden large-scale development from a financial or developer's point of view. One member of the planning board observed that "the only sensible conclusions are that:

1. Builders are insane
2. Builders (developers) do not study the market
3. Financing institutions are run by idiots
4. Financing institutions do not study the market or the developers
5. Somebody (or several somebodies) is out to make a fast buck
6. Somebody (or several somebodies) is out for a tax write off
7. The town is going to be left holding the bag for increased fire & police protection, education, traffic..."49a

Such observations were not unfounded, as the projects are over 1/4 empty, with little prospect of being filled.50

Greenfield enacted its moratorium both to be certain that
additional projects were not begun in 1972, and to have time to develop some sorts of regulations to prevent such dramatic changes from recurring. The ban affected only multi-unit housing.

The town, working with Phil Herr Associates, did devise a sophisticated new zoning by-law to regulate all new development of 16 or more units. In fact, the by-law may have been overly sophisticated.

The goal was to limit growth to roughly 100 new units annually, though this figure was flexible. Each year a project was limited to building 10% of its total number of units, or 15 units, whichever was larger. This percentage could be increased up to 28%, depending on the findings of various town boards.

If the project was found by the Housing Authority to satisfy an acute housing need in the town, the percentage could jump 5 points. Five percentage points were to be allocated by the Conservation Commission if they were fully satisfied with its environmental considerations. Increases of two points were to be granted by the Department of Public Works if they found there would be no appreciable strain on the sewer system, if no problems were foreseen providing water, if the school committee felt that the school system could handle the newcomers, or if the planning board felt that increases in local traffic would amount to less than ten percent. Final decision on the annual percentage building allowance was to be made by the Zoning Board of Appeals.

While this by-law amendment is similar in intent to the Ramapo subdivision regulations, it is completely dissimilar in
the means to its ends. It does not regulate the location of developments through time, but rather the timing of individual developments. It does not base its concepts upon the existence of a master plan or capital budget, but upon the goal of limiting new housing units to 100 each year.

The Attorney General disapproved the plan. Assistant Attorney General Henry O'Connor explained that "the impact of the by-law is to control growth and to exclude by postponement additional residents in designated categories of housing. It infringes on a Constitutionally protected right of travel. Construction Industry Association of Sonoma County v. City of Petaluma (U.S.D.C. for N. Dist. of Calif. N C-73 663 April 20 1974)

"Bonus allocations are authorized to be granted by the Board of Appeals if certain determinations are made by other public affairs and employees. Since the Board of Appeals is thus constrained by the judgement of others, it amounts to a delegation of their discretion. Coolidge v. Planning Board of North Andover 337 Mass. 591

"...Ramapo relied heavily on an established municipal plan to provide services. Greenfield has submitted no evidence of an established plan to provide services."51

Despite this setback, it is reasonable to say the moratorium was a success in a narrow sense. It halted new development while the town studied and drew up new plans to regulate such activities. A major program upgrading sewer and water facilities is continuing on schedule.

A similar situation triggered a similar reaction in Northfield.
They were suddenly faced with development proposals which would have doubled the town's population in five years. The moratorium was the best alternative. The chairman of Northfield's planning board reports that it "has resulted in complete revision of our subdivision regulations, revision of the town map so that it can be used in master plan studies and other work, completion of a natural resources inventory, work on revision of the town zoning regulations, a more direct and involved participation in county planning work and regional questions, and a strong renewal of interest in concluding the town's Master Plan program... If Northfield had not been able to obtain a moratorium on multiple unit housing, a portion of the town's future would have been in the hands of the developer. We prefer to make that determination ourselves."52

Similar sentiments were expressed by a town official in Chesterfield. "I feel that a community should have the right to limit rapid growth that could put hardships on a small town like ours."53

The issue being raised is local autonomy, in a sense. It seems especially true in small towns, where a major development will significantly expand the population, the moratorium is an effective emergency tool.

The moratorium in multi-unit housing in Amherst had "probably no real impact in terms of units constructed. Market was saturated anyway."54

In Arlington the moratorium "drastically curtailed development. From the point of view of comprehensive planning, it is considered an asset because it has permitted the opportunity
to properly plan...the true financial impact of the moratorium on the community will not be apparent until much later...the town might have experienced a reduction in building construction during this period without the moratorium.\textsuperscript{55}

Framingham has a permanent moratorium on apartments, though a planning official reported that in two years "the planning department will have developed a new zoning by-law which will contain apartment districts."\textsuperscript{56} The ban was not completely effective; just before it was adopted, because adoption was expected, there was a spurt in starts of new apartment buildings.\textsuperscript{57} These were unaffected by the moratorium, as the moratorium in Arlington had been declared in a court test to have prospective effect only.\textsuperscript{58} The net result in Framingham was the addition of multi-unit housing throughout the moratorium period.

In Raynham, an attempt to establish a moratorium was defeated by strong opposition from builders. "Too long Town Meeting. Took three nights, small attendance third night [for vote]."\textsuperscript{59}

Although moratoriums were not 100\% successful, even in their immediate attempts at temporarily stopping growth, they were on the whole a useful short-term tool, and will probably not have negative long term effects. Town officials were satisfied by the effects in nearly all cases, though most recognized it as a stop-gap measure.
CHAPTER FIVE - CONCLUSIONS AND CLOSING COMMENTS

A somewhat peripheral conclusion which can be made from the above is that the credibility of planners is high, and is on the rise. In Ramapo, the key to the success of a phased growth ordinance was its intimate link to a plan. In small Massachusetts towns faced with a crisis, a time out was taken to plan. Whenever courts evaluate a new regulation which infringes on private property rights, they look to planners for justifications. Expertise is now assumed; if a planner says it will work out, as far as anyone knows, it will.

Another easy conclusion to make is that the General Court ought to pass legislation clarifying the legal status of moratoria, and that it ought to be an affirmative clarification. None of the towns that I looked at had sinister motivations; their objectives were nearly identical with those of other municipalities with less drastic regulations. In each moratorium case there was a drastic circumstance that forced the extreme reaction.

At the same time, the moratorium can be a powerful tool, and could easily be abused. Perhaps it already has, and I just don't know about it. If the moratorium is legitimized as a municipal power, it would be wise to give an existing state agency, such as the Department of Community Affairs, responsibility to judge the reasonableness of the circumstances surrounding impositions of such bans. An "innocent until proven guilty" approach ought to be firmly stressed, but there is presently no review
process. The Attorney General may only pass on the legality of a zoning by-law, not its appropriateness, and all such amendments are legal if any are. The DCA is better staffed to make judgments regarding intent and effect of the measures.

 Somebody ought to give the Ramapo case some thought, and see if it might be appropriate in this state. Characteristics of the Ramapo approach and Massachusetts state laws regarding subdivisions are in direct conflict. If the controlled growth approach is deemed useful, enabling legislation will be required. Money may be required also for eighteen year plans, as they would be difficult to finance at the local level.

 Ramapo raises some hard questions. In a town so close to New York City, it might be reasonable to expect that total development will occur in eighteen years. What happens in another town, further away, after the end of the baby boom? In year twelve of the plan, demand for new housing completely drops off, there are many vacant units, and it is an obvious waste of money to continue building sewers for people who won't be moving in. But my parcel of land was scheduled to get sewers in year thirteen. I've been waiting twelve years to develop, I could have developed twelve years ago when there was still a demand for housing. Now, the town has a legitimate case to stop expanding sewers, but I've been deprived of the value of my land.

 Conversely, in year seven sewers are run to land that I own, but I'm not interested in developing at this time. Should the town run the utilities to the next guy down the road, as per the
plan, or will they try to force me to develop on the town's schedule?

These seem to me serious intrusions, and thus are flaws in the Ramapo approach. I don't believe one can accurately, reasonably plan eighteen years into the future. There are too many uncontrollable variables. A plan must be flexible, but in becoming so it loses the permanence and security which originally gave it legitimacy.

But then how should a town control sudden, rapid growth? It gets down to a clash of two grand old American ideals: the right to own property and do with it what one pleases, and to right to control one's own destiny and by implication, the destiny of one's environment or town, through democratic action. It is not an extraordinary feat for a developer or group of developers to gain control over enough land in a small town to be able to completely change the town. Present laws seem to give them this right, though the town has the right to make some zoning laws to affect the shape of the development. But where is democracy in this solution; one small group of men through manipulation of their wealth may completely alter the community of 10,000?

Is there a right not to be capriciously transformed? How is a town going to prevent developers from entering and slapping up all kinds of housing for a quick tax shelter, leaving the town with the mess to clean up? The important question is why is this happening? It really doesn't make any sense to put 1000 new units of apartments in a town of 18,000. What was the developers motive?
He is applying programs and funds for projects of a scale intended for Boston for projects of the same scale in towns with less than a tenth of the population. Somehow the market system has been tinkered with until it has been destroyed; I think this merits review and remedy. When government tax programs are causing problems, the solution is not more government powers or programs.

There is another interesting conflict, and another adversary for the residents of a small town: the people who don't live there, but might want to some day. Increasingly, courts and legislatures are holding the rights of the somewhat ephemeral group to be important and constitutionally protected (right to travel). How is a town to cope with this? Clearly it is not allowed to close one's doors to the rest of the world. Unless all the land is privately owned and the owners want it that way. Who can determine to what extent preparations must be made in each locality for those who might come after?

What happens when a town is fully developed? Must single family homes be torn down to make way for apartment buildings, to ensure that those who want to live in the town are not being excluded?

It has been suggested in some circles that someday the "right to travel" will become an anachronism, and people will have to apply for permission to change residence from one city to another. Recent actions by the state of Oregon support this. That problem is a long way from the crisis level, but its implications ought to be thought through now, while something might be done to influence it.
Moratoria on building development in Massachusetts are interesting not so much for their usefulness as a growth control tool, but for what they imply about the progress of attempts to plan towns in a meaningful way and about conflicts and clashes in basic freedoms we now take for granted. The solutions are more than academic exercises.
APPENDIX

Massachusetts Cities and Town with Building Moratoriums 1972-1974

Source: Department of Community Affairs

<table>
<thead>
<tr>
<th>City or Town</th>
<th>Length of ban, buildings affected</th>
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<tbody>
<tr>
<td>1. Amherst</td>
<td>Permanent apartment ban, sewer connections</td>
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<tr>
<td>2. Arlington</td>
<td>2 year apartment ban</td>
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<tr>
<td>3. Attleboro</td>
<td>2 year apartment ban, sewer connections</td>
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<tr>
<td>4. Ayer</td>
<td>Sewer connections</td>
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<tr>
<td>5. Belchertown</td>
<td>2 year ban of apartments and trailer parks</td>
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<tr>
<td>6. Bourne</td>
<td>2 year apartment ban</td>
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<tr>
<td>7. Boylston</td>
<td>2 year apartment ban</td>
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<tr>
<td>8. Brookline</td>
<td>7 month apartment ban</td>
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<td>9. Carver</td>
<td>1 year apartment ban</td>
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<tr>
<td>10. Chesterfield</td>
<td>3 year apartment ban</td>
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<td>11. Concord</td>
<td>2 year apartment ban</td>
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<td>12. Dalton</td>
<td>2 year apartment ban</td>
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<td>13. Falmouth</td>
<td>Permanent apartment ban</td>
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<tr>
<td>14. Framingham</td>
<td>Permanent apartment ban</td>
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<tr>
<td>15. Franklin</td>
<td>2 year apartment ban</td>
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<td>16. Granby</td>
<td>2 year ban on apartments and trailer parks</td>
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<td>17. Greenfield</td>
<td>2 year apartment ban</td>
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<td>Number</td>
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<td>40.</td>
<td>Webster</td>
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<td>41.</td>
<td>West Brookfield</td>
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<td>42.</td>
<td>Westfield</td>
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<td>43.</td>
<td>Williamstown</td>
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<td>44.</td>
<td>Wrentham</td>
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FOOTNOTES

1. Bacon v. Walker 204 U.S. 311 at 317 (1907)
2. 272 U.S. 365 (1926)
3. 272 U.S. 365 at 388
7. Miller v. Board of Public Works 234 Pac. 381 (1925)
9. Cutler, op. cit. p.374
10. Ibid. p.376
11. Interview with Mr. Perry, Rockport High School science teacher, 14 March 1975
12. Thomas, Gust, and Harris, "Coastal Access: A Case Study in Land Use Planning", February 1975
15. Huff v. Board of Zoning Appeals 133 A 2d 83 at 190 (1957),
    also Rodgers v. Village of Tarrytown 96 NE 2d 73 (1951)
18. Josephs v. Town Board 198 NYS 2d 695
19. Cutler, op. cit. p. 396
20. ASPO Newsletter November, 1960, p. 100

21. Cutler, op. cit. p. 372

22. Elliot and Marcus, "From Euclid to Ramapo", Hofstra Law Review, Volume 1, Spring 1973, p. 90


24. Ibid. p. 150

25. Golden v. Planning Board of Town of Ramapo, 285 NE.2d 91 at 152 (1972)

26. Ibid. p. 150


29. Bosselman, op. cit. p. 250


31. Blank, op.cit. p. 334


33. Ibid p. 530

34. Bosselman, op. cit. p. 248

35. The Urban Lawyer, Number 3, Summer 1972 p. 7

36. 234 Pac 381 (1925)

37. Annotated 136 American Law Review 844 (1942)

38. Gilbert, Steve, "Building Moratoriums in Massachusetts: Their Uses, Effects, and Legal Implications", paper prepared for the Department of Community Affairs State Land Use Project, Summer 1974
39. See appendix of this paper

40. As part of his research, Mr. Gilbert conducted a mail survey of the Massachusetts towns that had, or had discussed, moratoriums. I was allowed to examine the original returned survey forms. "Survey" in this and subsequent footnotes refers to my examination of these papers.

41. Gilbert, op. cit. p. 4. These towns were Amherst, Attleboro, Ayer, and North Attleboro

42. Belchertown, Granby, Metheun, Northfield, Rockport, Swampscott

43. Gilbert, op. cit. p. 4

44. Gust, James B. "Observations in Brookline" November 1970

45. Gilbert, op. cit. p. 30

46. Massachusetts General Laws c. 41 sec. 81M

47. 294 NE 2d 393 (1973)

48. 42 NE 2d 516 (1942)

49. 42 NE 2d 516 at 519

49a. Survey

50. Interview with building inspector Alfred Kuzmeskus 7 May 1975


52. John Carlson, Chairman of the Planning Board, in Northfield's survey return

53. Survey

54. Survey

55. Alan McClennen, Director of Planning and Community Development, in Arlington's survey return

56. Survey
57. Boston Globe, 26 May 1974 p. 21
58. Survey Documents
59. Survey