


**LAND USE LAW CENTER**  
**PACE UNIVERSITY SCHOOL OF LAW**  
WHITE PLAINS  NEW YORK

**THE LAND USE SYSTEM**

*New Castle Training Program*

**Objectives of Lecture**

- To examine the history of the land use system
- To understand the basic components of the land use system, including the role of local leaders in this system
- To reinforce that the State grants broad and flexible authority to local leaders to custom build local strategies

**The Land Use Legal Framework**

The State Enabling Act delegates authority to localities to:

- adopt comprehensive plans
- zone
- approve subdivisions and site plans
- issue special use permits
- award variances

State laws delegate authority to state and county agencies to regulate land development, such as:

- wetlands regulations
- access to county and state roads
- development of water and sewer systems

Federal and State laws preempt or limit local land use authority regarding issues, such as:

- utility siting
- cellular facilities
- religious uses
- group homes'

## What We Use the Land Use System to Accomplish

*Among the most important powers of local government is the responsibility to undertake comprehensive planning and to regulate land use to protect the public health, safety and general welfare.*

*-N.Y. Town, Village, General City Law*

In 1992, the Land Use Law Center conducted an opinion survey in conjunction with the McKinsey Consulting Company. Surveys were sent to over 2000 land use leaders throughout the State of New York. These leaders were asked to list the "objectives of the land use system." The following objectives received the most votes. These results indicate the broad scope of New York's land use system and what those who use it expect that it will accomplish.

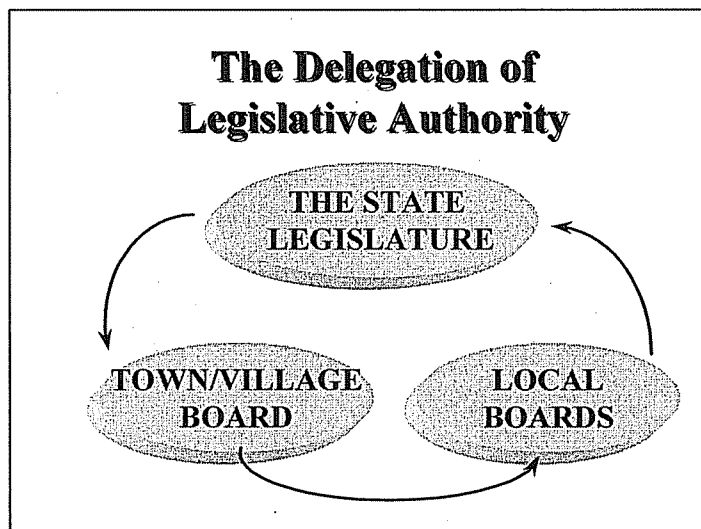
1. Protect the Natural Environment	66%
2. Spend Infrastructure Dollars Effectively	63%
3. Protect Community Character	60%
4. Locate and Support Business Activity	53%
5. Protect Agricultural Lands	43%
6. Protect Property Values	42%
7. Provide Affordable Housing	37%
8. Protect Developer's Rights	21%

## Timeline

1913	New York City Zoning Commission Formed
1916	New York City Comprehensive Zoning Law Passed
1922	Standard Zoning Enabling Act
1926	Zoning Declared Constitutional (Euclid v. Ambler Realty)
1928	Standard City Planning Enabling Act
1930s	The Great Depression
1940s	World War II
1950s	Postwar Boom
1960s	Basic Framework of Zoning in Place
1970s	Post Euclidean Period Begins in Response to Sprawl
1990s	Advent of Local Environmental Law
2000s	Smart Growth
2010s	Sustainable Development

## Delegation of Legislative Authority

State constitutions authorize state legislatures to adopt laws to protect the public health, safety, morals, and general welfare. The legislatures of most states delegate significant authority to regulate land use in the public interest to the local level. In New York, villages, towns, and cities have been authorized to adopt zoning and environmental regulations, to create planning, zoning, and environmental boards, and to provide for their future development using a wide range of techniques and strategies.



New York Municipalities...

- 1) Have specific authority under Town, Village, and General City Law to adopt:
  - comprehensive plans
  - zoning laws \*
  - subdivisions
  - site plan regulations
  
- 2) Have general authority under the Municipal Home Rule Law to protect:
  - the public health, safety, and welfare
  - the physical environment

\*The most significant land use power that state legislatures delegate to local governments is the authority to adopt zoning laws. Zoning ordinances divide the land within a municipality into districts and prescribe the land uses and the intensity of development allowed within each district. In New York, this delegated authority is found in the provisions of the Town, Village, and General City Law known as the Zoning Enabling Acts.

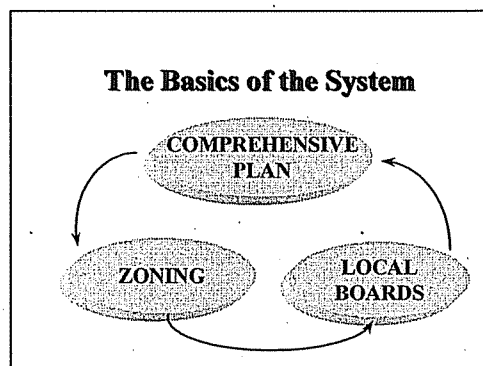
*[For more information see Gaining Ground, Chapter Two]*

## Basics of the System

The New York enabling statute require land use regulations to be “in accordance with a comprehensive plan” or “in accordance with a well considered plan.” \* Comprehensive planning is society’s method of ensuring that the public welfare is served by land use regulations. Where a locality has not adopted a comprehensive plan, or not kept it current, the courts will examine all of the land use policies and actions of the municipality, including the zoning law itself, for evidence of a plan to which zoning and other land use actions must conform.

### Organization of Comprehensive Plan

- I. **Goal:** broad statements of ideal future conditions that are desired
  - a. Example: *provide adequate supply of housing of various types and prices to meet the needs of the present and future population of the community*
- II. **Objectives:** statements of attainable, quantifiable, intermediate-term achievements that help accomplish each goal
  - a. Example: *produce 100 units of housing affordable to moderate-income families*
- III. **Strategies:** a set of actions to be undertaken to accomplish each objective
  - a. Example: *Zoning incentives to be given to private developers in exchange for the provision of affordable rental and ownership housing for moderate-income families*
- IV. **Implementation:** establishes how the strategies contained in each component of the plan will be implemented and coordinated with other plan components to achieve the goals of the comprehensive plan
  - a. Example: *Planning board will be assigned the task of developing a recommended incentive zoning provision for affordable housing within eight months from the effective date of the comprehensive plan.*



[For more information see *Gaining Ground, Chapters Two and Three*]

\* N.Y. State, Gen. City Law § 28-A (12) (a) (McKinney 2003); N.Y. State, Town Law § 272-A (11) (A) (McKinney 2003); N.Y. State, Village Law § 7-722 (11) (A) (McKinney 2003).

## Role of Local Boards

**Local Legislature:** Authorized to adopt and amend the zoning ordinance, subdivision regulations, site plan controls, and special permit provisions, as well as wetlands ordinances, historic district protections, and open space plans. It may also create other local boards and agencies, such as the planning board and zoning board of appeals and decide what authority to delegate to these boards.

**Zoning Board of Appeals:** Authorized to grant variances and interpret provisions of the zoning law. Its jurisdiction is appellate only. Persons aggrieved by the determinations, orders, and decisions of the administrative official charged with the enforcement and interpretation of the zoning law can appeal them to the zoning board of appeals. The zoning board of appeals may also be delegated some administrative functions.

**Planning Board:** Delegated the authority to review and approve site plan and subdivision applications and to issue special permits. The legislature can delegate a variety of advisory functions to a local planning board including the preparation of the comprehensive plan, zoning amendments, or site plan and subdivision regulations.

*All three boards must determine whether their land use actions under SEQRA may have a significant adverse impact on the environment and, where they may, they are required to mitigate these impacts.*

*[For more information see Gaining Ground, Pages 5-7]*

## Approval Process

