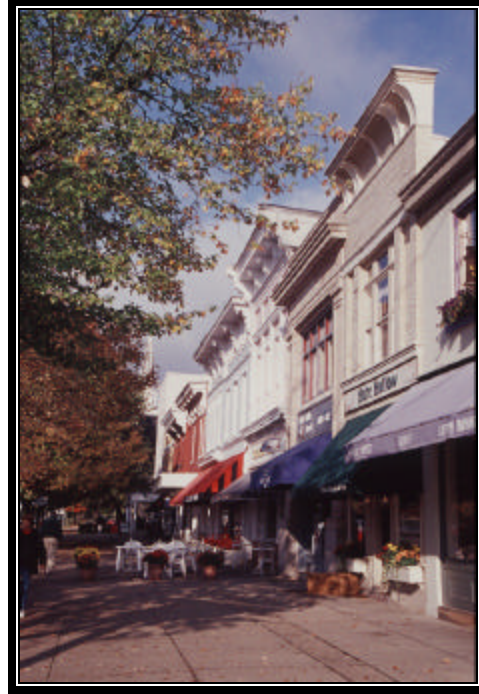


Temporary Development Controls

Smart Growth Tools for Main Street



Main Street, Granville, Ohio



Commercial Sprawl

Temporary Development Controls

Smart Growth Tools for Main Street

One of the most effective ways to guard against sprawl and its detrimental effects is to enact local legislation that affirmatively promotes downtown revitalization. However, even communities without such legislation in place can enact temporary development controls in order to maintain the status quo while they review and strengthen their planning and zoning laws.

Development moratoria

Development moratoria allow communities to place a temporary halt on new development so that local officials can examine the impact of proposed development and put measures in place to manage it. Moratoria enable local planning departments to consider issues often associated with big-box sprawl development, such as increased traffic, loss of community character and economic displacement. The moratorium is used to consider how these and other issues might affect the community and what measures should be adopted to protect the public's interest.

Fort Collins, Colorado, provides an example of a city that adopted a development moratorium to study sprawl-related concerns. The city's action came after several large chains announced plans almost simultaneously to build sprawling superstores in an area the city wanted to protect from sprawl. To give local planners time to examine the various planning issues presented by the "big boxes," the city council enacted a six-month moratorium on the construction of all superstores. In explaining the reasons for the moratorium, Ordinance 111 stated:

- a) that the City has recently been presented with development proposals for large, general and special merchandise stores, sometimes known as "superstores;"
- b) that the bulk, size and scale of such superstores present unusual land use concerns for the City, especially with regard to the aesthetic and transportation impacts of such uses;
- c) that considerable study is needed in order to determine the appropriate location for such land uses, the kind of design criteria which should be used to mitigate the visual impacts of the same, and the kind of infrastructure requirements which should be imposed to offset the parking and traffic impacts of such developments; and
- d) that the development of superstores, in the absence of appropriate regulatory guidelines, may have an irreversible negative impact upon the City.

The moratorium suspended the review and processing of all superstore development applications and permits for projects exceeding 80,000 square feet. Projects with preliminary or final approval in hand were exempted from the moratorium.

In the interim, Fort Collins appointed a special task force charged with developing design guidelines appropriate for superstores. These guidelines, developed in consultation with Clarion Associates of Denver, were ultimately adopted and implemented. They require superstores to be more pedestrian-oriented, better-designed, and generally more compatible with their surroundings.

Skaneateles, New York, enacted a six-month moratorium in 1994 for reasons similar to those motivating Fort Collins. The moratorium stated:

As a beautiful and historic town...Skaneateles faces significant development and growth pressures. It is reasonably anticipated that, with preparation of a comprehensive plan and significant zoning law revision underway, a flood of applications for new development could likely be received from applicants hoping to ease in under the wire before revised zoning is enacted.

The threat of possible damage to the Town from the conditions listed above is substantial, and it is apparent to the Town Board that the current zoning and subdivision laws are not sufficient to protect the character, health and welfare of the Town, nor the quality and integrity of Skaneateles Lake.

To prevent economic hardships for individual property owners as a result of the moratorium, the ordinance allowed for the consideration of zoning variances.

Arguing that the moratorium was “arbitrary and capricious,” a local developer sued the town over the moratorium, but a New York trial court upheld the moratorium in 1995. The court held that “reasonable interim or stop-gap legislation” is valid and recognized by the courts of New York. The court noted that six months was not an unreasonable period of time for a moratorium, especially since it applied to all commercial property owners and not just to one developer. The original moratorium was later extended twice. The second extension was challenged in court but upheld.

In **Granville, Ohio**, a proposal to build inappropriate sprawl development on the east side of the village sparked the adoption of a six-month moratorium on commercial development. Local citizens, concerned that the village council was acting irresponsibly, organized to stop the development until the zoning code could be updated. A group named Citizens for Sensible Growth collected enough signatures to put the moratorium proposal on the ballot. The measure eventually passed by an almost 70% approval margin.

During the moratorium, the comprehensive plan was reviewed and a new Planned Commercial District with zoning restrictions was established.

Interim Protection Provisions

Another type of temporary development control is the widely used "interim protection provision" found in many local historic preservation ordinances. In contrast to the broader development moratoria, which requires public hearings and a legislative act, this tool provides immediate protection for structures that are under consideration for historic designation. Properties that might otherwise be demolished or damaged in anticipation of designation are offered the same protection as officially designated properties. Properties are protected for a specific period of time or until a decision about designation is made. Portland, Maine's interim protection provision is typical of those commonly included in preservation ordinances. It contains the following language:

From the time of nomination until the Committee acts upon such nomination, a site, structure, object or area nominated but not yet designated as a landmark or district shall be subject to all of the provisions of Divisions 8 and 10 governing demolition and minimum maintenance, to the same extent as if designated. Upon final action of the Committee recommending designation, the site, structure, object, or area nominated shall be subject to

all of the protections of this article until a final decision on designation by the Council becomes effective.

Interim protection provisions are similar to development moratoria in that they are used for the same reason--to protect the status quo until a decision can be made on what course of action to take. However, such provisions differ from moratoria in that they are typically part of the local historic preservation ordinance, which is already in place following the requisite public hearings, and they do not require a new legislative act to take effect. Interim protection provisions provide an on-going tool to protect historic properties. Moratoria can be effective in protecting properties during the initial adoption of a historic preservation ordinance, but they are less practical during the designation process, which is generally not a one-time act.

Legal Issues

A reasonable and well-drafted ordinance imposing temporary development restrictions must be carefully drafted and enacted pursuant to proper procedures. Otherwise, the underlying basis for the law, the scope of the moratorium, the process used to enact the moratorium, or the economic impact of the interim law on an individual property owner may be challenged. Moratoria lasting up to 2 years have been upheld by the courts, but the shorter they are, the better. Moreover, it's important for the local government to move ahead expeditiously with studies and planning efforts that justified the moratoria in the first place.

Communities need to be aware of the issues that could arise in the adoption or enforcement of interim protection laws to ensure that they are legally defensible. Communities enacting moratoria need to determine whether they have the requisite legal authority to do so and base their action squarely on that authority. (*Most states do allow local governments to enact these interim controls.*) Communities applying moratoria should ensure that the proposed action falls within the intended scope. Claims that moratoria are "takings" of private property without just compensation (a constitutional violation) are generally unfounded, as they do not, by definition, deny property owners the economically viable use of their property as a whole. They are temporary measures. However, moratorium legislation that is not reasonable in duration could be vulnerable to constitutional challenge on due process grounds.

Note: Local governments should always consult with knowledgeable land-use attorneys to make sure moratoriums are legal in their state. For example, in the recent Naylor v. Township of Hellam case, the Pennsylvania Supreme Court ruled that Pennsylvania townships do not have the authority--implicit or otherwise--under the Municipal Planning Code to enact temporary moratoriums.

Note: On April 23, 2002, the U.S. Supreme Court handed down a sound victory for preservationists and environmentalists in the Lake Tahoe development moratorium case (Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency). In a 6 to 3 decision, the Court upheld the moratorium against a "takings" challenge from Tahoe property owners, and reaffirmed several of the key takings principles of the case, Penn Central Transp. Co v. New York City, 438 U.S. 104, including a clarification of the Court's position on the "parcel as a whole" issue. For a copy of the decision, which also includes a useful summary of court decisions pertaining to moratoria generally, see <http://www.supremecourtus.gov/opinions/01pdf/00-1167.pdf>

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