Tupper v. City of Syracuse and New York's Zoning Uniformity Requirement

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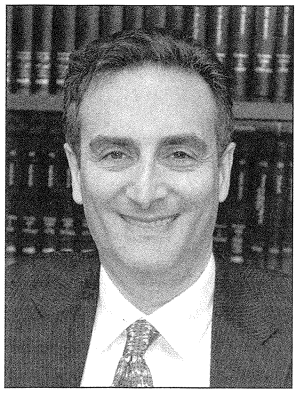

A "uniformity" requirement is virtually universal in zoning enabling legislation and is intended to "assure property holders that all owners in the same district will be treated alike and that there will be no improper discrimination[,]" thus reducing the likelihood of overreaching by approval authorities because "the legislative body pre-approves the uses permitted in a district without reference to particular owners."[1] The requirement is considered fundamental to "Euclidian" zoning by which a community is divided into basic use categories such as residential, commercial and industrial.[2] Yet, although the requirement dates to the early days of zoning and is included in New York's zoning enabling legislation in Town Law §262, Village Law §7-702 and General City Law §20(24), relatively little case law delineates its contours.[3] None of the cases discussed its application to a regulatory distinction between owner-occupied and non-owner-occupied (rental) housing until 2012 when the Appellate Division, Fourth Department, handed down a decision in *Tupper v. City of Syracuse*.[4] *Tupper* addresses precisely this question and discusses the applicability and requirements of General City Law §20(24). This article provides an overview of the uniformity provisions of New York's zoning enabling legislation, describes the uniformity holding in *Tupper* and the case law which preceded it, and concludes with a brief discussion of open issues regarding uniformity.

The Uniformity Requirement

Although the zoning enabling provisions of the Town, Village and General City Laws all incorporate a uniformity requirement, ironically, such provisions are not themselves uniform among the three species of municipality in New York State. The uniformity provision of the Town Law provides as follows:

> For any or all of said purposes the town board may divide that part of the town which is outside the limits of any incorporated village or city into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this act; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration or use of buildings, structures or land. All such regulations shall be uniform for each class or kind of buildings, throughout such district but the regulations in one district may differ from those in other districts.[5]

The Village Law's uniformity statute is substantially similar.[6]

However, the General City Law deviates to a limited extent from the parallel provisions of the Town and Village Laws. It provides that every city in the State is empowered:

> *To regulate and limit the height, bulk and location of buildings hereafter erected, to regulate and determine the area of yards, courts and other open spaces, and to regulate the density of population in any given area, and for said purposes to divide the city into districts.* Such regulations shall be uniform for each class of buildings throughout any district, but the regulations in one or more districts may differ from those in other districts. Such regulations shall be designed to secure safety from fire, flood and other dangers and to promote the public health and welfare, including, so far as conditions may permit, provision for adequate light, air, convenience of access, and the accommodation of solar energy systems and equipment and access to sunlight necessary therefor, and shall be made with reasonable regard to the character of buildings erected in each district, the value of land and the use to which it may be put, to the end that such regulations may promote public health, safety and welfare and the most desirable use for which the land of each district may be adapted and may tend to conserve the value of buildings and enhance the value of land throughout the city.[7]

The differences among these statutes have never been the subject of a judicial opinion (indeed, in *Augenblick v. Town of Cortlandt*, Justice Lazer merely calls these provisions "similar"[8]). For the purposes of this article the authors assume that each provision would be interpreted the same way so that cases applying, for example, the uniformity provision of the Town Law would be applicable to both the Village and General City Laws.[9]

The pre-*Tupper* case law provided practitioners with some guidance about the applicability of the uniformity requirement, often in the form of cases demonstrating the types of ordinances that violate the mandate. For example, courts have held that the following types of zoning regulations run afoul of the uniformity requirement: (1) a regulation which allowed asphalt manufacturing as a permitted use on a single property in a Town;[10] (2) a provision prohibiting the sale of food and beverages within a one-thousand-foot perimeter surrounding an existing industrial park;[11] (3) regulations which permitted two-family homes in one portion of a residential zoning district but not others;[12] (4) a provision that proscribed quarrying in certain portions of a town's business and industrial zone, but not others;[13] and (5) regulations that made existing trailer parks a permitted use (not a nonconforming one), but prohibited new trailer parks from being established in the same district.[14]

Tupper v. City of Syracuse

In *Tupper*, the Fourth Department reversed a decision of the Supreme Court, Onondaga County, which upheld the City of Syracuse's adoption General Ordinances 20 and 21 of 2010. General Ordinance 20, among other things, added a definition of "workable parking space" to the City's Zoning Ordinance and limited the maximum area of a parcel that could be devoted to workable parking spaces on properties improved with one- and two-family residences throughout the City. General Ordinance 21, among other things, required that the owners of non-owner-occupied one- and two-family homes in the City's University Special Neighborhood District (the "SND") provide one workable parking space per "potential bedroom" in such homes.[15] In contrast, owners of owner-occupied one- and two-family homes in the SND were only required to provide one workable parking space per dwelling unit. In combination, the General Ordinances could have effectively foreclosed many properties in the SND from being rented to non-owner occupants because the required number of parking spaces could not be provided within the available area.[16] Plaintiffs who were, among others, owners of non-owner-occupied one- and two-family homes in the City and the SND, and an association of such owners commenced an action to invalidate the General Ordinances.

Although Plaintiffs sought to annul and declare invalid the General Ordinances on several grounds, perhaps the most notable was the claim that General Ordinance 21 violated the uniformity requirement of General City Law §20(24).[17] The specific questions for the Court were: (1) is an off-street parking requirement included in a zoning ordinance one that must be uniform for each class of building within a district even though off-street parking is not a specifically-enumerated parameter in General City Law §20(24);[18] and, if so, (2) does General Ordinance 21 violate the uniformity requirement of General City Law §20(24) by requiring one "workable parking space" per "potential bedroom" for non-owner-occupied one- and two-family homes in the SND, where the City's Zoning Ordinance only requires owners of owner-occupied one- and two-family homes in that district to provide one "workable parking space" per dwelling unit, regardless of the number of "potential bedrooms" in such homes?[19]

Answering the first question in the affirmative, the *Tupper* Court held that:

> Contrary to defendants' contention, the statute and charter section apply to General Ordinance 21 inasmuch as that ordinance regulates open spaces. The creation of off-street parking regulations is included in the authority to regulate the use of land and open spaces (citation omitted).[20]

With respect to the second question, the City argued that one-and two-family homes become different classes of buildings depending upon whether they are owner-occupied or non-owner-occupied.[21] Rejecting this argument, the Fourth Department held that:

> "[t]he uniformity requirement is intended to assure property holders that all *owners* in the same district will be treated alike and that there will be no improper discrimination" [citation omitted]. Uniformity provisions protect against legislative overreaching by requiring regulations to be passed without reference to the particular owners (*see id.*). General Ordinance 21 treats buildings within the same class differently based solely on the status of the property owner, i.e., absentee property owners as opposed to owners who occupy the property. Even though such a distinction may be constitutionally valid, it is invalid under the uniformity requirements of the General City Law and the City of Syracuse Charter.[22]

Tupper is significant because it confirms what the authors believe to be a previously implicit principle that

off-street parking regulations must be uniform within a district. More importantly, it expressly recognizes that the limitation on a municipality's zoning authority imposed by the statutory uniformity requirement goes beyond that effected by the constitution and, conversely, that landowners are provided with an extra degree of protection by the requirement for uniform zoning regulations. Notably, case law predating *Tupper* has held that regulations distinguishing between owner-occupied and non-owner-occupied housing can withstand constitutional (equal protection or due process) scrutiny.[23]

Issues Remaining After *Tupper*

Although *Tupper* is a valuable addition to the body of uniformity case law in New York, it certainly does not answer all of the open questions with respect thereto. Several issues involving the construction and operation of the uniformity requirement remain.

For example, *Tupper* does not explain the meaning of the term "class of building" or "kind of building" for which zoning regulations must be uniform; nor does the State enabling legislation or other case law. Under the legislation challenged in *Tupper*, the identical building being occupied by the identical family in the same location would face different regulations based on whether the family residing therein owned or rented it. It would be hard to argue that such a home would constitute a different "class" or "kind" of building under such circumstances and, in fact, the *Tupper* court gave short shrift to the contention that owner-occupied and non-owner occupied were two different classes of building.[24] Whether the meaning of the term will be defined or become significant in future litigation remains to be seen.

A highly significant open question is whether municipalities can dispense with the uniformity requirement altogether by adopting local legislation pursuant to Municipal Home Rule Law §10 to supersede the applicable state statue. The first court to address the question—the Supreme Court, Rockland County—held that the zoning enabling legislation in the Town Law, particularly Town Law §262, may not be superseded pursuant to the Municipal Home Rule Law.[25] Subsequent cases from the Appellate Division and the Court of Appeals make it clear that the zoning enabling legislation in the Town, Village and General City Laws are not entirely immune to supersession.[26] However, "a [municipal government] cannot supersede a state law where a local law is otherwise preempted by State law[.]"[27] In turn, where by its nature a legislative scheme indicates that there is a need for statewide uniformity on a particular topic, it may preempt the entire field and prevent any attempt under the Municipal Home Rule Law to override the state provision.[28] It is at least arguable that representing, as it does, a fundamental aspect of the entire zoning scheme, the uniformity requirement is just the type of state statutory provision that cannot be superseded. Ultimate resolution of the question of whether the requirement for zoning uniformity in the Town, Village and General City Law can be superseded will need to await another day.[29]

Additionally, to the extent that New York's zoning enabling legislation fails to contain uniform uniformity requirements—it differs among Cities, Towns and Villages—it will be interesting to see if or when a court is called upon to interpret the distinctions in the text of such statutes. The applicability of the uniformity requirement pertaining to use regulations in Cities will be of particular note because the Town and Village Laws expressly provide that use regulations must be uniform, but the General City Law does not contain the same language. It is hard to believe that this distinction could have been meant to create a functional difference.

Finally, as noted above, although courts have recognized that the uniformity requirement has its genesis in constitutional law,[30] the *Tupper* Court holds that constitutional and uniformity scrutiny of a law may not result in the same outcome, with uniformity, at times, presenting a more significant hurdle to zoning regulation. Thus, future courts will be left to explore and decide the exact parameters of the interplay between constitutional requirements (particularly due process and equal protection) and statutory mandates for uniformity.

Conclusion

Tupper is a good reminder of the important limitation on the municipal zoning power embodied in the uniformity requirement. Although this requirement is seldom the basis for a challenge to zoning legislation, it is still alive and well and practitioners, particularly those representing municipal governments, should keep its implications in mind when reviewing zoning legislation and advising their clients about the limitations applicable to such laws.

Endnotes

1. *Augenblick v. Town of Cortlandt*, 104 A.D.2d 806, 814, 480 N.Y.S.2d 232, 239 (2d Dep't 1984) (Lazer, J., dissenting), *rev'd on dissenting opinion of Lazer, J.*, 66 N.Y.2d 775, 497 N.Y.S.2d 363 (1985).
2. *Id.* at 813 (Lazer, J., dissenting) (referring to *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926), the United States Supreme Court case which upheld the constitutionality of modern zoning regulations).
3. *See* P. Salkin, *New York Zoning Law and Practice*, §4:19, p. 4-36 (4th ed. 2012).
4. *Tupper v. City of Syracuse*, 93 A.D.3d 1277, 941 N.Y.S.2d 383 (4th Dep't 2012), *lv. denied*, 96 A.D.3d 1514, 945 N.Y.S.2d 587 (2012).
5. Town Law §262.
6. Section 7-702 of the Village Law reads as follows:

   > For any or all of said purposes the board of trustees may divide the village into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this article; and within such districts it may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land. All such regulations shall be uniform for

each class or kind of buildings throughout each district but the regulations in one district may differ from those in other districts.

7. General City Law §20(24) (emphasis added).
8. *Augenblick*, 104 A.D.2d at 813, 480 N.Y.S.2d at 238-39 (Lazer, J., dissenting).
9. The practitioner may or may not want to make the same assumption and should review the distinctions in the language in the context of the facts of his or her case and the position being advanced.
10. *Augenblick*, 104 A.D.2d 806.
11. *Carleton Tennis Assocs., Inc. v. Town of Clay*, 131 Misc. 2d 522, 500 N.Y.S.2d 908 (Sup. Ct. Onondaga Co. 1985). The Court rejected the Town's argument that the 1,000 foot strip surrounding the existing industrial park was its own zoning district since, among other things, it was not listed in the zoning districts section of the Town's Code or shown on the Town's zoning map.
12. *Klebetz v. Town of Ramapo*, 109 Misc. 2d 952, 441 N.Y.S.2d 216 (Sup. Ct. Rockland Co. 1981).
13. *Callanan Road Imp. Co. v. Town of Newburgh*, 6 Misc. 2d 1071, 167 N.Y.S.2d 780 (Sup. Ct. Ulster Co 1957), *aff'd*, 5 A.D.2d 1003, 173 N.Y.S.2d 780 (2d Dep't 1958).
14. *Jackson & Perkins Co. v. Martin*, 12 N.Y.2d 1082, 240 N.Y.S.2d 29 (1963), *adopting the dissenting opinion below*, 16 A.D.2d 1, 225 N.Y.S.2d 112 (4th Dep't 1962).
15. *Tupper*, 93 A.D.3d at 1277-1278, 941 N.Y.S.2d at 385.
16. Although existing non-owner-occupied dwellings were exempt from these new parking requirements, the owners of those properties were required to bring them into compliance with the new parking requirements if they made any "material change" to such properties. *Tupper*, 93 A.D.3d at 1277-1278, 941 N.Y.S.2d at 385.
17. General Ordinances 20 and 21 were also challenged on the grounds that they were adopted in violation of the New York State Environmental Quality Review Act ("SEQRA"; collectively referring to Article 8 of the Environmental Conservation Law and 6 N.Y.C.R.R. Part 617), violated Plaintiffs' due process rights under the State and Federal Constitutions, and were unlawfully adopted on the night that they were introduced to the City's Common Council without the unanimous consent of the councilors in contravention of Second Class Cities Law §35 and a corresponding provision of the Syracuse Charter. Although Plaintiffs' SEQRA and due process claims were dismissed, the Fourth Department annulled both General Ordinances, holding that they were improperly adopted without unanimous consent on the night they were introduced. As discussed more fully in the body of this article, General Ordinance 21 was also invalidated as being in violation of the uniformity provision of General City Law §20(24) and a corresponding provision of the Syracuse Charter. *Tupper*, 93 A.D.3d at 1277-1281, 941 N.Y.S.2d at 388.
18. General Ordinance 21 was also challenged under a provision of the Syracuse Charter, which paralleled the operative language of General City Law §20(24). Because the Syracuse Charter provision has no applicablity beyond the City's geographical limits, this article focuses on General City Law §20(24).
19. *Tupper*, 93 A.D.3d at 1280-1281, 941 N.Y.S.2d at 385.
20. *Id.*, 941 N.Y.S.2d at 387-88.
21. *Id.* at 1287, 941 N.Y.S.2d at 381.
22. *Id.* at 1280-1281, 941 N.Y.S.2d at 387-88 (emphasis in original).
23. *See, e.g., Kasper v. Town of Brookhaven*, 142 A.D.2d 213, 535 N.Y.S.2d 621 (2d Dep't 1988) (holding that a town may constitutionally enact a local law which permits owners of owner-occupied single-family residences to establish accessory apartments in their residences, but does not extend a similar benefit to owners of non-owner-occupied dwellings).
24. *Tupper*, 93 A.D.2d at 1281, 941 N.Y.S.2d at 387.
25. *Klebetz*, 109 Misc. 2d at 955-958, 441 N.Y.S.2d at 218-20.
26. *Sherman v. Frazier*, 84 A.D.2d 401, 408, 446 N.Y.S.2d 372 (2d Dep't 1982)("we have no doubt that the supersession power includes the power to amend or supersede the zoning provisions of the Town Law"); *Kamhi v. Town of Yorktown*, 74 N.Y.2d 423, 548 N.Y.S.2d 144 (1989) (holding that a Town could supersede Town Law §274-a provided that it follows the requisite statutory procedure); *c.f. Cohen v. Board of Appeals of the Village of Saddle Rock*, 100 N.Y.2d 395, 399, 764 N.Y.S.2d 64, 67 (2003).
27. *Cohen*, 100 N.Y.2d at 400, 764 N.Y.S.2d at 67 (quoting *Kamhi*, 74 N.Y.2d 423).
28. *Id.*, 764 N.Y.S.2d at 67.
29. Although an extensive discussion of the preemption doctrine is beyond the scope of this article, the interested reader may wish to consult *Cohen, supra*, and the relatively recent Second Department case, *Sunrise Check Cashing and Payroll Services, Inc. v. Town of Hempstead*, 91 A.D.3d 126, 933 N.Y.S.2d 388 (2d Dep't 2011), for their analysis of the topic.
30. *See, e.g., Augenblick*, 104 A.D.2d at 814, 480 N.Y.S.2d at 239.

***The authors of this article represented the Plaintiffs in *Tupper v. City of Syracuse*.**

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