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The Supreme Court and Zoning Legislation

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THE SUPREME COURT AND ZONING LEGISLATION

The constitutionality of municipal zoning ordinances in their general scope and dominant features was upheld by the Supreme Court of the United States in a decision handed down on November 22, 1926, in the case of the Village of Euclid, Ohio, and Harry W. Stein, Inspector of Buildings for the Village of Euclid, appellants, v. Ambler Realty Company.[1] The case involved the crux of the more recent zoning legislation, namely, the creation and maintenance of residential districts, from which business and trade of every sort, including hotels and apartment houses are excluded. Upon this subject the Supreme Court had not thus far spoken.

The question was before the Supreme Court on appeal from the United States District Court for the Northern District of Ohio.[2] The highest court reversed the decree of the lower court which had granted an injunction to the respondent against the enforcement of the zoning law enacted by the Village of Euclid. Mr. Justice Sutherland delivered the opinion of the court. Mr. Justice Van Devanter, Mr. Justice McReynolds and Mr. Justice Butler dissented from the majority opinion.

The Village of Euclid is an Ohio municipal corporation. It adjoins and practically is a suburb of the city of Cleveland. Its estimated population is between 5,000 and 10,000, and its area from 12 to 14 square miles, the greater part of which is farm lands or unimproved acreage.

Appellee owned a vacant tract of land containing 68 acres. Adjoining his land on the east and on the west had been laid out restricted residental plats upon which residences had been erected.

On November 13, 1922, an ordinance was adopted by the village council, establishing a comprehensive zoning plan for regulating and restricting the location of trades, industries, apartment houses, two-family houses, single family houses, etc., the lot area to be built upon, the size and height of buildings, etc.

The entire village was divided by the ordinance into six classes of use districts, denominated U-1 to U-6, incl.; three classes of height districts denominated H-1 to H-3, incl.; and four classes of area districts, denominated A-1 to A-4, incl. Appellee's land fell in the residential U-2 and U-3 districts, and in the less desirable U-6 unrestricted use district.

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[1] 71 L. Ed. (Adv.—).
[2] 297 Fed. 307.

The ordinance was assailed by appellee on the ground that it was in derogation of Sec. 1 of the 14th Amendment to the Federal Constitution in that it deprived appellee of liberty and property without due process of law and denied it the equal protection of the law, and that it offended against certain provisions of the constitution of the State of Ohio. The prayer of the bill was for an injunction restraining the enforcement of the ordinance and all attempts to impose or maintain as to appellee's property any of the restrictions, limitations or conditions. Appellee alleged that if allowed to sell and develop his land for industrial uses, it had a market value of about $10,000 per acre, but if the use was limited to residential purposes the market value was not in excess of $2,500 per acre; that the first 200 feet of the parcel had a value of $150 per front foot if unrestricted as to use, but if limited to residential uses, its value was not in excess of $50 per front foot.

Appellee had made no effort to obtain a building permit or apply to the zoning board of appeals for relief as it might have done under the terms of the ordinance, but asked relief in this action on the theory that the ordinance of its own force operated greatly to reduce the value of appellee's lands and destroy their marketability for industrial, commercial, and residential uses. Prospective buyers would be deterred from buying any part of his land because of the existence of the ordinance and the necessity of conducting litigation in order to vindicate the right to use the land for lawful purposes, he alleged.

The court found the question to be decided under both the United States and the Ohio constitution to be the same, namely: "Is the ordinance invalid in that it violates the constitutional protection to the right of property in the appellee by attempted regulations under the guise of the police power, which are unreasonable and confiscatory?"

In answering this question, the court observed that "regulations, the wisdom, necessity and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive. The meaning of constitutional guaranties never varies, but the scope of their application must expand to meet the new and different conditions which are constantly coming within the field of their operation."

The court observed that the line of demarcation between legitimate and illegitimate exercises of the police power varies with circumstances and conditions, and that the law of nuisances

might be consulted for helpful aid in ascertaining the scope of the power. "A nuisance may be merely a right thing in the wrong place,—like a pig in the parlor instead of the barnyard."

The following were found to give rise to no serious difference of opinion in respect of validity; namely regulation as to:

I. The height of buildings within reasonable limits.

II. The character of materials and methods of construction of buildings.

III. The adjoining area which must be left open to minimize the danger of fire, the evils of overcrowding, etc.

IV. The exclusion from residential sections of offensive trades, industries and structures likely to create nuisances.

"The serious question in this case," said the court, "arises over the provisions of the ordinance excluding from residential districts, apartment houses, business houses, retail stores and shops, and other like establishments." The decisions of the state courts were found to be numerous and conflicting; those broadly sustaining the power[3] greatly outnumbering those denying it altogether or narrowly limiting it;[4] further that the constantly increasing tendency was in the direction of the broader view.[5]

The court gives the following reasons for sustaining the broader view:

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[3] The court cited the following cases as sustaining the power: Opinion of Justices, 234 Mass. 597, 607, 127 N. E. 525; *Inspector of Buildings v. Stoklosa*, 250 Mass. 52, 125 N. E. 262; *Spector v. Building Inspector*, 250 Mass. 63, 145 N. E. 265; *Brett v. Building Comr.*, 250 Mass. 73, 145 N. E. 269; *State ex rel. Civello v. New Orleans*, 154 La. 271, 282, 33 A. L. R. 260, 97 So. 440; *Lincoln Trust Co. v. Williams Bldg. Corp.* 229 N. Y. 313, 128 N. E. 209; *Aurora v. Burns*, 319 Ill. 84, 93, 149 N. E. 784; *Deynzer v. Evanston*, 319 Ill. 226, 149 N. E. 790; *State ex rel. Beery v. Houghton*, 164 Minn. 146, — A. L. R. —, 204 N. W. 569; *State ex rel. Carter v. Harper*, 182 Wis. 148, 157-161, 33 A. L. R. 269, 196 N. W. 451; *Ware v. Wichita*, 113 Kan. 153, 214 Pac. 99; *Miller v. Board of Public Works*, 195 Cal. 477, 486-495, 38 A. L. R. 1479, 234 Pac. 381; *Providence v. Stephens*, — R. I. —, 133 Atl. 614.

[4] For the contrary view see: *Goldman v. Crowther*, 147 Md. 282, 38 A. L. R. 1455, 128 Atl. 50; *Ignaciunas v. Risley*, 98 N. J. L. 712, 121 Atl. 783; *Spann v. Dallas*, 111 Tex. 350, 19 A. L. R. 1387, 235 S. W. 513.

[5] For Court reversing former decisions see the following: *State ex rel. Deery v. Houghton*, 164 Minn. 146, — A. L. R. —, 204 N. W. 569, sustaintaining the power, with *State ex rel. Lachtman v. Houghton*, 134 Minn. 226, L. R. A. 1917F, 1050, 158 N. W. 1017; *State ex rel. Roerig v. Minneapolis*, 136 Minn. 479, 162 N. W. 477; and *Vorlander v. Hokenson*, 145 Minn. 484, 175 N. W. 995; denying it, all of which are disapproved in the Houghton case (p. 151) last decided.

I. Promotion of the health and security from injury of children and others by separating dwelling houses from territory devoted to trade and industry. Congestion of population is prevented, quiet residence districts are secured, including a more favorable environment in which to rear children; fewer nervous disorders are the result for young and old. Places of business are noisy; they are apt to be disturbing at night; some of them are malodorous; some are unsightly; some are apt to breed rats, mice, roaches, flies, ants, etc.

II. Suppression and prevention of disorder. A more efficient distribution of patrolmen's beats is possible. Criminals and loiterers are more open to suspicion in a restricted residential neighborhood.

III. Facilitating the extinguishment of fires and the enforcement of street traffic regulations and other general welfare ordinances.

IV. Aiding the health and safety of the community by excluding from residential areas the confusion and danger of fire, contagion and disorder which in greater or less degree attach to the location of stores, shops and factories.

V. The construction and repair of streets may be rendered easier and less expensive by confining the greater part of the heavy traffic to the streets where business is carried on. A cheaper pavement would suffice in a restricted residence district.

VI. The development of detached house sections is greatly retarded by the coming of apartment houses. Apartment houses in such sections may be parasitic, constructed in order to take advantage of the open spaces and attractive surroundings created by the residential character of the district. They interfere by their height and bulk with the free circulation of air, monopolize the sun's rays, and bring as accompaniments the disturbing noises incident to increased traffic and business.

VII. The fact that zoning has received much attention at the hands of commissions and experts, whose investigations have been set forth in comprehensive reports; such reports bearing evidence of painstaking consideration, and concurring in support of the foregoing.

VIII. The fact that the governing authorities presumably representing a majority of the inhabitants of the village have spoken from which it follows that if the validity of the legislative classification for zoning purposes could be said to be fairly debatable, the legislative judgment should be allowed to control.

It should not be lost sight of that the zoning ordinance was here attacked upon the broad ground that its mere existence, by adversely affecting values and curtailing opportunities of the market, constituted a present and irreparable injury. In such a case, said the court, it would not scrutinize its provisions sentence by sentence to ascertain by process of piecemeal dissection whether it contained provisions of a minor character or relating to matters of administration, or not shown to contribute to the injury complained of, which, if attacked separately might not withstand the test of constitutionality. The court suggests that provisions of the ordinance when concretely applied to particular premises or conditions may be found to be clearly arbitrary or unreasonable.

To the reviewer the following facts seem to be patent. First, the opinion is illuminative as a study in dynamic jurisprudence. Precedents drawn from the days of the stage coach may be of little service when it comes to the application of constitutional precepts to the complex urban life of today. In this ever-changing field of the police power, the court regards legal precepts as norms or guides to just results rather than as inflexible molds.[6] The law consists of rules, principles and standards.[7] "This court has perceived the embarrassment which is likely to result from an attempt to formulate rules or decide questions, beyond the necessities of the immediate issue. It has preferred to follow the method of a gradual approach to the general by a systematically guarded application and extension of constitutional principle, to particular cases as they arise, rather than by out of hand attempts to establish general rules to which future cases must be fitted."

Secondly, the court gives no indication in the case as to its attitude toward the aesthetic in zoning regulations. It is often said that the merits of zoning are presented in one light to the citizens concerned and in an entirely different light to the courts. There are three types of decisions on the aesthetic in zoning to date. A few courts look upon zoning as unconstitutional because an improper use of the police power for aesthetic purposes.[8] The great majority of jurisdictions avoid the question of the aesthetic and base their decisions upon some provision in zoning making for the promotion of the public health, safety or morals.[9] A third class of decisions frankly admit the aesthetic value of zoning, but, nevertheless, recognize zoning regulations as a proper exercise of the police power.[10]

It would seem that the dividing line between the aesthetic and the utilitarian is not sharply defined and that they are not contrasted compartments of human motive or activity. There is probably an aesthetic ingredient in almost every human action. It would appear that the courts might well recognize the aesthetic as one of the reasons for upholding zoning even though

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[6] Pound—The Scope and Purpose of Sociological Jurisprudence, 24 Harvard Law Review 591.

[7] Pound—The Theory of Judicial Decision, 36 Harvard Law Review 641.

[8] *City of St. Louis v. Evraiff*, 301 Mo. 231, 256 S. W. 489. *Spann v. City of Dallas*, 111 Tex. 350, 235 S. W. 513.

[9] *City of Aurora v. Burns et al.*, 319 Ill. 84. *Miller v. Board of Public Works*, (Cal. 1925) 234 Pac. 381. Baker, "Aesthetic Zoning Regulations," *Mich. Law. Rev.*, Dec., 1926.

[10] *State ex rel. Carter v. Harper* (Wis. 1925) 196 N. W. 451. *State ex rel. Civello v. City of New Orleans*, 154 La. 271, 97 So. 440.

promotion of beauty alone may not be sufficient to justify property regulation.[11]

Thirdly, inasmuch as the exercise of the police power deprives the owner of property of a natural use of the property without giving compensation for the loss, a rather broad distinction is usually taken between the powers of taxation and eminent domain and the police power in that the latter cannot be used to infringe on property rights unless a clear necessity exists, while taxation and eminent domain need only be for a public use. It has been suggested that one way of eliminating this rather artificial distinction would be to "concede the right to exercise the police power with compensation in those border line cases where any real distinction is well nigh impossible."[12] It is, however, believed that such an exception would introduce confusion into the law of the police power, and that the amplification of the exception might in time impose serious limitations on the ability of urban communities to act wisely and beneficially.

What of the future? If an ordinance is good creating a district of single family houses, why not an ordinance creating further refinements,—say, a residence district in which homes are to cost not less than $100,000? Apparently the answer to such and related matters is to be found not in the laying down of general rules and principles, but in the progress of community thought and opinion. The application of the law making to individual needs is to be considered, but in this dynamic sphere of the police power especially, courts are showing a progressive tendency to follow the thinking of living men and women.

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11 Bettman: "Constitutionality of Zoning," 37 *Harvard Law Rev.* 834.
12 Note and Comment, 28 Mich. Law Review 527.