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Municipal Corporations-Master Plans-Power of Cities to Zone for Future Conditions

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MUNICIPAL CORPORATIONS—MASTER PLANS—POWER OF CITIES TO ZONE FOR FUTURE CONDITIONS—After purchasing land which was subject to a zoning ordinance requiring a minimum lot size of 21,780 square feet, plaintiffs, real estate developers, challenged the ordinance as unreasonable and confiscatory. Defendant city argued that the ordinance was based upon a comprehensive master plan and had the purpose of limiting future density of population in accordance with sewage capacity. On appeal from the circuit court order invalidating the zoning ordinance as applied to plaintiff's property, *held*, judgment affirmed, three judges dissenting. A city zoning ordinance requiring a minimum lot size for the purpose of limiting future density of population in proportion to sewage capacity is arbitrary, unreasonable, unrelated to the *present* needs of the community and, therefore, invalid. *Christine Bldg. Co. v. City of Troy*, 367 Mich. 508, 116 N.W.2d 816 (1962).

Since the historic case of *Village of Euclid v. Ambler Realty Co.*,[1] local units of government have devised manifold zoning ordinances[2] attempting to promote or secure the "health, safety, morals and general welfare of the community." The prevalent statutory requirement that zoning ordinances be passed in accordance with a "general plan"[3] has produced a concurrent growth in the concept of planning. Municipal planning, in its incipient stage, legally meant little more than the papers or maps on which the regulatory ordinances were based.[4] Under many of the early enabling acts, the planning requirement could be met through an *a posteriori* method of drawing zoning maps reflecting the existing community conditions.[5] But the pains of urban growth demanded a guiding and predictive force,[6] which gave birth to a more sophisticated form of planning—the "master plan," a professionally drawn, long-term advisory plan for the physical development of the community.[7] The master plan differs from the general plan required by the zoning enabling acts in at least three aspects. First, it derives its existence from separate state enabling acts which authorize municipal planning.[8] Second, the purpose of the

1 272 U.S. 365 (1926) (*held*, due process does not prohibit reasonable restrictions upon use of land imposed under state's police power).

2 For a general discussion of the types of zoning ordinances now in use, see CRIBBET, THE LAW OF PROPERTY 323-26 (1962).

3 The terminology varies. State statutes refer to "comprehensive plans," "city plans," "development plans," and "plans." For purposes of this discussion, "general plan" will be used to denote the minimum planning requirements of a typical zoning enabling act. See generally Haar, *In Accordance With a Comprehensive Plan*, 68 HARV. L. REV. 1154 n.3 (1955).

4 See POOLEY, PLANNING AND ZONING IN THE UNITED STATES 5 (1961).

5 See, *e.g.*, Kozesnik v. Montgomery Twp., 24 N.J. 154, 165-66, 131 A.2d 1, 7-8 (1957); Haar, *supra* note 3, at 1157.

6 See Mansfield & Swett, Inc. v. Town of West Orange, 120 N.J.L. 145, 150-51, 198 Atl. 225, 229 (Sup. Ct. 1938).

7 See Haar, *supra* note 3, at 1155. For purposes of this discussion, "master plan" refers to a professionally drawn plan authorized by state planning legislation. See generally BASSETT, THE MASTER PLAN 82-90 (1938).

8 See POOLEY, *op. cit. supra* note 4, at 13-14.

master plan is to provide *recommendations* for the development, location, and character of streets, bridges, parks, waterways, public buildings, and public utilities, as well as for a zoning plan.[9] Third, the master plan is the product of professional planners and is based on comprehensive, analytical surveys of the social, economic, and physical conditions of the community. While the objectives of the master plan would appear to be both momentous and salutary, the plan must at least in part depend for its efficacy upon a valid zoning ordinance to implement its recommendations.[10]

The decision in the principal case both illustrates the dependence of master planning upon the establishment of valid zoning ordinances and serves as a warning that the courts may use essentially the same criteria in reviewing all zoning ordinances, regardless of whether based on master plans or general plans. The traditional test of the validity of a zoning measure is its "reasonableness," which generally requires that the ordinance be within the scope and purpose of the power granted to the municipal unit.[11] Judicial attitudes toward the valid exercise of the zoning power vary from a willingness to find zoning for merely aesthetic considerations reasonable to an insistence upon a literal interpretation of the requirements that zoning further the public health, safety, morals and general welfare.[12] The Michigan courts have followed the latter approach and have restrictively construed the cities' police power in this area by requiring zoning ordinances to have a tangible relationship to the health, safety, or morals of the community.[13] The language of the principal

9 See Haar, *The Master Plan: An Impermanent Constitution*, 20 LAW & CONTEMP. PROB. 353, 361-66 (1955). See also MICH. COMP. LAWS § 125.36 (1948): "It shall be the . . . duty of the [municipal planning] commission to make and adopt a master plan for the physical development of the municipality . . . . Such plan . . . shall show the commission's recommendations for the development of said territory, including . . . the general location, character, and extent of streets . . . bridges, waterways . . . playgrounds . . . the general location of public buildings . . . and the general location and extent of public utilities . . . as well as a zoning plan for the control of the height, area, bulk, location, and use of buildings and premises. . . ."

10 See POOLEY, *op. cit. supra* note 4, at 18-20.

11 *E.g.*, Pere Marquette Ry. v. Township Bd., 298 Mich. 31, 298 N.W. 393 (1941); City of North Muskegon v. Miller, 249 Mich. 52, 227 N.W. 743 (1929). The "reasonableness" limitation on municipal legislative power has a twofold basis: the constitutional due process requirement that every act based on the state's police power have a reasonable relationship to a legitimate end of the state and, second, the judicially imposed restriction that municipal ordinances be consistent with the extent of power delegated to the municipality through state enabling acts, *i.e.*, reasonableness in an ultra vires sense. See Anderson v. City of St. Paul, 226 Minn. 186, 205-08, 32 N.W.2d 538, 548-50 (1948) (Loring, C.J., dissenting).

12 *Compare* Senior v. Zoning Comm'n, 146 Conn. 531, 153 A.2d 415 (1959), and Simon v. Needham, 311 Mass. 560, 42 N.E.2d 516 (1942), *and* Fischer v. Township of Bedminster, 11 N.J. 194, 93 A.2d 378 (1952), *with* Hitchman v. Township of Oakland, 329 Mich. 331, 338, 45 N.W.2d 306, 310 (1951), *and* Frischkorn Constr. Co. v. Building Inspector, 315 Mich. 556, 563, 24 N.W.2d 209, 212 (1946).

13 The Michigan court has indicated that an ordinance based solely on considerations such as aesthetic purposes, civic pride, and community contentment is not sufficiently related to the state's police power. At best, such considerations give secondary

case seems to indicate that the ordinance in question was invalidated because it was based on merely expectant conditions and that, as a result, it failed to establish the necessary relationship to a legitimate use of the state's police powers.[14] To interpret the case as unequivocally standing for the proposition that regulations based on expectant conditions are unreasonable, however, would be to emasculate master planning. If such a narrow view of permissible prediction prevails, municipalities that attempt to prevent future difficulties, such as inadequate water and sewage capacity, will be faced with "a cancerous situation . . . which will permit almost any city plan to be destroyed piecemeal without any examination or consideration of the overall city plan [*i.e.*, master plan] . . . . "[15] The court could have precluded this possible result and still have reached the same decision by a more thorough analysis of the particular factual circumstances underlying the case. For instance, since the defendant City of Troy had contracted with the City of Detroit for the former's sewage disposal, the City of Troy attempted to justify its minimum lot size requirements on the basis of the limited sewage capacity imposed by that contract.[16] Though it is highly doubtful that ordinances which are founded upon self-imposed limitations would be invalidated for that reason, such limitations do detract from the equities in favor of the ordinance.[17] Plaintiffs argued that the city could easily provide by contract for enlarged capacity when the need arose, and the court observed that, prior to the time when the existing sewage disposal capacity would be reached, technological advances might have obviated the problem of further increases.[18] Plaintiffs also demonstrated that the economic probability of demand for lots of the size contemplated by the city's plan appeared questionable. The ordinance required nearly fifty percent of the municipality's residential area to consist of lots of an area of 15,000 or more square feet.[19] This not only cast a shadow over the probability of a market demand for the multitude of large-size lots so created,[20] but also raised questions concerning discrimination against prospective residents of moder-

support to the validity of the ordinance. See Hitchman v. Township of Oakland, *supra* note 12, at 338. *But see* City of Miami Beach v. Ocean & Inland Co., 147 Fla. 480, 3 So. 2d 364 (1941).

14 For instance, the court stated that it has "consistently held that the reasonableness of a zoning restriction must be tested according to existing facts and conditions and not some condition which might exist in the future." Principal case at 516. See Roll v. City of Troy, 370 Mich. 94, 120 N.W.2d 804 (1963).

15 Principal case at 524 (Adams, J., dissenting).

16 *Id.* at 518.

17 *Ibid.*

18 *Id.* at 517.

19 Joint Appendix, pp. 171a-172a.

20 See Comer v. City of Dearborn, 342 Mich. 471, 476, 70 N.W.2d 813, 815-16 (1955); Gust v. Township of Canton, 342 Mich. 436, 439, 70 N.W.2d 772, 773 (1955). See also Corthouts v. Town of Newington, 140 Conn. 284, 99 A.2d 112 (1953).

ate financial means.[21] This argument was strengthened by the absence of market studies in the master plan indicating a ready market for such houses as would have to be built on the lot sizes in question.[22] Finally, the possibility for the plaintiffs to realize a fair return on their investment within a reasonable amount of time was doubtful.[23] The property in question was located close to an elite residential district which offered more desirable lots with less onerous lot size requirements,[24] thereby impairing the ready marketability of plaintiffs' property.

The presence of these circumstances relieved the court from having to face the question of whether ordinances based upon a master plan must be tested for reasonableness solely in the light of existing conditions and circumstances, as the rule has been with regard to zoning ordinances based upon general plans.[25] When this question is presented the court will have to take account of the impact of the planning enabling act,[26] which indicates a legislative intent that such plans, and necessarily ordinances based thereon, should be prognostic in nature. The problems of rapid urban growth, increasingly the topic of both sociological and political attention, should move the court to relax its insistence upon existing conditions as the standard of reasonableness in matters of municipal restrictions upon land use. The principal case should be read, therefore, not as a condemnation of ordinances based upon anticipated conditions and problems, but merely as an indication to municipal planners of the factors and considerations which should be included in their plans in order to harmonize the master plan with the existing legal framework into which the implementing ordinances must fit. Such an approach would enhance the master plan as an effective, guiding instrument for community growth.

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21 Brief for Appellee, pp. 35-36. See Board of Supervisors v. Carper, 200 Va. 653, 107 S.E.2d 390 (1959).

22 Joint Appendix, p. 172a.

23 Although the Michigan Supreme Court has often stated that a zone is not invalidated because it decreases a landowner's profit, the court, in determining the reasonableness of a condemnation or zoning measure, has examined the extent of diminution in the value of the zoned property, Janesick v. City of Detroit, 337 Mich. 549, 554-55, 60 N.W.2d 452, 455 (1953), the proximity of the property in question to non-regulated or dissimilarly zoned areas, McGiverin v. City of Huntington Woods, 343 Mich. 413, 418-19, 72 N.W.2d 105, 107-08 (1955), and the impairment of the alienability of the property in question, Board of Educ. v. Baczewski, 340 Mich. 265, 65 N.W.2d 810 (1954). See Cram, *Master Planning Creates Clouds on Titles*, 35 Mich. S.B.J., April 1956, p. 9.

24 Joint Appendix, p. 113a.

25 See, *e.g.*, Township of West Bloomfield v. Chapman, 351 Mich. 606, 88 N.W.2d 377 (1958); Gust v. Township of Canton, 342 Mich. 436, 70 N.W.2d 772 (1955). *But see* Zahn v. Board of Pub. Works, 195 Cal. 497, 513, 234 Pac. 388, 395 (1925), *aff'd*, 274 U.S. 325 (1927).

26 MICH. COMP. LAWS § 125.31 (Supp. 1961); MICH. COMP. LAWS §§ 125.32-.45 (1948).